

THE  
INSTITUTE *of*  
ARBITRATORS & MEDIATORS  
—  —  
AUSTRALIA

*Conflict Management Expertise*

**INDUSTRY/CONSUMER DISPUTE RESOLUTION SCHEME RULES FOR  
(Name of Sponsoring Body)**

The Consumer Dispute Resolution Scheme has been introduced by the Institute to provide fair, quick and cost-effective resolution of claims brought by consumers against suppliers of goods and services.

These Rules provide for two stages in the dispute resolution process, namely conciliation and arbitration.

Conciliation is a relatively informal process where an independent person (the Conciliator) assists the parties to negotiate a settlement of their dispute. Arbitration is a process which provides a final and binding determination of the dispute by an independent person (the Arbitrator), in the form of the Arbitrator's written Award.

The Institute recommends that parties in dispute firstly attempt to resolve their differences by conciliation. Under the Rules, conciliation will always be attempted first unless one or both of the parties expressly decide to proceed directly to arbitration.

<b>PRELIMINARY</b>
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- 1.1 This Scheme applies to claims by consumers for monetary compensation or other remedy from manufacturers or suppliers of goods or services.
- 1.2 This Scheme does not apply to claims for compensation exceeding \$ **AMOUNT** or to claims concerning physical injury, illness, nervous shock or their consequences.
- 1.3 Registration fees are payable when either an application for conciliation or arbitration is submitted. These fees are charged on the scales set out on the Application Form.
- 1.4 If the Institute considers that a dispute is either not eligible under this Scheme or is not capable of proper resolution under these Rules, it shall notify the parties accordingly and refund the registration fees.
- 1.5 If conciliation is not to be attempted, this must be stated on the Application Form.
- 1.6 The parties agree that the Institute of Arbitrators & Mediators Australia its officers and employees, and any person appointed as Conciliator or Arbitrator, are not liable to any party for or in respect

of any act or omission arising out of or in connection with these Rules unless such act or omission is shown to have been fraudulent.

## **COMMENCEMENT OF CONCILIATION PROCEEDINGS**

- 2.1 Where a written complaint by a consumer has been made to a supplier or manufacturer and the complaint has been rejected, or there has been no reply or the parties have been unable to settle the dispute within four (4) weeks of the date of the written complaint, the matter can be referred for conciliation in accordance with these Rules.
- 2.2 Within ten (10) days after receipt of an Application Form completed by all parties to the dispute together with the registration fees payable, the President of the Institute (or his or her nominee) shall appoint a suitably qualified independent person as Conciliator, and will advise the parties and the Conciliator accordingly.
- 2.3 Except as provided under Rules 3.6 and 3.7, if the Conciliator is unwilling or unable to act in accordance with these Rules, then the President of the Institute (or his or her nominee) shall appoint a substitute Conciliator as soon as reasonably practicable, and will advise the parties and the Conciliators accordingly.

## **CONCILIATION PROCEDURE**

- 3.1 The Conciliator shall:
  - (a) adopt procedures suitable for quick, cost-effective and fair resolution of the dispute., minimising formality as far as possible; and
  - (b) be independent of, and act fairly and impartially as between the parties, giving each party a reasonable opportunity of putting its case and dealing with that of any opposing party.
- 3.2 The parties shall:
  - (a) do all things reasonably necessary for the quick, cost-effective and fair resolution of the dispute;
  - (b) comply without delay with any direction or ruling by the Conciliator.
- 3.3 Subject to Rule 3.1, the conciliation procedure will be at the discretion of the Conciliator, but may include:
  - (a) convening meetings with the parties, in person or by teleconferencing, to develop possible solutions to the dispute;
  - (b) provision by each party of copies of all relevant documents or other material to the Conciliator and all other parties to the dispute.
- 3.4 Unless the parties otherwise agree or the Conciliator considers that it would not assist resolution of the dispute, the Conciliator shall provide a written report to the parties prior to the conclusion of the conciliation process containing the Conciliator's suggestions for settlement. Any suggestions

for settlement by the Conciliator are not binding on the parties and are intended to assist the parties to settle the dispute.

- 3.5 If the parties settle the dispute by conciliation, the Conciliator shall prepare a written agreement recording the settlement terms for signature by the parties.
- 3.6 If the parties do not settle the dispute within six (6) weeks of the Conciliator's appointment (or such other time agreed in writing by the parties), the dispute may be referred to arbitration. The documents previously submitted to the Conciliator shall be passed on to the Arbitrator, together with a report by the Conciliator on the facts, issues, claims and counterclaims. The Conciliator must not communicate to the Arbitrator any suggestions for settlement of the dispute nor any information given in confidence by either party nor any views expressed by the Conciliator.
- 3.7 If at any stage the parties agree or the Conciliator considers that the dispute is inappropriate for continuation of the conciliation process, then the matter may be referred to arbitration under these Rules.
- 3.8 Unless jointly requested by the parties, the Conciliator shall not be appointed as Arbitrator.
- 3.9 The Conciliator shall not act as an advocate, adviser or witness for a party in the arbitration, or be required to disclose any information about any matter arising during the conciliation procedure other than as provided under Rule 3.6.
- 3.10 The Conciliator's fees and expenses shall be paid by the Institute. Those fees and expenses and the Institute's administration costs shall be recovered from the sponsoring body.
- 3.11 Unless otherwise agreed by the parties, each party shall bear its own costs of the conciliation regardless of the outcome.

