



**ARBITRATORS' AND MEDIATORS'  
INSTITUTE OF NEW ZEALAND INC**

*Te Mana Kaiwhakataū, Takawaenga o Aotearoa*

# AMINZ Arbitration Appeal Rules

Adopted: 27 May 2009

**ARBITRATORS' AND MEDIATORS' INSTITUTE OF NEW ZEALAND INC  
("AMINZ")**

**AMINZ ARBITRATION APPEAL TRIBUNAL**

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**AMINZ ARBITRATION APPEAL RULES**

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Adopted 27 May 2009  
AMINZ Council



## AMINZ ARBITRATION APPEAL RULES

### 1. Purpose

- 1.1. The purpose of the AMINZ Arbitration Appeal Rules is to encourage, through the use of the AMINZ Arbitration Appeal Panel, the efficient, confidential and high-quality resolution of appeals from arbitral awards on questions of law.

### 2. Interpretation

- 2.1. In these Rules, unless the context otherwise requires:-

**“AMINZ”** means the Arbitrators’ and Mediators’ Institute of New Zealand Incorporated, and includes its Council and any individual or committee authorised by that Council to exercise any of the powers and duties of AMINZ under these Rules;

**“Act”** means the Arbitration Act 1996 and any amendments thereto and any enactment in substitution therefor;

**“Address”** means full address including physical and email address and landline, facsimile and cellphone numbers;

**“Address for service”** means that portion of a party’s address specified by that party for service of notices upon that party;

**“Appellant”** means the party or parties lodging an appeal from an arbitral award under Rule 5.1 of these Rules;

**“AAP”** means the Arbitration Appeal Panel, consisting of former Judges and other suitably-qualified arbitrators, maintained by AMINZ from which AAT members are drawn;

**“AAT”** in relation to any appeal, means the Arbitration Appeal Tribunal appointed to hear that appeal in accordance with these Rules;

**“Arbitration Appeals Committee”** means the Committee comprised of three experienced lawyers or arbitration practitioners established pursuant to the Schedule of these Rules which shall exercise the powers vested in that Committee under these Rules.

**“Composition of tribunal letter”** means a letter from a party to AMINZ with representations as to the composition of an AAT in accordance with Rules 5.1 and 5.2 of these Rules;

**“Cross-Appellant”** means a respondent who has filed a cross-appeal under Rule 5.3 of these Rules;

**“Notice”** means a notice in writing, served in accordance with Rule 14 of these Rules;

**“Question of Law” –**

- (a) includes an error of law that involves an incorrect interpretation of the applicable law (whether or not the error appears on the record of the decision); but
- (b) does not include any question as to whether –
  - (i) the award or any part of the award was supported by any evidence or any sufficient or substantial evidence; and
  - (ii) the arbitral tribunal drew the correct factual inferences from the relevant primary facts;

**“Registrar”** means the Registrar of the Arbitration Appeals Tribunal who shall be the Executive Director from time to time of AMINZ unless the Council decides otherwise.

**“Respondent”** means the party or parties other than the appellant named in an award which is the subject of an appeal under these Rules;

**“Rules”** means these AMINZ Arbitration Appeal Rules including any valid amendments to these Rules effected after an arbitration agreement has conferred jurisdiction for an appeal;

**“Schedule of fees, costs and expenses”** means the Schedule of fees, costs and expenses fixed from time to time by AMINZ.

Words in the singular include the plural and words in the plural include the singular. Gender references are construed as references to all genders.

### 3. **General**

- 3.1. The provisions of the Act and any statutory amendment, modification or re-enactment thereof for the time being in force shall apply to every appeal under these Rules save insofar as such provisions are expressly excluded or modified by, or are inconsistent with, these Rules.
- 3.2. For the avoidance of doubt, Section 12 of the Act and Articles 15, 16, 17, 18, 20, 22, 24, 25, 28, 30, 31(2) and 33(2) of the First Schedule and Clauses 3(b), (d), (e), and (j) and 6 of the Second Schedule of the Act shall apply with any necessary modifications to the procedure and decisions of the AAT; and Articles 21, 23(1), 23(2) and 26 of the said First Schedule, and the remainder of the said Second Schedule, shall not apply to such procedure and decisions.
- 3.3. These Rules shall apply to arbitrations where the juridical seat of the arbitration has been agreed or determined to be New Zealand, in accordance with Article 20(1) of the First Schedule to the Act.

