

## Resolution Institute Arbitration Rules 2023

### Explanatory Note

The Resolution Institute Arbitration Rules 2023 have been developed with the following principles in mind. First, they follow the United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules wherever possible and appropriate. Second, they strive to be absolutely consistent with Australian Commercial Arbitration Acts (CAA) and the *International Arbitration Act 1974* (Cth) (IAA) and the *Arbitration Act 1996* (NZ) (AA) and common law. Thirdly they provide a flexible and efficient platform for dispute resolution. Fourthly, they provide a default expedited process that applies where the amount in dispute is not greater than \$2m AUD.

The major changes introduced in 2020 and carried through into the Resolution Institute 2023 Rules is that they:

- provide which version of the Resolution Institute Rules will apply (a clear and workable incorporation by reference provision) (Rule 1.2);
- are focused on single arbitrator arbitrations;
- deal expressly with electronic service by email to a designated or authorised address and how time is calculated (Rule 2);
- provide greater flexibility in hearing procedures (Rule 27 to 28). They remove previous constraints on whether a hearing and discovery occur on the basis of the amount in dispute;
- provide an efficient mechanism for joinder of subsequent disputes between the same parties under the same contract to avoid the current issue of multiple disputes being commenced under the one contract and the difficult consolidation provision contained in the CAA and IAA in that event (Rule 22.3 and 22.4). They specifically allow amendment to claims and defences to add or substitute causes of action arising after commencement (Rule 22.2);
- provide an improved challenge provision of arbitrators (Rule 13);
- provide a clear time limit in which the parties are to agree on the arbitrator failing which Resolution Institute may nominate the arbitrator (Rule 8);
- provide a flat Resolution Institute entitlement to a nomination fee calculated as 10% of the arbitrator's fees **if** the arbitrator is nominated by Resolution Institute (rather than a lump sum fee upfront based on the amount in dispute). The nomination fee is payable by the arbitrator and is recoverable from the parties as a disbursement (Rule 41);
- remove the implied waiver of the requirement to comply with the arbitrator's directions if no complaint is made (Rule 30);
- remove the mandatory dismissal of claim if a direction is not complied with and a complaint is made about the default (Rule 30). A clear and fair procedural structure on default is provided;

- improve immunity for arbitrators and nominee arbitrators (Rule 45);
- operate without amendment whether the nomination of arbitrator is by agreement of the parties or nomination by Resolution Institute. For example, commencement of the arbitration does not depend on involving Resolution Institute or paying a commencement fee (Rule 3.1). They provide a process for the suggestion and acceptance of the arbitrator's identity (Rules 3.4(c), 4.2(b) and Rule 8);
- maintain the 365 days target time in which the arbitration is to be decided (Rule 16);
- reduce potential for conflict with the domestic Australian Arbitration Acts (the CAAs), the *International Arbitration Act* and the NZ Arbitration Act. They can operate where the Model law has not been adopted (PNG or Fiji). Rules 23 and 46 — confidentiality and pleas as to jurisdiction - "gap fill" if the CAA, IAA or AA do not apply. Other clauses precisely restate key CAA/IAA provisions such as Rule 34;
- provide the law of the *arbitration* agreement is the law of the contract — explicitly dealing with a controversy (law of the contract or law of the seat?) that has arisen in international law (Rule 35.4);
- provide complete flexibility in relation to fees and encourage arbitrators and parties to make their own arrangements. (Rule 41.1). They deal specifically with the Arbitrator's Terms of Engagement and what happens if they are not agreed. Of course, the parties and the arbitrator remain free to agree a fee cap in the Arbitrator's Terms of Engagement if they wish;
- removes from the Rules a limit on recoverable legal fees by the successful party. Of course, the parties remain free to agree that in their contract if they wish; and
- for contracts entered into after 1 January 2023, introduces a default expedited procedure in Section IV where less than \$2m AUD is in dispute.