

*Associations Incorporations Act 1981*



**STATEMENT OF PURPOSES**

***AND***

**RULES**

***OF THE***

**AUSTRALIAN INSTITUTE FOR COMMERCIAL ARBITRATION INC.**

5 October 2004

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**STATEMENT OF PURPOSES  
OF THE  
AUSTRALIAN INSTITUTE FOR COMMERCIAL ARBITRATION INC.**

The objects of the Australian Institute for Commercial Arbitration Inc. shall be:

- (1) To provide a forum for meetings of people who practise in or have an interest in commercial arbitration and mediation and to foster closer working and social relationships between them.
- (2) To bring to the attention of members, through the medium of regular meetings, matters of concern or interest or both relating to commercial arbitration and mediation and to conduct discussions and formulate position statements or recommendations or both for submission to such person or body as the Committee may deem proper.
- (3) To establish communications and actively liaise with courts, tribunals, authorities, government departments and instrumentalities and other associations and bodies concerned with or interested in commercial arbitration and mediation.
- (4) To seek representation on and liaison with committees of government concerned with matters of concern to members.
- (5) To liaise with the government, courts and other bodies in relation to matters of concern to members of the Association and to ensure that, as far as practicable, consultation between those bodies and the Committee takes place before those bodies formulate policies or makes decisions on commercial arbitration and mediation matters.
- (6) To encourage participation by members in continuing arbitration and mediation education programmes, conferences and other outlets whereby arbitrators and mediators and other interested professional groups and the public may increase their knowledge and understanding of commercial arbitration and mediation.

**RULES OF THE  
AUSTRALIAN INSTITUTE FOR COMMERCIAL ARBITRATION INC.**

**Name**

1. The name of the incorporated association is the "***Australian Institute for Commercial Arbitration Inc.***" (in these Rules called "***the Institute***").

**Definitions**

2. (1) In these Rules, unless the contrary intention appears  
"**Commercial arbitration and mediation**" shall be given the widest possible interpretation and shall include:
  - (a) laws (both Federal and State) relating to arising out of concerning or affecting arbitration and mediation;
  - (b) proposed changes to any such laws;
  - (c) the practice and procedure of arbitrators and mediators engaging in alternative dispute resolution processes as may be affected by any such laws or howsoever otherwise;
  - (c) the administration practice and procedure of any court body or authority administering any such laws.

"**Chair**" means a member who is appointed by the President to Chair a Section of the Institute.

"**Committee**" means the Committee of Management of the Institute.

"**Executive**" means a Committee comprised of the President, Senior Vice-President, Vice-President (Convenor), and Vice-President (Finance).

"**Financial year**" means the year ending on 30 September.

"**General Meeting**" means a general meeting of members convened in accordance with Rule 11.

**"Member"** means a member of the Institute and includes the separate categories of Honorary Life Members, Fellows (Certified Arbitrators), Ordinary Members and Associate Members.

**"Ordinary Member of the Committee"** means a member of the Committee who is not an officer of the Institute under Rule 21.

**"President"**, **"Senior Vice-President"**, **"Vice-President (Convenor)"**, and **"Vice-President (Finance)"** severally mean the person (or persons if more than one) for the time being holding the appropriate office in accordance with these Rules;

**"Registered Address"** of a member means the address of the member on the date of becoming a member or the address of any other address the member may have transferred provided that the member has notified the Vice-President (Convenor) in writing of such change;

**"Section"** of the Institute means a specialist grouping of members of the Institute established by resolution of the Executive from time to time and until otherwise resolved shall be as set out in Schedule 3 to these Rules.

**"Secretary"**, **"Assistant Secretary"** and **"Deputy Chair"** means the person appointed by the Chair of a Section to act as Secretary, Assistant Secretary or Deputy Chair of the Section.

**"The Act"** means the ***Associations Incorporation Act 1981***.

**"The Regulations"** means Regulations under the Act.

- (2) In these Rules, a reference to the Vice-President (Convenor) of the Institute is a reference to -
- (a) where a person holds office under these Rules as Vice-President (Convenor) of the Institute - to that person; and
  - (b) in any other case, to the public officer of the Institute.

- (3) Words or expressions contained in these Rules shall be interpreted in accordance with the ***Interpretation of Legislation Act 1984*** and the Act as in force from time to time.

### **Membership**

3. (1) Any person who is a graduate or entitled to graduate from the following courses that are or may be offered by Victoria University (*the Commercial Arbitration Courses*):
- (i) Master of Commercial Arbitration;
  - (ii) Graduate Diploma of Commercial Arbitration;
  - (iii) Graduate Certificate in Commercial Arbitration,
- or such other persons as may be determined by the Committee:
- (iv) to have qualifications similar to the Commercial Arbitration Courses; or ,
  - (v) by their standing and experience are to be deemed as having the equivalent of training and education as provided by such qualifications (see also Guidelines attached),
- shall be entitled to apply to be become a member in a category set out in sub-clause 3 (2) below by completing the application form in Schedule 1, delivering it to the Vice-President (Convenor), providing such information as may be required by the Committee and by paying the sum payable under these Rules.
- (2) (i) Any person holding a Master of Commercial Arbitration or a Graduate Diploma of Commercial Arbitration from Victoria University shall be entitled to apply for membership as a Fellow (Certified Arbitrator) of the Institute ("**FAICA**");
- (ii) Any person holding a Graduate Certificate in Commercial Arbitration shall be entitled to apply for membership as an Ordinary Member of the Institute ("**MAICA**");
- (iii) Any person enrolled in one of the Commercial Arbitration Courses shall be entitled to apply for membership as an Associate Member of the Institute ("**AAICA**");