### 4. **Appeal Provisions**

- 4.1. Only appeals on questions of law may be the subject of an appeal or cross-appeal to an AAT under these Rules.
- 4.2. An appeal under these Rules may be brought only where the parties to an arbitration have agreed to a right of appeal under these Rules and have agreed that the provisions of the Appendix to these Rules, or provisions to the same effect, shall apply.

- 4.3. No party to any agreement which provides for an appeal from an arbitral award to an AAT, or any person or persons claiming under that party, shall bring any legal proceedings against the other party or parties in respect of the subject-matter of any such appeal until the time for filing an appeal has expired and no appeal has been filed or, if an appeal has been filed, until such appeal has been heard and determined by an AAT in accordance with these Rules or until such appeal has been withdrawn, abandoned, or dismissed .
- 4.4. It is expressly agreed and declared that the expiry of the time for filing an appeal or, if an appeal is filed, the making of a final award by an AAT in accordance with these Rules or the withdrawal, abandonment or dismissal of any appeal shall be a condition precedent to the right of any party, or any person or persons claiming under that party, to bring any legal proceedings against any other party or parties in respect of the enforcement of the award which is the subject matter of the appeal.

## **5. Right of Appeal**

- 5.1. Any party to an arbitration in respect of which there is an agreement providing for a right of appeal to an AAT may appeal to an AAT from any award in such arbitration provided that the following conditions are complied with:
- (a) Not later than 15 working days after the date when the award was received by the appellant, the appellant shall:
    - (i) file with the Registrar and serve on all respondents a notice of appeal and any composition of tribunal letter which the appellant seeks to have taken into account by the Arbitration Appeals Committee;
    - (ii) make payment to Registrar of the prescribed appeal fee.
  - (b) The notice of appeal referred to in paragraph (a) shall have attached to it a copy of the award to which the appeal relates and shall specify:
    - (i) the award or part of the award to which the appeal relates;
    - (ii) the grounds of the appeal in sufficient detail to identify the issues raised by the appeal;
    - (iii) the names and addresses of the parties; and
    - (iv) the appellant's address for service.
  - (c) The composition of tribunal letter referred to in paragraph (a) shall be the appellant's only communication to the Registrar and the Arbitration Appeals Committee concerning membership of the AAT (unless the Arbitration Appeals Committee at a later stage expressly requests further comments), and shall be strictly confined to:
    - (i) any preference on the appellant's part for the AAT to have one or three members;

- (ii) any criteria which the appellant would prefer the Arbitration Appeals Committee to take into account when making appointments to the AAT; and
    - (iii) any considerations known to disqualify any members of the AAP from appointment in the particular case.
  - (d) The appellant shall pay such further sum or sums on account of fees, costs and expenses of the appeal as may be called for by the Registrar at any time after the filing of the appeal (as defined in paragraph (a)) and prior to the making of its award by the AAT.
- 5.2. If a respondent intends to oppose the appeal, the respondent shall, within 10 working days after service of the notice of appeal on that respondent, file with the Registrar and serve on the other parties a notice of opposition and any composition of tribunal letter the respondent seeks to have taken into account by the Arbitration Appeals Committee. The composition of tribunal letter shall conform to Rule 5.1(c). The notice of opposition shall:
- (a) state the respondent's intention to oppose the appeal, and the grounds of opposition in sufficient detail to identify the issues raised by the notice of opposition; and
  - (b) confirm the respondent's name and address and advise the respondent's address for service.
- 5.3. In a respondent's notice of opposition, or subsequently if the AAT decides that the delay was justified in the circumstances and extends time under Rule 16.1, that respondent may contend that the award raises another question of law which, if decided in the respondent's favour, would represent an additional ground for upholding the award. The respondent may not contend that the award raises another question of law unless the respondent complies with this Rule.
- 5.4. Within the time for filing and serving a notice of opposition, or subsequently if the AAT decides that the delay was justified in the circumstances and extends time under Rule 16.1, a respondent may file and serve a notice of cross-appeal. All provisions of these Rules applicable to an appeal shall apply to a cross-appeal with any necessary modifications. The respondent may not pursue any cross-appeal unless the respondent complies with this Rule.
- 5.5. If any payments required under Rule 5.1(d) have not been received by the Registrar within 20 working days of receipt by the appellant or cross-appellant of demand by the Registrar, the notice of appeal or cross-appeal shall be deemed to have been withdrawn and the right of appeal or cross-appeal waived unless, within that period of 20 working days, the appellant or cross-appellant, as the case may be, has applied to the Registrar for an extension, in which case the Arbitration Appeals Committee may, after considering submissions from the parties, grant an extension for a specified period on such terms as it considers appropriate.