### **COMMENCEMENT OF ARBITRATION PROCEEDINGS**

- 4.1 If the parties wish to proceed directly to arbitration, or if conciliation has not resolved the dispute, an application must be submitted to the Institute on the Application Form together with the prescribed registration fees.
- 4.2 Within ten (10) days after receipt of a completed Application Form together with the registration fees payable, the President of the Institute (or his or her nominee) shall appoint a suitably qualified independent person as Arbitrator, and will advise the parties and the Arbitrator accordingly.
- 4.3 If the appointed Arbitrator is unwilling or unable to act in accordance with these Rules, then the President of the Institute (or his or her nominee) shall appoint a substitute Arbitrator as soon as reasonably practicable, and will advise the parties and the Arbitrators accordingly.
- 4.4 Once the Arbitrator is appointed, all communications with the Arbitrator should be in writing and should be copied to all other parties.

### **ARBITRATION PROCEDURE**

- 5.1 The Arbitrator shall:

- (a) adopt procedures suitable for quick, cost-effective and fair determination of the dispute, minimising formality as far as possible; and
- (b) be independent of, and act fairly and impartially as between the parties, giving each party a reasonable opportunity of putting its case and dealing with that of any opposing party.

5.2 The parties shall:

- (a) do all things reasonably necessary for the quick, cost-effective and fair resolution of the dispute;
- (b) comply without delay with any direction or ruling by the Arbitrator.

5.3 Unless otherwise agreed in writing by the parties or otherwise determined by the Arbitrator, the arbitration shall proceed in the following manner:

- (a) The party making the claim (claimant) shall, within fourteen (14) days of the date on which the Arbitrator is appointed, provide to each other party and to the Arbitrator a document specifying the nature and basis of the claim, the amount claimed (and how it has been calculated) and any other remedy sought, and enclosing copies of all documents and any witness statements or expert reports relied upon in support of the claim.
- (b) Within a further fourteen (14) days, any other party (respondent) shall serve its response to the claimant's claim, setting out what it says as to the nature and basis of the claim, the amount claimed (and how it has been calculated) and any other remedy sought, and enclosing copies of all documents and any witness statements or expert reports relied upon by the respondent in response to the claim.
- (c) If any party other than the claimant wishes to make a counterclaim against the claimant or any other party, then it shall within the period specified in paragraph (b) serve a document setting out its counterclaim including what it says as to the nature and basis of the counterclaim, the amount of the counterclaim (and how it has been calculated) and any other remedy sought in the counterclaim, and enclosing copies of all documents and any witness statements or expert reports relied upon in support of the counterclaim.
- (d) If a counterclaim is served, then, within a further fourteen (14) days, any respondent to the counterclaim shall serve its response to the counterclaim, including what it says as to the nature and basis of the counterclaim, the amount of the counterclaim (and how it has been calculated) and any other remedy sought in the counterclaim, and enclosing copies of all documents and any witness statements or expert reports relied upon in response to the counterclaim.
- (e) If the dispute concerns issues which involve expert evidence, then if Arbitrator considers it appropriate, he or she may direct that:
  - (i) expert reports not be served but that, instead, the experts retained by the parties are to be each provided with the material otherwise served, and then jointly meet (by a time fixed by the Arbitrator) and produce a joint report or reports (by a time fixed by the Arbitrator) recording the matters on which they agree, the matters on which they

disagree, and identifying the reasons for any such disagreement and their respective contentions in relation to same;