- (iv) Any person otherwise mentioned in sub-clause 3 (1) (iv) or (v) above shall be entitled to apply for membership as an Associate Member of the Institute and upon their membership being approved may, if desired, thereupon apply to the Committee for membership in another category on grounds to be provided by the member to be considered by the Committee.
  - (v) A person who is a member may only use the appropriate membership category post-nominal whilst a financial member of the Institute.
- (3) Upon any application being approved by the Committee, the Vice-President (Convenor) shall, with as little delay as possible, notify the applicant of the approval for membership of the Institute and request payment within the period of 28 days of the sum payable under these Rules if not already received by the Vice-President (Convenor).
- (4) The Vice-President (Convenor) shall, upon payment of the amounts referred to in sub-clause 3 (3) within the period referred to in that sub-clause, enter the applicant's name in the register of members and, upon the name being so entered, the applicant becomes a member of the Institute in the appropriate category determined by the Committee.
- (5) A right, privilege, or obligation of a person by reason of membership of the Institute -
  - (a) is not capable of being transferred or transmitted to another person; and
  - (b) terminates upon the cessation of membership whether by death or resignation or otherwise.
- (6) The Executive may confer Honorary Life Membership, upon any person whether already a member of the Institute or not.

- (7) A member shall be entitled to remain a member for as long as his or her name appears upon the said list and for as long as all membership fees have been paid.
4. Until otherwise determined by the Committee the annual subscription is as follows:
- |                               |           |
|-------------------------------|-----------|
| Fellow (Certified Arbitrator) | \$200     |
| Ordinary Member               | \$100     |
| Associate Member              | \$50      |
| Honorary Life Member          | No charge |
5. The Vice-President (Convenor) shall keep and maintain a register of members in which shall be entered the full name, address and date of entry of the name of each member and the register shall be available for inspection by members upon request.
6. (1) A member of the Institute who has paid all moneys due and payable by the member to the Institute may resign from the Institute by first giving one month's notice in writing to the Vice-President (Convenor) of his or her intention to resign and upon the expiration of that period of notice, the member ceases to be a member.
- (2) Upon the expiration of a notice given under sub-clause (1), the Vice-President (Convenor) shall make in the register of members an entry recording the date on which the member by whom the notice was given, ceased to be a member.
7. (1) Subject to these Rules, the Committee may by resolution -
- (a) expel a member from the Institute;
  - (b) suspend a member from membership of the Institute for a specified period; or
  - (c) fine a member an amount not exceeding \$20 -



- if the Committee is of the opinion that the member -
  - (d) has refused or neglected to comply with these Rules; or
  - (e) has been guilty of conduct unbecoming a member or prejudicial to the interests of the Institute.
- (2) A resolution of the Committee under sub-clause (1) -
  - (a) does not take effect unless the Committee, at a meeting held not earlier than 14 and not later than 28 days after the service on the member of a notice under sub-clause (3) confirms the resolution in accordance with this clause; and
  - (b) where the member exercises a right of appeal to the Institute under this clause, does not take effect unless the Institute confirms the resolution in accordance with this clause.
- (3) If the Committee passes a resolution under sub-clause (1), the Vice-President (Convenor) shall, as soon as practicable, cause to be served on the member a notice in writing -
  - (a) setting out the resolution of the Committee and the grounds on which it is based;
  - (b) stating that the member may address the Committee at a meeting to be held not earlier than 14 and not less than 28 days after service of the notice;
  - (c) stating the date, place and time of that meeting;
  - (d) informing the member that he or she may do one or more of the following:
    - (i) attend that meeting;
    - (ii) give to the Committee before the date of that meeting a written statement seeking the revocation of the resolution; and
    - (iii) not later than 24 hours before the date of the meeting lodge with the secretary a notice to the effect that he or she wishes to appeal to the Institute in general meeting against the Resolution.

- (4) At a meeting of the Committee held in accordance with sub-clause (2), the Committee -
  - (a) shall give to the member an opportunity to be heard;
  - (b) shall give due consideration to any written statement submitted by the member; and
  - (c) shall be resolution determine whether to confirm or to revoke the resolution.
- (5) If the Vice-President (Convenor) receives a notice under sub-clause (4), he or she shall notify the Committee and the Committee shall convene a general meeting of the Institute to be held within twenty-one days after the date on which the Vice-President (Convenor) received the notice.
- (6) At a general meeting of the Institute convened under sub-clause (5) -
  - (a) no business other than the question of the appeal shall be transacted;
  - (b) the Committee may place before the meeting details of the grounds for the resolution and the reasons for the passing of the resolution;
  - (c) the member shall be given an opportunity to be heard; and
  - (d) the members present shall vote by secret ballot on the question whether the resolution should be confirmed or revoked.
- (7) If at the general meeting -
  - (a) two-thirds of the members vote in person or by proxy in favour of the confirmation of the resolution, the resolution is confirmed; and
  - (b) in any other case, the resolution is revoked.