## **6. Arbitration Appeal Tribunal**

- 6.1. An AAT for each individual case shall be appointed and constituted by the Arbitration Appeals Committee. No AAT shall come into existence until so appointed. An AAT shall have either one or three members.
- 6.2. In making an appointment under these Rules, the Arbitration Appeals Committee shall have due regard to any qualifications required of the arbitrator by the agreement of the parties and to such considerations as are likely to secure the appointment of an independent and impartial arbitrator and where the parties are of different nationalities shall also take into account the advisability of appointing an arbitrator of a nationality other than those of the parties.
- 6.3. Any arbitrator (whether or not appointed by the parties) conducting an appeal under these Rules shall be and remain at all times independent and impartial and shall not act as advocate for any party.
- 6.4. A prospective arbitrator shall disclose to those who approach him or her in connection with his or her possible appointment any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence.
- 6.5. An arbitrator, once appointed or chosen, shall disclose any such circumstances (referred to in Rule 6.4 above) to all parties, not already informed by him or her, of these circumstances.
- 6.6. Within 5 working days of the filing of a notice of opposition by all respondents, the parties may (subject to Rule 6.9) agree in writing to the appointment of a particular person or persons to be the AAT for the appeal and/or to the appointment of a particular person to be the Chairman of the Tribunal and notify the Registrar. Subject to Rule 6.9, the Arbitration Appeals Committee will forthwith appoint the agreed person or persons as the AAT (and where appropriate the agreed Chairman) and notify the parties.
- 6.7. In the absence of agreement between all parties and notice to the Arbitration Appeals Committee within the period referred to in Rule 6.6, the Arbitration Appeals Committee shall as soon as practicable select and appoint the member or members of the AAT and notify the parties.
- 6.8. Where the Arbitration Appeals Committee selects the member or members of the AAT, the following will apply:
  - (a) The member or members will be drawn from the AAP.
  - (b) The choice between a sole member and three members will be determined in accordance with any coinciding wish of the parties recorded in composition of tribunal letters filed and served under Rules 5.1 and 5.2.

- (c) In the absence of any composition of tribunal letter or letters, or where the letters express disagreement as to the number of members, the Arbitration Appeals Committee will appoint a sole member unless in all the circumstances of the case three members appear to the Arbitration Appeals Committee to be warranted.
  - (d) Where three members are selected, the Arbitration Appeals Committee will designate the Chairman of the AAT and shall take into account any comments from the parties (if any) as to the matter of the Chairmanship.
  - (e) In making selections from the AAP, Arbitration Appeals Committee will have regard to any criteria for appointment expressed in any composition of tribunal letters (unless contested by other parties) and to the nature and circumstances of the dispute.
- 6.9. All appointees to an AAT shall be members of the AAP save in exceptional circumstances relating to overseas appointments and at the discretion of the Arbitration Appeals Committee.
- 6.10. If a member of an AAT dies, refuses to act, resigns, or becomes incapable of acting, or fails to proceed with the appeal, or is found to be ineligible, or has membership of AMINZ revoked by AMINZ as a result of disciplinary proceedings, another member shall thereupon be appointed by the Arbitration Appeals Committee in that person's place.