- (ii) the experts retained by the parties attend one or more meetings chaired by the Arbitrator, so as to narrow issues in dispute, which meetings are to be held at a time and are to be conducted and recorded in a manner directed by the Arbitrator.
  - (f) The Arbitrator may make such other directions or rulings as he or she considers to be reasonably appropriate in the circumstances.
  - (g) The Arbitrator shall determine the matter based on the written material served or produced under this Rule unless the Arbitrator determines that an oral hearing is necessary to explain or resolve conflicts in that written material in relation to any one or more of the issues in dispute.
  - (h) If the Arbitrator determines that an oral hearing should be held in relation to any one or more of the issues in dispute, then that oral hearing shall be conducted as soon as practicable at a time and in the manner directed by the Arbitrator, including any reasonable time limits on oral evidence and the provision of written opening addresses and final submissions.
  - (i) Any times fixed under this Rule may be varied by agreement of the parties. In the absence of such agreement, on proper cause being shown by a party, the Arbitrator may vary the times fixed on such terms as to costs or otherwise as the Arbitrator, in his or her discretion, considers reasonable in the circumstances.
  - (j) Subject to paragraph (i), if any party fails to deliver anything required under these Rules within fourteen (14) days of the date on which it is due, then:
    - (i) where a claim or counterclaim is not delivered, it shall deem to be abandoned;
    - (ii) where a claim is abandoned, the arbitration will not proceed unless a counterclaim has been delivered (in which case the arbitration will proceed on the counterclaim only);
    - (iii) where a counter claim is abandoned, the arbitration will proceed on the claim only;
    - (iv) otherwise, the arbitration shall proceed as the Arbitrator considers appropriate in the circumstances.
- 5.4 Unless the parties otherwise agree, the law to be applied in the arbitration shall be the law of the place with the closest connection to the dispute. If the parties cannot agree on the place with the closest connection to the dispute, then the law to be applied shall be the law of the state or territory where the arbitrator ordinarily resides.
- 5.5 As soon as reasonably practicable after receiving all submissions and evidence, the Arbitrator shall make a final and binding award with reasons. The Institute will send a copy of the award to each party and to the organization acting as the sponsoring body for the Scheme.
- 5.6 Unless otherwise directed, any amount awarded shall be paid to the party entitled to receive it within twenty one (21) days of dispatch of the award to the parties.

- 5.7 The Arbitrator's fees and expenses shall be paid by the Institute. Those fees and expenses and the Institute's administration costs shall be recovered from the sponsoring body.
- 5.8 Unless otherwise agreed by the parties or ordered by the Arbitrator under Rule 5.7, each party shall bear its own costs of the arbitration.
- 5.9 The Arbitrator may order one party to pay the whole or part of another party's costs where the first party has acted unreasonably and caused the other party unnecessary expense.
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**INDUSTRY/CONSUMER DISPUTE RESOLUTION SCHEME FOR**  
**(Name of Sponsoring Body)**

**APPLICATION FOR CONCILIATION AND/OR ARBITRATION**

(N.B. Before completing this form please refer to the accompanying Guidance Notes)

1. \_\_\_\_\_ **Claimant**

of \_\_\_\_\_

Tel: \_\_\_\_\_ Fax: \_\_\_\_\_ Email: \_\_\_\_\_

**and**

\_\_\_\_\_ **Respondent**

of \_\_\_\_\_

Tel: \_\_\_\_\_ Fax: \_\_\_\_\_ Email: \_\_\_\_\_

do hereby apply to The Institute of Arbitrators & Mediators Australia for the following dispute to be resolved under the Current Rules of the Industry/Consumer Dispute Resolution Scheme for \_\_\_\_\_ (Name of Sponsoring Body), and for appointment of a Conciliator and/or Arbitrator under those Rules.

2. The dispute concerns the following issues: *(list)*

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3. The amount (if any) claimed is \$ \_\_\_\_\_

and the amount (if any) counterclaimed is \$ \_\_\_\_\_

4. We, the parties to this application have read the current Rules of the Scheme. We agree to be bound by them and by the Award of any Arbitrator appointed by The Institute of Arbitrators & Mediators Australia to determine the dispute.

5. We require this dispute to be resolved by conciliation and if necessary arbitration\*

*or*

We require this dispute to proceed directly to arbitration.\*

(\* *Delete as appropriate*)

6. Registration fees are payable by all parties to commence the procedure. See Clauses 1.3; 3.10; and 5.7. Conciliator and Arbitrator fees are payable by the Sponsoring Body as per an agreement made to set up this scheme. Applicable Registration fees are based upon a sliding scale dependent upon the amount in dispute (or in certain schemes the type of issue) as follows:

<i>Amount in Dispute</i>	<i>Applicable Registration Fee per Party (including GST)</i>
Less than \$5000	\$77
\$5000 to \$50,000	\$110
More than \$50,000	\$165

7. We enclose cheques made payable to The Institute of Arbitrators & Mediators Australia, in the amount of \$ \_\_\_\_\_ (including GST) in respect of the Claimant's registration fee and the amount of \$ \_\_\_\_\_ (including GST) in respect of the Respondent's registration fee. If paying by credit card, please complete:

Bankcard                      Visacard                      Mastercard

**Claimant's Card Number**..... Expiry Date.....

Cardholder's Name.....

Signature.....

Bankcard                      Visacard                      Mastercard

**Respondent's Card Number**..... Expiry Date.....

Cardholder's Name.....

Signature.....

**Signed:**.....                      **Date:**.....

**Name:**.....                      **Claimant**

**Signed:**.....                      **Date:**.....

**Name:**.....                      **Respondent**