### **Annual General Meetings**

8. (1) The Institute shall in each calendar year convene an Annual General Meeting of its members.

- (2) The Annual General Meeting shall be held on such day as the Committee determines.
- (3) The Annual General Meeting shall be specified as such in the notice convening it.
- (4) The ordinary business of the Annual General Meeting shall be -
  - (a) to confirm the minutes of the last preceding Annual General Meeting and of any general meeting held since that meeting;
  - (b) to receive from the Committee reports upon the transactions of the Institute during the last preceding financial year;
  - (c) to elect officers of the Institute; and
  - (d) to receive and consider the statement submitted by the Institute in accordance with section 30(3) of the Act.
- (5) The Annual General Meeting may transact special business of which notice is given in accordance with these Rules.
- (6) The Annual General Meeting shall be in addition to any other general meetings that may be held in the same year.

### **Special General Meetings**

9. All general meetings other than the Annual General Meeting shall be called special general meetings.
10.
  - (1) The Committee may, whenever it thinks fit, convene a special general meeting of the Institute and, where, but for this sub-clause, more than fifteen months would elapse between Annual General Meetings, shall convene a special general meeting before the expiration of that period.
  - (2) The Committee shall, on the requisition in writing of members representing not less than 5 per cent of the total number of members, convene a special general meeting of the Institute.
  - (3) The requisition for a special general meeting shall state the objects of the meeting and shall be signed by the members making the requisition and be sent to the address of the Vice-President

- (Convenor) and may consist of several documents in a like form, each signed by one or more of the members making the requisition.
- (4) If the Committee does not cause a special general meeting to be held within the month after the date on which the requisition is sent to the address of the Vice-President (Convenor), the members making the requisition, or any of them, may convene a special general meeting to be held not later than three months after that date.
  - (5) A special general meeting convened by members in pursuance of these Rules shall be convened in the same manner as nearly as possible as that in which those meetings are convened by the Committee and, all reasonable expenses incurred in convening the meeting shall be refunded by the Institute to the persons incurring the expenses.
11. (1) The Vice-President (Convenor) of the Institute shall, at least 14 days before the date fixed for holding a general meeting of the Institute, cause to be sent to each member of the Institute a notice stating the place, date and time of the meeting and the nature of the business to be transacted at the meeting.
- (2) No business other than that set out in the notice convening the meeting shall be transacted at the meeting.
  - (3) A member desiring to bring any business before a meeting may give notice of that business in writing to the Vice-President (Convenor), who shall include that business in the notice calling the next general meeting after the receipt of the notice.
12. (1) All business that is transacted at a special general meeting and all business that is transacted at the Annual General Meeting with the exception of that specially referred to in these Rules as being the ordinary business of the Annual General Meeting shall be deemed to be special business.

- (2) No item of business shall be transacted at a general meeting unless a quorum of members entitled under these Rules to vote is present during the time when the meeting is considering that item.
- (3) Five members personally present (being members entitled under these Rules to vote at a general meeting) constitute a quorum for the transaction of the business of a general meeting.
- (4) If within half an hour after the appointed time for the commencement of a general meeting, a quorum is not present, the meeting if convened upon the requisition of members shall be dissolved and in any other case shall stand adjourned to the same day in the next week at the same time and (unless another place is specified by the Chairman at the time of the adjournment or by written notice to members given before the day to which the meeting is adjourned) at the same place and if at the adjourned meeting the quorum is not present within half an hour after the time appointed for the commencement of the meeting, the members present (being not less than 3) shall be quorum.

### **Conduct of Meetings**

13. (1) The President, or in the President's absence, the Senior Vice-President, shall preside as Chairman at each general meeting of the Institute.
  - (2) If the President and the Senior Vice-President are absent from a general meeting, the members present shall elect one of the officers of the Institute to preside as Chairman at the Meeting.
14. (1) The Chairman of a general meeting at which a quorum is present may, with the consent of the meeting, adjourn the meeting from time to time and place to place, but no business shall be transacted at an adjourned meeting other than the business left unfinished at the meeting at which the adjournment took place.

- (2) Where a meeting is adjourned for fourteen days or more, a like notice of the adjourned meeting shall be given as in the case of the general meeting.
- (3) Except as provided in sub-clauses (1) and (2), it is not necessary to give notice of an adjournment or of the business to be transacted at an adjourned meeting.

### **Voting**

15. A question arising at a general meeting of the Institute shall be determined on a show of hands and unless, before or on the declaration of the show of hands a poll is demanded, a declaration by the Chairman that a resolution has, on a show of hands, been carried or carried unanimously or carried by a particular majority or lost, and an entry to that effect in the Minute Book of the Institute is evidence of the fact, without proof of the number or proportion of the votes recorded in favour of, or against, that resolution.
16.
  - (1) Upon any question arising at a general meeting of the Institute, a member has one vote only.
  - (2) All votes shall be given personally or by proxy.
  - (3) In the case of an equality of voting on a question, the Chairman of the meeting is entitled to exercise a second or casting vote.
17.
  - (1) If at a meeting a poll or any question is demanded by not less than three members, it shall be taken at that meeting in such manner as the Chairman may direct and the resolution of the poll shall be deemed to be a resolution of the meeting on that question.
  - (2) A poll that is demanded on the election of a Chairman or on a question of an adjournment shall be taken forthwith and a poll that is demanded on any question shall be taken at such time before the close of the meeting as the Chairman may direct.