## **7. Challenge of Arbitrators – Replacement of Arbitrators**

- 7.1. Any arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence.
- 7.2. A party may challenge the arbitrator appointed by him only for reasons of which he becomes aware after the appointment has been made.
- 7.3. A party who intends to challenge an arbitrator shall send notice of his challenge to the Registrar within ten (10) working days after the appointment of the challenged arbitrator has been notified to the challenging party or within ten (10) working days after the circumstances mentioned in Rule 7.1 or 7.2 became known to that party.
- 7.4. The challenge shall also be notified to the other party, the arbitrator who is challenged and the other members of the AAT. The notification shall be in writing and shall state the reasons for the challenge. Upon receiving the notification of challenge by the Registrar, the appeal shall be suspended until the challenge is resolved or decided upon.
- 7.5. When an arbitrator has been challenged by one party, the other party may agree to the challenge. The arbitrator may also, after the challenge, withdraw from office. In neither case does this imply acceptance of the validity of the grounds for the challenge. In both cases, the procedure provided in Rule 6 shall be used in full for the appointment of the substitute arbitrator, even if during the process of appointing the challenged arbitrator, a party had failed to exercise his right to appoint or to participate in the appointment.



- 7.6. If the other party does not agree to the challenge and the challenged arbitrator does not withdraw, the decision on the challenge will be made by the Arbitration Appeals Committee whose decision shall be final and not be subject to appeal.
- 7.7. If the Arbitration Appeals Committee sustains the challenge, a substitute arbitrator shall be appointed or chosen pursuant to the procedure provided in Rule 6.
- 7.8. In the event of the death or resignation of an arbitrator during the course of the appeal proceedings, a substitute arbitrator shall be appointed or chosen pursuant to the procedure provided in Rule 6.
- 7.9. In the event that an arbitrator refuses or fails to act or in the event of the de jure or de facto impossibility of his or her performing functions, the procedure in respect of the challenge and replacement of an arbitrator as provided in this Rule 7 shall apply.
- 7.10. If under this Rule 7 the sole or presiding arbitrator is replaced, any hearings held previously shall be repeated unless otherwise agreed by the parties. If any other arbitrator is replaced under this Rule 7, such prior hearings may be repeated at the discretion of the AAT.

## **8. Appeal Procedure**

- 8.1. Once constituted, the AAT shall establish a timetable for the provision of written submissions in the following order which may be varied in its discretion:
  - (a) The appellant shall serve concise written submissions in support of the appeal, together with any authorities relied upon.
  - (b) The respondents shall, on receipt of (a) above, serve concise written submissions in support of their opposition and/or any cross appeal, together with any authorities relied upon.
  - (c) The appellant shall have the right, on receipt of (b) above, to serve written submissions and any authorities strictly in reply and/or opposition to any cross-appeal.
- 8.2. Submissions must contain references to any statutory provisions, regulations or rules or principles of law relied upon.
- 8.3. The AAT, having due regard to the timetable and the convenience of the parties, shall set down the appeal for a hearing and nominate the place of hearing. The parties may agree to dispense with an oral hearing and may request the AAT to consider the appeal on the papers.

## **9. The Award of the AAT**

- 9.1. The AAT shall make its award in written form. Unless all parties agree otherwise, the AAT shall state the reasons upon which its award is based. The award shall state

the seat of the arbitration and it shall be signed by the AAT or those of its members assenting to it.

