

Conduct and compensation agreements: Arbitration

Overview of arbitration

Arbitration is a process where parties to a dispute choose an independent third party known as an arbitrator to resolve the dispute. In an arbitration process, the parties present their arguments and evidence to the arbitrator who makes a decision on the dispute that is **legally binding** on the parties. This binding decision is called an award¹.

Arbitration is different from the various forms of **non-binding** dispute resolution processes such as mediation, case appraisal, conciliation or negotiation.

What is arbitration for a Conduct and Compensation Agreement?

Under the statutory negotiation process set out in the *Mineral and Energy Resources (Common Provisions) Act 2014*, arbitration is an alternative option to the Land Court for parties unable to negotiate a Conduct and Compensation Agreement. Both the Land Court and arbitrator will provide a legally binding resolution.

Unlike Land Court proceedings, arbitration is a voluntary process so it's important that each party understands the risks and benefits associated with choosing to undertake arbitration, such as:

- the arbitrator's decision cannot be appealed
- the arbitrator's award is confidential
- arbitration may be more costly due to the arbitrator's fees.

What if I don't agree to arbitration?

It's important to understand that arbitration can only take place if both parties agree to enter the arbitration process to resolve the dispute.

If the landholder or resource authority holder does not agree to arbitration, then the parties have two options open to them. Either party may:

- require the other party to participate in a non-binding alternative dispute resolution (ADR) process. However, this option only applies if the arbitration election notice was issued at the end of the minimum negotiation period for a Conduct and Compensation Agreement
- apply to the Land Court for a decision.

How does it work?

Under the statutory negotiation process set out in the *Mineral and Energy Resources (Common Provisions) Act 2014*, arbitration is available if:

- the resource authority holder has issued a negotiation notice and at the end of the minimum negotiation period, the parties have not negotiated a Conduct and Compensation Agreement
- the parties have undertaken an ADR process following an unsuccessful minimum negotiation period but have still not reached a Conduct and Compensation Agreement by the end of the ADR.

¹ Alternative Dispute Resolution, Queensland Law Society
http://www.qls.com.au/For_the_community/Alternative_Dispute_Resolution#arbitration

To start an arbitration process, the landholder or resource authority holder may provide an arbitration election notice to the other party requesting participation in this process. The election notice must state:

- Details of the matters in dispute
- The name of the arbitrator (who is independent of both parties) proposed to conduct the arbitration
- That if a party accepts the request for arbitration, neither party can make an application to the Land Court for a determination of the dispute
- That the parties are liable to pay the costs of the arbitration as prescribed in section 91E of the *Mineral and Energy Resources (Common Provisions) Act 2014*
- that the party receiving the arbitration election notice is not required to agree to enter into arbitration
- that parties are able to be legally represented in an arbitration.

Both parties have to agree to attend arbitration before proceeding any further.

If the request for arbitration is agreed to by the other party, the parties may, within 10 business days, jointly appoint the arbitrator that was proposed in the arbitration election notice. If the parties do not agree to the proposed arbitrator, the party who gave the arbitration election notice must require an arbitration institute prescribed in the Mineral and Energy Resources (Common Provisions) Regulation 2016 to appoint an arbitrator that is independent to both parties.

Once appointed, the arbitrator will have six months to issue an award. The arbitrator's decision is final and has the same effect as if the parties had entered into a binding and enforceable agreement. The decision cannot be appealed. The arbitrator's decision does not limit or otherwise affect a power of the Supreme Court to decide if the arbitrator's decision is affected by jurisdictional error.

Who pays the costs of arbitration?

The arbitrator's fees and expenses are to be shared equally between the parties unless:

- the parties agree otherwise
- the arbitrator decides otherwise
- the parties had not participated in an ADR process about the dispute before the arbitrator was appointed, in which case, the resource authority holder will be liable to pay the fees and expenses of the arbitrator.

Parties are able to be legally represented in an arbitration. Regardless of who is responsible for paying the arbitrator's fees and expenses, each party bears their own costs of participating in the process (including the cost of legal representation) unless the parties have reached an alternative agreement or the arbitrator decides otherwise.

How do I contact an arbitrator?

There are number of professional organisations that have accredited arbitrators as members. The following organisations have members that are accredited arbitrators and are prescribed in the Mineral and Energy Resources (Common Provisions) Regulation 2016:

- Resolution Institute
- Queensland Law Society.

If parties cannot reach an agreement about who should be appointed as their arbitrator, the party that issued the arbitration election notice must contact one of the arbitration institutes listed above. The arbitration institute will choose an independent arbitrator on behalf of the parties.