

Member Update

No. 23 of 22 • 5 October 2022

TOPIC: Proposed Small Claims Arbitration Model - Call for industry feedback

DISTRIBUTION: GTA Members – primary contact list. Please circulate to all appropriate internal parties.

1. Purpose

The purpose of this Member Update is to advise members and seek comment (and submissions) on a proposed Small Claims Arbitration process.

2. Background

GTA currently administers a Dispute Resolution Service (DRS) which includes arbitration conducted in accordance with the NSW Commercial Arbitration Act (the Act). GTA publishes Dispute Resolution Guidelines and Dispute Resolution Rules to assist, govern and guide the overall dispute resolution process.

GTA needs to ensure the DRS is efficient, effective and “competitive” compared to alternatives and ultimately meets the needs of members and industry.

The GTA DRS currently offers:

- Full Arbitration – A panel of 3 industry arbitrators adjudicate and issue an Award for disputes (usually) greater than \$50K.
- Fast Track Arbitration – A sole arbitrator adjudicates and issues an Award for disputes of less than \$50K (Art 15.2) and may be used for disputes between \$50-100K at the request of the parties, subject to the sole discretion of GTA (Art 15.3). GTA generally takes the view that disputes greater than Fast Track levels should be full arbitrations, as they are often more complex, and given the value involved is best evaluated by a panel.
- Expert Determination – An Expert Determination is:
 - a non-binding Process where GTA appoints an Expert to review the Parties’ submissions and issue an opinion to the Parties. GTA will use its best endeavours to provide this within five (5) business days of receiving the final submission.
 - does not require the consent of both Parties and may be requested solely or jointly. An Expert Determination is non-binding whether or not a single Party or all Parties participate.
 - The Parties agree to participate in good faith in the Expert Determination.

It should be noted that the Expert Determination provides a non-binding opinion rather than an enforceable Award. While rarely, if ever, used as part of the DRS it is available where both parties can agree to abide by the Expert Determination.

3. Proposed Small Claims arbitration process

GTA proposes to introduce a Small Claims Arbitration process in addition to the current Dispute Resolution Service. The Small Claims process will:

- be compulsory for disputes with a claim value of less than \$15,000
- not apply to claims valued in excess of \$15,000
- issue binding Awards, rather than non-binding Opinions as per current Expert Determination
- provide efficiency for Parties and GTA.

It is proposed:

- Fee structure: \$1,700 (non-refundable) payable by Claimant on commencement (but which may be recoverable as part of the Final Award)
- Submissions are capped at three (3) pages in Points of Claim or Points of Defence with no more than ten (10) pages of supporting documentation
- GTA will appoint a sole Arbitrator (from its Panel of approved arbitrators)
- The final Award will include a brief statement of reasons
- The Arbitration Guidelines and Dispute Resolution Rules will be updated accordingly
- Small Claims Arbitration Model aligns with Commercial Arbitration Act

With the addition of Small Claims Arbitrations Model, Fast Track Arbitration will be compulsory for disputes with a claim between \$15,000 and \$50,000 (exclusive of interest and costs).

4. Further Information

The GTA Commerce Committee and the Board have endorsed development of the Small Claims Arbitrations Model concept.

5. Submissions – Due 14 October 2022

GTA is now calling for submissions and feedback on the Small Claims Arbitrations Model as outlined above.

All industry feedback must be received by COB Friday, 14 October 2022 and be forwarded to admin@graintrade.org.au