- 9.2. Where there are three members of an AAT and the AAT fails to agree on any issue, the members shall decide that issue by a majority. Failing a majority decision on any issue, the Chairman of the AAT shall decide that issue.
- 9.3. If any member of the AAT refuses or fails to sign the award, the signatures of the majority or (failing a majority) of the Chairman shall be sufficient, provided that the reason for the omitted signature is stated in the award by the majority or Chairman.
- 9.4. The AAT shall submit its signed but undated award to the Registrar. The Registrar shall, upon receipt of the signed award, give notice to the parties named in the award that the award is available to the parties, if necessary upon the payment of any fees, costs and expenses which have not been prepaid to AMINZ. If payment is not received by the Registrar within 10 working days from such notice, the Registrar may call upon any one or more of the parties to uplift the award and in such case the party or parties so called upon shall pay the fees, costs and expenses as directed. Upon receipt of the fees, costs and expenses, the Registrar shall date and issue the award to the parties. The date of issue to the parties shall, for the purposes of the Act and these Rules, be deemed to be the date upon which the award was made.

## **10. Security**

- 10.1. The AAT may, prior to determining the appeal, in its absolute discretion and on such terms as to the giving of security or otherwise as the AAT may think fit, direct:
  - (a) that all or any part of any money required by the terms of the award under appeal to be paid by one party to another shall be paid to that other party or security therefor provided; or
  - (b) that any party comply with any order, other than the payment of money, as may have been made in the award under appeal.
- 10.2. Where money has been paid or security therefor provided, the AAT shall direct in its award how and to which of the parties the amount so paid or security provided is to be repaid or otherwise dealt with.
- 10.3. If the appellant or cross-appellant fails to comply with any direction under Rule 10.1, then the appeal or cross-appeal as the case may be shall be deemed to be withdrawn and the AAT shall make an order terminating the appeal or cross-appeal under Article 32(2)(a) of the First Schedule to the Act, but without prejudice to the outstanding appeals or cross-appeals of opposing parties.

## **11. Failure to Prosecute Appeal or Cross-Appeal**

- 11.1. Unless otherwise agreed by the parties, if, without showing sufficient cause, the appellant fails to prosecute the appeal, the AAT may make an award under Article 25(a) of the First Schedule to the Act dismissing the appeal or give directions, with or

without conditions, for the speedy determination of the appeal, in either case with or without any orders as to costs.

**12. Powers of Arbitration Appeal Tribunal**

- 12.1. The parties agree that the AAT shall have all the powers of the High Court when the Court is dealing with appeals from arbitral awards under Clause 5 of the Second Schedule to the Act, save that the AAT shall not have the power to remit the award back to the original arbitral tribunal where that tribunal is unwilling or unable to accept the remission. In the latter case, the AAT itself in its discretion may decide the issue(s) which would otherwise have been remitted.

**13. Withdrawal of Appeals**

- 13.1. The appellant shall have the right, at any time before the AAT makes its award, to withdraw an appeal by giving notice of such withdrawal to the Registrar. If notice of withdrawal is received by the Registrar no later than 28 days before the date fixed for the hearing of the appeal, one-half of the fees paid in advance by the appellant shall be returned to the appellant. If notice of withdrawal is received by the Registrar within 28 days but not later than 14 days before the date fixed for the hearing of the appeal, one-quarter of the fees paid in advance by the appellant shall be returned to the appellant. No part of the fees shall be returned following receipt of a notice of withdrawal at a date later than 7 days before the date fixed for the hearing. After deduction of its costs, the Registrar shall pay the balance so retained to the member(s) of the AAT as cancellation fees.
- 13.2. In the event of withdrawal of the appeal by the appellant, the respondent shall continue to have the right to pursue any cross-appeal. In the event of withdrawal of a cross-appeal by the respondent, the appellant shall continue to have the right to pursue the appeal.
- 13.3. When notice of withdrawal of any appeal and/or cross-appeal is duly given, the AAT may make an award or an order under Article 32 terminating the whole or part of the arbitral proceedings with any consequent order as to costs.
- 13.4. In the event of an adjournment of an appeal hearing, the AAT shall have power to order that a party or parties pay any costs incurred by the Arbitration Appeals Committee or the AAT, and may order the payment of reasonable cancellation fees for the AAT.

