

MLAANZ ARBITRATION PRACTICE NOTE

This Practice Note has been prepared to assist parties and arbitrators in their application of the MLAANZ Arbitration Rules 2007 (“Rules”). The Rules are to be interpreted in accordance with rule 1 of the Rules.

The Rules do not prescribe that parties’ disputes be defined by way of pleadings and particulars. Rule 21(c) expressly refers to “statements of contentions of fact and law”. Parties and arbitrators are encouraged to adopt processes which are less legalistic; however, some disputes may arise where, in order to meet the object of the Rules, the parties may be required to draft pleadings and particulars.

The Rules do not prescribe discovery of documents, as is undertaken in courts. Rule 21(d) refers to “disclosure of all documents which advance or are injurious to any party’s case”. Again, parties and arbitrators are encouraged to undertake some form of disclosure of relevant documents; however, the width of this process is dependent upon the size and type of dispute between the parties.

The Rules do not provide that the Tribunal is to be bound by the rules of evidence; however, the parties may choose to agree that the rules of evidence do apply. Rule 21(e) refers to the “exchange of any witness statement or outline” and rule 21(f) refers to the “exchange of any expert’s report”. The parties are encouraged to reduce their evidence to writing, particularly where it is possible to determine the arbitration “on the papers”. However, depending on the nature of the dispute between the parties, it may be more appropriate that evidence is given *viva voce*.

Where a dispute involves a sum which is less than \$100,000, parties and arbitrators are encouraged to adopt a speedy procedure pursuant to which an award can be delivered within three months from the first preliminary conference.

The Rules have been written so that parties can adopt a procedure which more readily assists in the quick and efficient resolution of each individual case. Historically, parties and arbitrators have been all too willing to adopt court procedures in arbitrations. Unless the dispute warrants such an approach, parties are encouraged to adopt procedures which effect the most expeditious and cost effective resolution of such disputes.