

Guidance Note for the ACICA Expedited Arbitration Rules

September 2010

Purpose and Structure

The purpose of this Guidance Note is to explain to legal advisors and arbitrators some of the more important features of the ACICA Expedited Arbitration Rules (**Expedited Rules**).

This document is for information only, and its content does not form part of the Expedited Rules. It will be updated regularly in light of feedback and practical experiences in administering arbitrations under these Rules as well as other fast-track rules.

For more information on the Expedited Rules, see Jonathon DeBoos, Clyde Croft, Richard Garnett, Bjorn Gehle and Luke Nottage, 'ACICA's Expedited Arbitration Rules' in Luke Nottage and Richard Garnett (eds), *International Arbitration in Australia* (Federation Press, Sydney, 2010), chapter 5.

Arbitrator Appointment

Article 8.2 of the Expedited Rules provides that ACICA appoints the Arbitrator. Article 8.5 gives ACICA the power to obtain from either party information it deems necessary in order to make this appointment. In practice, ACICA expects to liaise with all parties when making the appointment so that they have some input into the choice. However, this too will be subject to the Overriding Objective of securing quick, cost-effective and fair arbitration.

If parties instead wish to appoint an Arbitrator by agreement, then ACICA recommends that they provide as such in their arbitration agreement (as expressly permitted by the proviso to Article 2.1). In drafting such an agreement, provisions in ACICA's generic Arbitration Rules may offer some assistance. However, if parties wish to retain the Expedited Rules for the rest of the arbitration, designed for lower-value and simpler disputes, ACICA recommends that parties set strict time limits for agreeing on appointment of the arbitral tribunal.

Managing Time limits

Due to the short time limits imposed by the Expedited Rules, ACICA recommends that the arbitrator:

- (a) convenes a preliminary conference as soon as possible after s/he is appointed; and
- (b) discusses with the parties the fact that the time limits are very tight and that Article 22 limits the scope for extending them (in the absence of agreement among the parties and the arbitrator).

The time limit for rendering the award is calculated by reference to the date of the arbitrator's appointment. Consequently, each time the parties are granted an extension of time under Article 22, the arbitrator's time for preparing the award is being reduced. As such, where the arbitrator and the parties agree to extend time limits to a greater extent than is provided under Article 22.2, ACICA recommends that the arbitrator also seeks the parties' agreement to an equivalent extension of the time for rendering the award.

Determination of challenges to the Arbitrator's jurisdiction

Article 20.4 of the Expedited Rules provides that, in general, the Arbitrator should rule on a plea concerning his or her jurisdiction as a preliminary question. However, the Arbitrator may proceed with the arbitration and rule on such a plea in his or her final award.

ACICA recommends that an Arbitrator rules on a challenge to his or her jurisdiction as a preliminary question in circumstances where:

- (a) that question can be decided without a detailed analysis of the substance of the dispute; and
- (b) there is a reasonable prospect of its determination leading to an early resolution of the dispute.

However the Arbitrator should keep in mind the time limit for rendering his or her award when deciding whether to bifurcate the proceedings in this manner.