**14. Acceptance of rules and fees, costs and expenses**

- 14.1. Each party engaging in an appeal pursuant to these Rules is deemed thereby to agree to abide by these Rules and that the Rules form part of the arbitration agreement between them.
- 14.2. Each party also agrees with AMINZ to be liable to AMINZ (jointly and severally with all other parties to the appeal) for all fees, costs and expenses incurred in connection with the appeal and any remission back to the original arbitral tribunal, which fees, costs and expenses shall, upon notification by the Registrar, be a sum certain and a debt immediately due to AMINZ.

14.3. The fees, costs and expenses to be paid to AMINZ for the appointment of the AAT and the management of the appeal shall be in accordance with the Schedule of fees, costs and expenses.

14.4. The fees, costs and expenses to be paid to the member or members of the AAT shall be in accordance with the Schedule of fees, costs and expenses.

**15. Communications and Notices**

15.1. Routine communications and notifications between the parties and the AAT may be validly made by facsimile or email.

15.2. Correspondence between parties and the AAT shall be confined to requests for rulings and administrative matters. Argumentation shall be reserved for written submissions lodged in relation to issues under consideration by the AAT and for hearings before the AAT.

15.3. Subject to Rule 15.1, notices required under these Rules shall be served in any manner provided by Rule 6.1 of the High Court Rules, and High Court Rule 6.6 shall apply in place of Article 3 of the First Schedule to the Act.

15.4. The parties, their representatives and the AAT shall notify all parties of any change of name, description, address, telephone, email or fax number. In the absence of such notification, communications sent in accordance with the addresses provided below shall be valid:

- (a) For the appellant – the address for service specified under Rule 5.1(b)(iv);
- (b) For the respondent/cross-appellant – the address for service specified under Rule 5.2(b) ;
- (c) For the Arbitration Appeals Committee or the Registrar – to the attention of the Registrar at the AMINZ Wellington office as follows:

Telephone:	64 4 4999 384
Freephone:	0800 4 AMINZ (0800 426 469)
Postal Address:	PO Box 1477 Wellington New Zealand 6140
Physical Address:	Level 3, Hallenstein House 276-278 Lambton Quay Wellington 6011 New Zealand
Email:	<a href="mailto:institute@aminz.org.nz">institute@aminz.org.nz</a>

or such other place or manner as may be advised by AMINZ from time to time.

- (d) For the AAT members – at the address(es) specified in the notice of appointment of the AAT from the Registrar to the parties.

**16. Non-compliance with time limits and rules**

- 16.1. If any time limit or provision imposed by these Rules is not complied with, the appellant's appeal or respondent's cross-appeal, as the case may be, shall be deemed to be waived and absolutely barred, unless (except in the case of the time limit under Rule 5.1(a)) the AAT in its absolute discretion extends the time for compliance (notwithstanding that the time may have already expired) or dispenses with the necessity for compliance, in which event the AAT may proceed to hear and determine the appeal or cross-appeal as if each and all of these Rules had been complied with. Any decision made pursuant to this Rule may be subject to such conditions as the AAT considers appropriate and shall be final, conclusive and binding.

**17. Waiver**

- 17.1. Any party who knows that any provision of these Rules has not been complied with and yet proceeds with the appeal without promptly stating its objection to such non-compliance shall be treated as having irrevocably waived its right to object.

**18. Arbitration agreements deemed to prohibit disclosure of confidential information**

- 18.1. Subject to Rule 18.2, every arbitration agreement providing for a right of appeal to an AAT is deemed to provide that the parties and the AAT must not disclose confidential information.

- 18.2. A party or an AAT may disclose confidential information:

(a) to a professional or other adviser of any of the parties;

or

(b) if both of the following matters apply:

(i) the disclosure is necessary –

(A) to ensure that a party has a full opportunity to present the party's case on appeal; or

(B) for the establishment or protection of a party's legal rights in relation to a third party: or

(C) for the making and prosecution of an application to a court under the Act: and

(ii) the disclosure is no more than what is reasonably required to serve any of the purposes referred to in subparagraph (i)(A) to (C); or

- (c) if the disclosure is in accordance with an order made, or a subpoena issued, by a court; or
- (d) if both of the following matters apply:
  - (i) the disclosure is authorised or required by law (except the Act) or required by a competent regulatory body (including New Zealand Exchange Limited); and
  - (ii) the party who, or the AAT that, makes the disclosure provides to the other party and the AAT or, as the case may be, the parties, written details of the disclosure (including an explanation of the reason for the disclosure); or
- (e) if the disclosure is in accordance with an order made by an AAT under Rule 18.3.

