



AAT Terminal End-User Dispute Resolution Process

1.1 General

The Terminal End-User Dispute Resolution Process:

- (a) is available for all Terminal End-User Complaints and Terminal End-User Disputes;
- (b) is intended to facilitate the genuine and good faith negotiations of resolution to bona fide commercial disputes between AAT and Terminal End-Users (**TU**);
- (c) applies only to disputes about conduct which occur after 25 December 2009; and
- (d) does not apply to disputes relating to the prices set and charged by AAT in relation to the supply of Port Terminal Services.

The Terminal End-User Complaint and Terminal End-User Dispute and any terms for its resolution are to be kept strictly confidential by AAT and the TU at all times.

Definitions of capitalized terms are contained in clause 1.9 of these terms.

Terminal End-User Complaints

1.2 Complaints Officers

- (a) If a TU has a Terminal End-User Complaint, the TU must contact and notify the AAT Complaints Officer in the Port Terminal the complaint has arisen in.
- (b) If the subject matter of the Terminal End-User Complaint has arisen in more than one state, then the Terminal End-User Complaint will be referred to the AAT Complaints Officer in the state of the TU's choosing.
- (c) Details of the relevant AAT Complaints Officer at each Port Terminal follow:
 - (i) Port Adelaide: David Reid, david.reid@aat.auz.biz, (02) 4221 0901
 - (ii) Port of Bell Bay; David Reid, david.reid@aat.auz.biz, (02) 4221 0901
 - (iii) Port of Brisbane; Darren Parsons, darren.parsons@aat.auz.biz, (07) 3909 3002
 - (iv) Port Kembla; David Reid, david.reid@aat.auz.biz, (02) 4221 0901
 - (v) Port of Melbourne; David Reid, david.reid@aat.auz.biz, (02) 4221 0901
- (d) The AAT Complaints Officer and a representative of the TU must undertake genuine and good faith negotiations with a view to resolving the complaint.
- (e) If the Terminal End-User Complaint is unable to be resolved to the TU's satisfaction, the TU may notify the AAT Complaints Officer of a Terminal End-User Dispute and seek resolution in accordance with the terms below.



Terminal End-User Disputes

1.3 Written notice of dispute

- (a) In the event that a Terminal End-User Complaint is not resolved, the TU must give written notice of the dispute to AAT's Complaints Officer and specify that it is using the Terminal-End-User Dispute Resolution Process (**Dispute Notice**). The following details need to be included in the Dispute Notice:
- the nature of the dispute;
 - the outcome sought by the TU; and
 - the action that the TU believes AAT should take to resolve the dispute.
- (b) A Dispute Notice shall only relate to a TU Dispute.
- (c) Notification of a Terminal End-User Dispute must be sent by registered post to AAT's registered office in the relevant state, and is deemed to be received by AAT upon the expiration 2 Business Days after the date on which it is sent.

1.4 Direct negotiation between the parties

- (a) The AAT Complaints Officer and a representative the TU must undertake genuine and good faith negotiations with a view to resolving the dispute.
- (b) If, within 15 Business Days of the date of the Dispute Notice, the dispute is not resolved through negotiation between the AAT Complaints Officer and the TU, the dispute must be referred to the chief executive officers (**CEOs**) (or their representatives) of AAT and the TU.
- (c) The CEOs of AAT and the TU, or their representatives as the case may be, must attempt to resolve the Terminal End-User Dispute, including by undertaking genuine and good faith negotiations and informal mediation.

1.5 Formal mediation

Referral to formal mediation

- (a) If the CEOs of AAT and the TU, or their representatives as the case may be, cannot negotiate a resolution within 15 Business Days of the Dispute Notice being referred to them, the Terminal End-User Dispute must be referred to formal mediation in the state in which the subject of the Terminal End-User Dispute has arisen.
- (b) If the subject matter of the Terminal End-User Dispute has arisen in more than one state, then the Terminal End-User Dispute will be referred to formal mediation in the state of the TU's choosing.



Appointment of mediator

- (c) A Terminal End-User Dispute referred to formal mediation in accordance with clauses 1.5(a) and 1.5(b) will be mediated by a single mediator appointed by agreement of the parties.
- (d) If the parties fail to agree on the appointment of a mediator within 10 Business Days, the President of the Chapter of the Institute of Arbitrators and Mediators of Australia (**IAMA**) in the state in which the mediation will be conducted will appoint the mediator.
- (e) AAT and the TU will use all reasonable endeavours to ensure that:
 - (i) the mediation occurs within 20 Business Days after a mediator has been appointed; and
 - (ii) the mediator is provided with all relevant information available to AAT and the TU and all reasonable assistance to enable the mediator to conduct the mediation.

