

Draft Resolution Institute Arbitration Rules 2020

Explanatory Memorandum

With the support and encouragement of the CEO, a revision of the RI Arbitration Rules has been prepared: the RI Arbitration Rules 2020. It is hoped that they will be adopted by the RI Board at its meeting on 5 December 2020 and come into force on 1 January 2020. The Rules are now at the stage where they can be released for comment by all RI graded arbitrators.

Any comments must be received by 21 October 2019 to meet our tight timeline. They should be directed to Toby Shnookal QC (shnookal@vicbar.com.au) and/or Dr Richard Manly QC (manly@chancery.com.au). Toby is presenting on the Draft Rules at Arbitration Week on 20 November 2019 at McCullough Robertson Lawyers 7.30 to 9.00 am and you are encouraged to attend.

The revised version has been developed with the following principles in mind. First, they follow the UNCITRAL Rules wherever possible and appropriate. Second, they strive to be consistent with Australian domestic arbitration legislation and common law. Thirdly they provide a flexible and efficient platform for dispute resolution.

The major changes from the previous rules are that they provide:

- which version of the RI Rules will apply (Art 1.2)
- complete flexibility in relation to fees by encouraging arbitrators and parties to make their own arrangements and removing all fee caps (Art 41.1)
- greater flexibility in hearing procedures (Art 27 to 28)
- a mechanism for joinder of subsequent disputes between the same parties under the same contract (Art 47)
- an improved confidentiality provision (Art 46)
- a clear time limit in which the parties are to agree on the arbitrator failing which RI may nominate the arbitrator (Art 8)
- a flat RI entitlement to a nomination fee calculated as 10% of the arbitrator's fees if the arbitrator is nominated by RI. The nomination fee is payable by the arbitrator and recoverable from the parties as a disbursement (Art 41)
- removal of the implied waiver of the requirement to comply with arbitrator's directions if no complaint is made and the mandatory dismissal of claim if a direction is not complied with and complaint is made (Art 30)
- removal of the power to appoint experts without the parties consent (Art 29)
- improved immunity for arbitrators and nominee arbitrators (Art 45), and
- reduced potential for conflict with domestic arbitration acts.