18.3. If –

- (a) a question arises in any appeal proceedings as to whether confidential information should be disclosed other than as authorised under Rule 18.2(b)(i) A-C or Rule 18.2(d); and
- (b) at least 1 of the parties agrees to refer that question to the AAT concerned;

the AAT, after giving each of the parties an opportunity to be heard, may make or refuse to make an order allowing all or any of the parties to disclose confidential information.

## 19. Immunity of AMINZ and AAT members

- 19.1. In appointing persons to the AAP or an AAT, neither AMINZ nor the Arbitration Appeals Committee is liable for anything done or omitted in the discharge or purported discharge of that function unless the act or omission is shown to have involved conscious and deliberate wrongdoing.
- 19.2. AMINZ is not liable, by reason of having appointed a member of the AAT, for anything done or omitted to be done by the member of the AAT, in the discharge or purported discharge of the member's functions as an arbitrator.
- 19.3. After the award has been made by the AAT, neither any member of an AAT nor the Arbitration Appeals Committee nor AMINZ shall be under any obligation to make any statement to any person about any matter concerning the arbitration, nor shall any parties seek to make any of these persons a witness in any legal or other proceedings arising out of the arbitration.

**20. Matters not expressly provided for**

- 20.1 In all matters not expressly provided for in these Rules, the Registrar, the Arbitration Appeals Committee and the AAT and the parties shall act in the spirit of these Rules and shall make every reasonable effort to ensure that the Award of the AAT is valid and legally enforceable.

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## APPENDIX

*Parties wishing to provide for an appeal to an Arbitration Appeal Tribunal ("AAT") should include the following provisions, or provisions to the same effect, in their arbitration agreement or in some subsequent document:*

- (a) The parties hereby exclude all rights under Clause 5 of the Second Schedule to the Arbitration Act 1996 ("Act") to appeal to the High Court from any award arising out of or related to this agreement, including any award or ruling of an AAT.
- (b) The parties further agree that an appeal may be taken by either or any of them under the AMINZ Arbitration Appeal Rules as applicable at the time of appeal ("Rules") from any arbitral award in any arbitration arising out of or related to this agreement. Any appeal shall be conducted in accordance with the requirements of those Rules.
- (c) The parties further agree not to seek to enforce in New Zealand or in any other jurisdiction in terms of Article 35 of the First Schedule to the Act, any award that may be the subject of an appeal to an AAT unless and until the time for filing an appeal under the Rules has expired and, if an appeal is filed, there has been a final award by an AAT under the Rules or the appeal has been withdrawn, abandoned or dismissed.
- (d) The parties agree that any AAT appointed as a result of any appeal under the Rules, shall, subject to any limitations expressed in the Rules, have all the powers exercisable by the High Court on an appeal to that Court under Clause 5 of the Second Schedule to the Act save that the AAT shall not have the power to remit the award back to the original arbitral tribunal where that tribunal is unwilling or unable to accept the remission. In the latter case, the AAT itself in its discretion may decide the issue(s) which would otherwise have been remitted.
- (e) Any arbitral tribunal appointed by the parties or by an appointing authority under the arbitration agreement between the parties will acknowledge and agree that the tribunal will accept and action any reference back by an AAT consequent upon any appeal under the Rules.
- (f) In the case of an appeal under the Rules where the parties have agreed to a right of such appeal after their original arbitration agreement has been made, the parties will use their best endeavours jointly to request the arbitral tribunal appointed under their original arbitration agreement to accept and action any reference back to that tribunal from an AAT.