Parties to indemnify the mediator

- (f) AAT and the TU will execute a deed to indemnify the mediator against any loss or damage incurred by the mediator in the course of carrying out his or her functions in accordance with his or her terms of appointment.

Conduct of mediation

- (g) Unless otherwise agreed between AAT and the TU:
 - (i) each of AAT and the TU may be represented at the mediation by another party, including by a legally qualified person;
 - (ii) the cost of the mediation will be shared equally between AAT and the TU;
 - (iii) AAT and the TU will bear their own costs relating to the preparation for and attendance at the mediation; and
 - (iv) the mediation will otherwise be conducted under the IAMA Mediation Rules (whether or not the mediator is a legal practitioner).

1.6 Referral to expert determination or arbitration

- (a) If the Terminal End-User Dispute is not resolved by formal mediation, AAT or the TU may refer the Terminal End-User Dispute to:
 - (i) an expert for determination in accordance with clause 1.7; or
 - (ii) an arbitrator for arbitration in accordance with clause 1.8.
- (b) Within 15 Business Days of the end of the formal mediation of the Terminal End-User Dispute, AAT and the TU will agree on:



- (i) which of expert determination or arbitration will be conducted to resolve the Terminal End-User Dispute; and
 - (ii) the identity of the expert or arbitrator to be appointed to conduct the expert determination or arbitration.
- (c) In the event that AAT and the TU cannot agree on either:
- (i) which of expert determination or arbitration will be conducted to resolve the Terminal End-User Dispute; or
 - (ii) the identity of the person to conduct the expert determination or arbitration as the case may be,
- then the Australian Consumer and Competition Commission (**ACCC**) may determine those matters. In so determining the ACCC may:
- (iii) consult with relevant industry associations, government departments or other parties; and
 - (iv) have regard to any other matter it considers is relevant.
- (d) The ACCC may authorise a member of the ACCC to exercise any powers under clause 1.6 (c) on behalf of the ACCC.

1.7 Expert determination

If the Terminal End-User Dispute is referred to an expert for expert determination pursuant to clause 1.6(a), the following provisions will apply:

- (a) The parties will use all reasonable endeavours to ensure that the expert provides the expert's determination on the Terminal End-User Dispute within 40 Business Days of its commencement.
- (b) The expert will decide the Terminal End-User Dispute as an expert not an arbitrator and the expert's decision will be final and binding on both AAT and the TU. AAT must take all steps within its power to ensure that the expert's decision is fulfilled or otherwise given effect to, including by enforcing AAT's contractual rights against third parties.
- (c) The cost of the expert determination will be shared equally between the parties, unless agreed otherwise.
- (d) AAT and the TU will use all reasonable endeavours to ensure that the expert is provided with:
 - (i) all relevant information available to AAT and the TU; and
 - (ii) all reasonable assistance, in a timely manner, to enable the expert to make a determination in relation to the Terminal End-User Dispute within 40 Business Days of its commencement.



- (e) AAT and the TU will execute a deed to indemnify the expert against any loss or damage incurred by the expert in the course of carrying out his or her functions in accordance with his or her terms of appointment.

1.8 Arbitration

- (a) If the Terminal End-User Dispute is referred to an arbitrator pursuant to clause 1.6(a), the parties may agree on the terms on which the arbitration will be conducted.
- (b) AAT must take all steps within its power to ensure that any determination by the arbitrator is fulfilled or otherwise given effect to, including by enforcing AAT's contractual rights against third parties.
- (c) If, within 10 Business Days of the arbitrator being appointed, the parties are unable to reach agreement on the terms on which the arbitration will be conducted, the arbitration will be conducted in accordance with the following procedures:
 - (i) the arbitrator will not be required to proceed with the arbitration unless and until the party that issued the Dispute Notice has agreed to pay the arbitrator's and other costs as determined in accordance with clause 1.8(k) and provide any indemnity as required in accordance with clause 1.8(m);
 - (ii) unless the parties to the Terminal End-User Dispute agree otherwise, the arbitration will be conducted in private;
 - (iii) a party may appoint a person, including a legally qualified person, to represent it or assist in the arbitration;
 - (iv) the arbitrator must observe the rules of natural justice, but is not bound by technicalities, legal forms or rules of evidence;
 - (v) the arbitrator must act as speedily as a proper consideration of the Terminal End-User Dispute allows, having regard to the need to carefully and quickly enquire into and investigate the Terminal End-User Dispute and all matters affecting the merits, and fair settlement, of the Terminal End-User Dispute;
 - (vi) the arbitrator may determine the periods that are reasonably necessary for the fair and adequate presentation of the respective cases of the parties to a Terminal End-User Dispute, and may require that the cases be presented within those periods;
 - (vii) the arbitrator may require evidence or argument to be presented in writing, and may decide the matters on which it will hear oral evidence or argument;
 - (viii) the arbitrator will present its determination in a draft form to the parties and allow the parties the opportunity to comment before making a final determination;
 - (ix) the arbitrator will hand down a final determination in writing which includes its reasons for making the determination and findings on material questions of law and fact, including references to evidence on which the findings of fact were based;