18. A member is not entitled to vote at any general meeting unless all moneys due and payable by the member to the Institute have been paid.

### **Proxies**

19. (1) Each member is entitled to appoint another member as a proxy by notice given to the Vice-President (Convenor) no later than 24 hours before the time of the meeting in respect of which the proxy is appointed.
- (2) The notice appointing the proxy shall be in the form set out in Schedule 2.

### **Committee of Management**

20. (1) The affairs of the Institute shall be managed by the Committee of Management constituted as provided in Rule 22.
- (2) The Committee -
- (a) shall control and manage the business and affairs of the Institute;
  - (b) may, subject to these Rules, the Regulations and the Act, exercise all such powers and functions as may be exercised by the Institute other than those powers and functions that are required by these Rules to be exercised by general meetings of the members of the Institute; and
  - (c) subject to these Rules, the regulations and the Act, has power to perform all such acts and things as appear to the Committee to be essential for the proper management of the business and affairs of the Institute;
  - (d) may authorise the Executive to manage the business and affairs of the Institute between meetings of the Committee.
- (3) The Commencing Committee of the Association to hold office, as officers until 30 September 2006 and as ordinary members of the Committee until 30 September 2005, shall be those persons who held the same positions in the

unincorporated association known as the Australian Institute for Commercial Arbitration which has resolved to being incorporated under the Act and as set out in the Schedule 4.

21. (1) The officers of the Institute shall be -
    - (a) a President;
    - (b) a Senior Vice-President;
    - (c) a Vice-President (Convenor); and
    - (d) a Vice-President (Finance).
  - (2) The provisions of Rule 23 so far as they are applicable and with the necessary modifications, apply to and in relation to the election of persons to any of the offices mentioned in sub-clause (1).
  - (3) Each officer of the Institute shall hold office until the Annual General Meeting 2 years next after the date of his or her election but is eligible for re-election.
  - (4) In the event of a casual vacancy in any office referred to in sub-clause (1) the Committee may appoint one of its members to the vacant office and the member so appointed may continue in office up to and including the conclusion of the Annual General Meeting next following the date of the appointment.
- 
22. (1) Subject to section 23 of the Act, the Committee shall consist of -
    - (a) the officers of the Institute (each of whom shall be elected at the relevant Annual General Meeting of the Institute); and
    - (b) the Chairman (or nominee) of each Section of the Institute (each of whom shall be appointed by the President at each Annual General Meeting); and
    - (c) the Secretaries of the Institute (each of whom shall be appointed by the Chair of a Section at each Annual General Meeting).



- (2) Each ordinary member of the Committee shall, subject to these Rules, hold office until the Annual General Meeting next after the date of election/appointment but is eligible for re-election/re-appointment.
- (3) In the event of a casual vacancy occurring in the office of an ordinary member of the Committee, the President may appoint a member of the Institute to fill the vacancy and the member so appointed shall hold office, subject to these Rules, until the conclusion of the Annual General Meeting next following the date of the appointment.

### **Elections**

23. (1) Nominations of candidates for election as officers of the Institute -
  - (a) shall be made in writing, signed by two members of the Institute and accompanied by the written consent of the candidate (which may be endorsed on the form of nomination); and
  - (b) shall be delivered to the Vice-President (Convenor) of the Institute not less than three days before the date fixed for the holding of the Annual General Meeting.
- (2) If insufficient nominations are received to fill all vacancies, the candidates nominated shall be deemed to be elected and no further nominations shall be received at the Annual General Meeting.
- (3) If the number of nominations received is equal to the number of vacancies to be filled, the persons nominated shall be deemed to be elected.
- (4) If the number of nominations exceeds the number of vacancies to be filled, a ballot shall be held.
- (5) The ballot for the election of officers of the Institute shall be conducted at the Annual General Meeting in such usual and proper manner as the Committee may direct.

- (6) A nomination of a candidate for election under this clause is not valid if that candidate has been nominated for another office for election at the same election.

### **Vacancies**

24. For the purposes of the Rules, the office of an officer of the Institute, the Chair of a Section, or, of an ordinary member of the Committee becomes vacant if the officer, Chair, or member -
  - (a) ceases to be a member of the Institute;
  - (b) becomes an insolvent under administration within the meaning of the *Corporations Act 2001*;
  - (c) in the case of a Chair or member is removed by a resolution of the Executive;
  - (d) resigns from office by notice in writing given to the Vice-President (Convenor).

### **Meetings of the Committee**

25.
  - (1) The Committee shall meet at least 3 times in each year at such place and such times as the Committee may determine.
  - (2) Special meetings of the Committee may be convened by the President directing the Vice-President (Convenor) to so convene a meeting.
  - (3) Notice shall be given to members of the Committee of any special meeting specifying the general nature of the business to be transacted and no other business shall be transacted at such a meeting.
  - (4) Any four members of the Committee constitute a quorum for the transaction of the business of a meeting of the Committee.
  - (5) No business shall be transacted unless a quorum is present and if within half an hour of the time appointed for the meeting a quorum is not present the meeting shall stand adjourned to the same place

and at the same hour of the same day in the following week unless the meeting was a special meeting in which case it elapses.

- (6) At meetings of the Committee -
  - (a) the President or in the President's absence the Senior Vice-President shall preside; or
  - (b) if the President and the Senior Vice-President are absent, such one of the remaining members of the Committee as may be chosen by the members present shall preside.
- (7) Questions arising at a meeting of the Committee or of any sub-committee appointed by the Committee shall be determined on a show of hands or, if demanded by a member, by a poll taken in such manner as the person presiding at the meeting may determine.
- (8) Each member present at a meeting of the Committee or of any sub-committee appointed by the Committee (including the person presiding at the meeting) is entitled to one vote and, in the event of an equality of votes on any question, the person presiding may exercise a second or casting vote.
- (9) Written notice of each committee meeting shall be served on each member of the Committee, in any manner authorised by these Rules, a reasonable time before the meeting.
- (10) Subject to sub-clause (4) the Committee may act notwithstanding any vacancy on the Committee.

### **Minutes**

26. The Vice-President (Convenor) of the Institute shall keep minutes of the resolutions and proceedings of each general meeting and each committee meeting in books provided for that purpose together with a record of the names of persons present at committee meetings.

### **Vice-President (Finance)**

27. The Vice-President (Finance) of the Institute -
- (a) shall collect and receive all moneys due to the Institute and make all payments authorised by the Institute; and
  - (b) shall keep correct accounts and books showing the financial affairs of the Institute with full details of all receipts and expenditure connected with the activities of the Institute.

### **Chair of a Section**

28. The Chair of a Section shall -
- (a) Preside at meetings of the Section.
  - (b) Have general supervision of the activities and affairs of the Section.
  - (c) Perform such other duties as may be required;
  - (d) May convene meetings and seminars of that Section upon notice in writing being given to all members of that Section by the Secretary. The Secretary shall notify the Vice-President (Convenor) of the meeting or seminar in sufficient time to allow all members of the Institute to be notified by the Vice-President (Convenor) of the meeting or seminar.

### **Removal from the Committee**

29. (1) The Institute in general meeting may by resolution remove any member of the Committee before the expiration of the member's term of office and appoint another member in his or her stead to hold office until the expiration of the term of the first-mentioned member.
- (2) Where the member to whom a proposed resolution referred to sub-clause (1) makes representations in writing to the Vice-President (Convenor) or President of the Institute (not exceeding a reasonable length) and requests that they be notified to the members of the Institute, the Vice-President (Convenor) or the

President may send a copy of the representations to each member of the Institute or, if they are not so sent, the member may require that they be read out at the meeting.

### **Disputes and mediation**

30. (1) The grievance procedure set out in this rule applies to disputes under these Rules between—
  - (a) a member and another member; or
  - (b) a member and the Institute.
- (2) The parties to the dispute must meet and discuss the matter in dispute, and, if possible, resolve the dispute within 14 days after the dispute comes to the attention of all of the parties.
- (3) If the parties are unable to resolve the dispute at the meeting, or if a party fails to attend that meeting, then the parties must, within 10 days, hold a meeting in the presence of a mediator.
- (4) The mediator must be—
  - (a) a person chosen by agreement between the parties; or
  - (b) in the absence of agreement—
    - (i) in the case of a dispute between a member and another member, a person appointed by the committee of the Institute; or
    - (ii) in the case of a dispute between a member and the Institute, a person who is a mediator appointed by the Provost *pro tem* of the Sir Zelman Cowen Centre for Continuing Legal Education, Victoria University.
- (5) A member of the Institute can be a mediator.
- (6) The mediator cannot be a member who is a party to the dispute.

- (7) The parties to the dispute must, in good faith, attempt to settle the dispute by mediation.
- (8) The mediator, in conducting the mediation, must—
  - (a) give the parties to the mediation process every opportunity to be heard; and
  - (b) allow due consideration by all parties of any written statement submitted by any party; and
  - (c) ensure that natural justice is accorded to the parties to the dispute throughout the mediation process.
- (9) The mediator must not determine the dispute.
- (10) If the mediation process does not result in the dispute being resolved, the parties may seek to resolve the dispute in accordance with the Act or otherwise at law.

### **Patrons**

31. The Committee may from time to time appoint Patrons to advance the cause of the Institute one of whom shall be, unless the Committee decides otherwise, the Provost *pro tem* of the Sir Zelman Cowen Centre for Continuing Legal Education, Victoria University.

### **Instruments and Seal**

32. All cheques, drafts, bills of exchange, promissory notes and other negotiable instruments shall be signed by two members of the Committee.
33.
  - (1) The common seal of the Institute shall be kept in the custody of the Vice-President (Convenor).
  - (34) The common seal shall not be affixed to any instrument except by the authority of the Committee and the affixing of the common seal shall be attested by the signatures either of two members of the

Committee or of one member of the Committee and of the Public Officer of the Institute.

### **Alteration of Rules**

34. These Rules and the statement of purposes of the Institute shall not be altered except in accordance with the Act.

### **Notices**

35. (1) A notice may be served by or on behalf of the Institute upon any member either personally, or by email, or by facsimile, or by sending it to the registered address of the member, or by such other way as may be determined by the Committee.
- (2) Where a document is properly addressed to a person as a letter, the document shall, unless the contrary is proved, be deemed to have been given to the person on the next business day following delivery.
- (3) Wherever practicable, these Rules and the activities of the Institute will be posted on the internet for access by all members.

### **Custody of Records**

36. (1) Except as otherwise provided in these Rules, the Vice-President (Convenor) shall keep in his or her custody or under his or her control all books, documents and securities of the Institute but subject to the direction of the Vice-President (Convenor) the Vice-President (Finance) shall be responsible for the accounts of the Institute.
- (2) All accounts, books, documents and securities of the Institute shall be available for inspection and copying by any member of the Institute upon request.

### **Funds**

37. The funds of the Institute shall be derived from annual subscriptions, donations and such other sources as the Committee determines.

### **Winding Up**

38. In the event of the winding up or the cancellation of the incorporation of the Institute, the assets of the Institute shall be disposed of in accordance with the provisions of the Act.



## SCHEDULE 1



### **APPLICATION FOR MEMBERSHIP OF THE AUSTRALIAN INSTITUTE FOR COMMERCIAL ARBITRATION INC.**

I, \_\_\_\_\_, desire to become a member of the Australian Institute for Commercial Arbitration Inc.

I apply for membership in the following category (tick nominated category):

- Fellow (Certified Arbitrator)
- Ordinary Member
- Associate Member

In the event of my admission as a member, I agree to be bound by the Rules of the Institute for the time being in force.

I attach to this application a cheque representing the sum payable under the Rules.

Signature of Applicant

Date

**SCHEDULE 2**



**FORM OF APPOINTMENT OF PROXY**

I,  
of  
being a member of the Australian Institute for Commercial Arbitration Inc.  
appoint

of \_\_\_\_\_ being a  
member of the Institute, as my proxy to vote for me on my behalf at the general  
meeting of the Institute (Annual General Meeting or special general meeting, as  
the case may be) to be held on \_\_\_\_\_ and at any  
adjournment of that meeting.

.....  
Signed

Date: .....

## **SCHEDULE 3**



### **SECTIONS OF THE INSTITUTE**

Commercial Arbitration - Practice & Procedure

Mediation - Practice & Procedure

## SCHEDULE 4



***President:*** David H Denton, RFD S.C. FAICA

***Senior Vice-President:*** Richard J Manly, S.C. FAICA

***Vice-President (Convenor):*** David L Bailey, FAICA

***Vice-President (Finance):*** John R Dixon, FAICA

## GUIDELINES



### Australian Institute for Commercial Arbitration (AICA)

#### Contents

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#### Introduction

Founded in Melbourne in collaboration with Victoria University, the Australian Institute for Commercial Arbitration Inc is a Australian not-for-profit association which conducts the only Australian University recognised and awarded Graduate Diploma in Commercial Arbitration.

The objects of the Australian Institute for Commercial Arbitration Inc. are:

- (1) To provide a forum for meetings of people who practise in or have an interest in commercial arbitration and mediation and to foster closer working and social relationships between them.
- (2) To bring to the attention of members, through the medium of regular meetings, matters of concern or interest or both relating to commercial arbitration and mediation and to conduct discussions and formulate position statements or recommendations or both for submission to such person or body as the Committee may deem proper.
- (3) To establish communications and actively liaise with courts, tribunals, authorities, government departments and instrumentalities and other associations and bodies concerned with or interested in commercial arbitration and mediation.
- (4) To seek representation on and liaison with committees of government concerned with matters of concern to members.
- (5) To liaise with the government, courts and other bodies in relation to matters of concern to members of the Association and to ensure that, as far as practicable, consultation between those bodies and the Committee takes place before those bodies formulate policies or makes decisions on commercial arbitration and mediation matters.
- (6) To encourage participation by members in continuing arbitration and mediation education programmes, conferences and other outlets whereby arbitrators and mediators and other interested professional groups and the public may increase their knowledge and understanding of commercial arbitration and mediation.

#### What is a Certified Arbitrator?

One may become a Certified Arbitrator in one of two fashions. A Certified Arbitrator is a Fellow:

- who has demonstrated to an Interview Panel advanced knowledge and understanding of arbitration and its practical application, evidencing a professional approach to parties and the public interest ('Practice Award'); or
- who has successfully completed the Graduate Diploma in Commercial Arbitration awarded by Victoria Law School, Victoria University, Melbourne ('University Award').

#### What is the criteria for passing the Interview Panel?

The standard to which the candidate will be judged is competence and experience to serve the public as an arbitrator in an ethical manner.

#### Who may apply to be a Fellow (Certified Arbitrator) – (Practice Award) (FAICA)?

Subject to the relevant bye-law, applications will be accepted from a candidate who have completed an Arbitration Skills Programme and are able to submit:

- A current Curriculum Vitae
- A schedule of CPD activities undertaken over the past 3 years
- A schedule of appointments as arbitrator undertaken within the last three years; the schedule should give details of the
  - Name of the matter;
  - Nature of the dispute;

- Date of the appointment;
- Name of the appointing body, if applicable;
- The date of award, and an indication whether it was a final award, interim award, award by consent, a settlement or the case is still in progress;
- The amount in dispute;
- Copies of at least two orders for directions issued as arbitrator;
- Copies of at least two reasoned awards issued as arbitrator, at least one of which should be a final award (the awards submitted should be from references which involved a hearing) respecting the confidentiality of the parties.
- Copies of at least one reasoned award from a documents-only reference (if such a reference undertaken) respecting the confidentiality of the parties
- Where the applicant is a judge, copies of two judgments.

**Fellows (Certified Arbitrators) Bye-law:**

**Fellows** shall be elected by the Council (save in respect for the foundation Fellows who shall be appointed by the Provost of the Sir Zelman Cowen Centre, Victoria University Melbourne, in his absolute discretion with reference to these bye-laws) and every candidate for election shall:

- (i) be a Member of the Institute and be not less than thirty-five years of age;
- (ii) satisfy the Council that he or she is in all respects a suitable person for election as a Fellow;
- (iii) have completed and passed the Institute's Personal Assessment for Fellowship to the satisfaction of the Council;
- (iv) have passed or been exempted from the examinations of the Institute or been exempted from the examinations of the Institute; and thereafter
- (v) have completed and passed the Arbitration Skills Programme to the satisfaction of the Council; provided always that the Council may:
  - (a) in exceptional circumstances waive the requirement that a candidate for election as a Fellow shall have attained the age of thirty-five years;
  - (b) in the case of candidates holding a professional qualification recognised by the Council as justifying such a waiver, waive the requirement for the completion of the supervised training element of the Fellowship Programme;
  - (c) in the case of a person who is a full member of another association of arbitrators or practitioners of alternative means of dispute resolution which has standards of knowledge of arbitration and alternative dispute resolution law, practice and procedure which are in the opinion of the Council equivalent to those of the Institute for admission to Fellowship and who satisfies the Council that he has achieved those standards or is otherwise considered to be a person of eminence and renown in the field of arbitration or alternative means of dispute resolution;
  - (d) waive any, all or part of the requirements of paragraphs (iii), (iv) and (v) above in the case of a person who is otherwise considered to be of eminence and renown in the field of arbitration.

Upon election to Fellowship by the Council of the Institute in accordance with subparagraphs (i)-(v) of this Bye-law, the member will be entitled to describe himself as a 'Certified Arbitrator'.

Existing Fellows of the Institute who are members of the Panel of Arbitrators or members of the register of Arbitrators at the date hereof, shall be deemed to have satisfied the requirements of this Bye-law (i)-(v).

Existing Fellows who are not qualified to act as arbitrator/arbiter will retain their status as a Fellow but will not be entitled to use the title 'Certified Arbitrator'.

**A Fellow of the Australian Institute for Commercial Arbitration (University Award) (FAICA)**

The criteria for eligibility as a Fellow (University Award) are that an applicant must be an existing Member and have successfully completed the Graduate Diploma in Commercial Arbitration, Victoria Law School, Victoria University.

**A Member of the Australian Institute for Commercial Arbitration (MAICA)**

The minimum criteria for eligibility as a Member are that an applicant must have either enrolled in the Graduate Diploma in Commercial Arbitration, Victoria Law School, Victoria University or been recognised by the Interview Panel as being eligible for Membership status.

**An Associate of the Australian Institute for Commercial Arbitration (AAICA)**

The minimum criteria for eligibility as an Associate are that an applicant must have either:

- passed one of the Institute's Introductory Assessments; or
- completed an authorised equivalent; or
- through practical experience, acquired the necessary level of knowledge and provides relevant evidence to that effect with the application.

## **GUIDELINES FOR MEMBERS ACTING AS MEDIATORS OR ACTING AS ADVISERS TO PARTIES IN MEDIATION**

### **1. INTERPRETATION**

- 1.1 "Mediator" means the person who either alone or with another conducts mediation;
- 1.2 "Parties" means any number of persons or entities who/which undertake mediation;
- 1.3 "Practitioner" means a legal practitioner;
- 1.4 In these guideline the singular word is to be read (where appropriate) as including the plural and vice-versa.

### **2. INTRODUCTION**

For the purposes of these guidelines, any reference to "mediator" shall be deemed to be a reference to a practitioner acting as mediator.

### **3. DEFINITION OF MEDIATION**

- 3.1 Conventional mediation is a voluntary process in which the mediator who is totally impartial and independent of the parties facilitate the parties in the negotiation by them of their own solution to their dispute by assisting the parties to isolate the issues, to develop options for the issues resolution and to reach an agreement which accommodates the interests and needs of the parties.

The mediator does not impose a solution upon the parties. It is not the function of mediation for the mediator to attempt to coerce the parties into agreement nor should any mediator make any decision for the parties. The mediator may only raise with and help the parties to explore options for an eventual agreement. The mediator shall not give legal advice to the parties.

- 3.2 Flexible mediation includes processes where the mediator, with the prior express agreement of the parties, provides an evaluation, either pursuant any Rules of Court or Guidelines of any Court, of the issues at mediation and/or recommends a basis for resolution and/or proceeds to arbitrate or conciliate one or more issues arising in the mediation.

### **4. RECOMMENDED DUTIES OF THE MEDIATOR**

(These provisions apply to conventional mediation and, unless contrary to the process used, to flexible mediation).

- 4.1 The mediator and the parties shall enter into a written agreement regulating their respective rights, duties, obligations and liabilities.
- 4.2 The mediator shall take such measures as are necessary to ensure the effective participation of parties. This shall include:
  - considering the level of understanding by the parties of the issues and implications of possible outcomes;
  - considering the possibility of any undue influence on a party by the other party or by any other outside involvements;
  - considering whether mediation is the appropriate process to resolve the parties' dispute;
  - Whether such reasons are appropriate to the process and whether the parties' participation is in good faith;
  - ascertaining whether the parties are able to negotiate effectively in the process.
- 4.3 The mediator is obliged to define and describe the process of mediation that is to be used.
- 4.4 The mediator shall explain the fees to be charged for mediation and any related costs and shall agree with the parties on how the fees will be shared and the manner of payment. No commissions, rebates or similar forms of remuneration shall be given or received for referral of the parties for mediation services.
- 4.5 The mediator shall as and when the mediator thinks fit obtain sufficient information from the parties so that they can mutually define and agree on the issues to be resolved in mediation.
- 4.6 The mediator shall give an overview of the process, assess the appropriateness of mediation for the parties and ascertain that each party gives free and informed consent to participate in the mediation process.
- 4.7 The mediator shall stress that the process is "without prejudice" and that unless both parties consent, unless otherwise required by law no information disclosed during the course of the mediation process should be disclosed in legal proceedings.
- 4.8 The mediator shall advise the parties that decisions are to be made voluntarily.
- 4.9 The mediator shall inform the parties that any of them or the mediator has the right to suspend or terminate the process of mediation at any time.

- 4.10 The mediator shall explain to the parties that there may be consultation between the mediator and each of them in separate sessions and that information divulged during any separate session will be kept confidential in the absence of that party's specific agreement to disclose the information to the other.
- 4.11 The mediator at the commencement of the mediation, shall establish rules with the parties as to the conduct of each party with respect to each other and the mediator during the mediation process.
- 4.12 The mediator shall inform the parties that they have the right at any time to obtain and may need to obtain independent legal advice during the mediation process.
- 4.13 The mediator shall encourage the parties to consider the impact of any agreement they make on others and the impact of relevant other parties on their agreement.

5. **RECOMMENDED DUTIES OF THE LEGAL PRACTITIONER AS AN ADVISER**

- 5.1 The legal practitioner shall at all times during any mediation process recognise that the mediator occupies a position not dissimilar to that of a Judge or Arbitrator. The legal practitioner shall observe similar proprieties with regard to honesty and candour and should not mislead the mediator.
- 5.2 Subject to the requirements of the law a legal practitioner must maintain confidentiality as required by the parties.

6. **IMPARTIALITY AND NEUTRALITY**

- 6.1 The mediator shall at times during any mediation process maintain impartiality towards the parties but this shall not prevent the mediator engaging in flexible mediation.
- 6.2 The mediator shall before and during the mediation process disclose to the parties any circumstances which may cause or have any tendency to cause a conflict of interest.
- 6.3 A mediator who is a partner, employer or fellow employee of any practitioner, legal counsel or law clerk retained by either of the parties shall not act as mediator for the parties.
- 6.4 A mediator shall not act in any capacity for either of the parties upon the conclusion of the mediation process save and except in situations which do not relate to the issues mediated between the parties and to which the parties agree.

7. **CONFIDENTIALITY**

- 7.1 The mediator shall observe and explain confidentiality. The mediator shall address parties' expectations regarding the extent and limits of confidentiality.
- 7.2 Subject to the requirements of the law, the mediator shall not disclose information received or obtained during the mediation process without the prior written consent of the parties.
- 7.3 The obligations of a practitioner relating to confidentiality and any limits on confidentiality as between practitioner and client shall apply between the mediator and the parties.
- 7.4 If subpoenaed or otherwise given notice or requested to testify the mediator shall inform the remaining party or parties immediately in writing.
- 7.5 Information received by the mediator in separate sessions shall not be revealed to the other party or parties without prior permission from the party from whom the information was received.

8. **TERMINATION OF MEDIATION**

- 8.1 The mediator shall discourage parties from abandoning the mediation process when the mediator believes an agreement is possible.
- 8.2 The mediator shall terminate the mediation when it is recognised that there is no reasonable prospect of continuing negotiation.
- 8.3 The mediator shall terminate the mediation when to continue the mediation could result in some harm to any of the parties.
- 8.4 In appropriate circumstances the mediator may abandon (or threaten to abandon) the mediation process in order to induce agreement.

9. **RESPONSIBILITIES OF MEDIATOR UPON AN AGREEMENT BEING/NOT BEING REACHED**

- 9.1 Where the parties have reached an agreement the mediator should endeavour to ensure that the agreement be reduced to writing and signed by the parties. If required by the express agreement of the parties or otherwise at law, a mediator involved in flexible mediation shall provide an appropriate written outcome such as an award, an opinion or an evaluation.
- 9.2 An accurate record shall also be kept upon an agreement not being reached and the mediator shall make any further appropriate referrals.
- 9.3 The mediator shall ensure that all parties to an agreement clearly understand the agreement, and their roles and responsibilities in it.
- 9.4 The agreement shall be tested at this stage for its workability and durability.