- (x) unless the parties to the Terminal End-User Dispute agree otherwise, any determination by the arbitrator will be confidential;
 - (xi) the arbitrator may make any determination or direction in relation to the Terminal End-User Dispute that it considers appropriate. For the avoidance of doubt, such determination or direction may include making a binding determination in relation to the Terminal End-User Dispute, or requiring the parties to continue or re-commence negotiations.
- (d) The arbitrator may at any time terminate an arbitration (without making an award) if he or she thinks that:
- (i) the notification of the Terminal End-User Dispute is vexatious;
 - (ii) the subject matter of the Terminal End-User Dispute is trivial, misconceived or lacking in substance; or
 - (iii) the party who notified the Terminal End-User Dispute has not engaged in negotiations in good faith.
- (e) In deciding a Terminal End-User Dispute, the arbitrator must have regard to the authorisation granted to AAT by the ACCC.
- (f) In deciding a Terminal End-User Dispute, the arbitrator may have regard to any other matters that he or she thinks are relevant.
- (g) In deciding a Terminal End-User Dispute, the arbitrator must not:
- (i) without the consent of all parties, make a determination which relates to matters which were not specified in the Dispute Notice; or
 - (ii) without the consent of all parties, allow any other party to join or intervene in the arbitration (except as set out in clause 1.7(l)(iii)).
- (h) A determination or direction of the arbitrator will be final and binding, subject to any rights of review by a court of law, and will have effect on and from the date specified by the arbitrator. Any or all of the provisions of a final determination may be expressed to apply from a specified day which is earlier than the day on which it takes effect.
- (i) Other than in circumstances where the determination or direction is the subject of review by a court of law, if a TU does not comply with a determination or direction of the arbitrator, AAT will not be obliged to continue to seek to resolve the matters subject of the Dispute Notice.
- (j) Other than where the determination or direction is the subject of review by a court of law, AAT will comply with the lawful determination or direction of the arbitrator.
- (k) The arbitrator's costs and the costs of the parties to the arbitration will be borne by the parties in such proportions as the arbitrator determines. Each party may make submissions to the arbitrator on the issue of costs at any time prior to the arbitrator's costs determination.



- (l) The parties' appointment of the arbitrator must provide that:
 - (i) the arbitrator must keep the ACCC advised, not less frequently than fortnightly, about the progress of the arbitration, including timelines and processes;
 - (ii) the arbitrator must provide a copy of any correspondence between the arbitrator and the ACCC relating to procedural or other matters to the parties within 3 Business Days; and
 - (iii) the ACCC will have the absolute right to make submissions to the arbitrator in respect of the Terminal End-User Dispute (subject only to complying with the procedures and timeframes for submissions determined by the arbitrator).
- (m) The arbitrator may require the parties to indemnify it from any claims made against the arbitrator arising in connection with the performance by the arbitrator of its duties under this clause 1.8, such indemnity excluding circumstances where the conduct of the arbitrator constitutes negligence (whether wilful or otherwise), dishonest or unlawful conduct.
- (n) AAT must send a copy of any determination made by the arbitrator to the ACCC within 2 Business Days of the determination being made.
- (o) Any laws relating to arbitrations applying in the jurisdiction in which any arbitration undertaken in accordance with this clause 1.8 is conducted will apply to the arbitration. Subject to any legal requirement to the contrary, to the extent of any inconsistency between those laws and the authorisation granted by the ACCC, the authorisation will prevail.

1.9 Definitions

"Applicant" means a person seeking access to Port Terminal Services.

"Business Day" means a day that is not a Saturday, Sunday or public holiday in the Australian Capital Territory, except that if used in relation to a specific Port Terminal means the State in which the Port Terminal is located.

"Port Terminal" means each of the terminals presently operated by AAT and located at Port Adelaide, Port of Bell Bay, Port of Brisbane, Port Kembla and Port of Melbourne.

"Port Terminal Services" means:

- (a) the use of facilities and infrastructure owned, operated or controlled; or
- (b) services and anything else provided,

by AAT at a Port Terminal which in each case AAT makes available to allow a stevedore to facilitate export and import of motor vehicles and other cargo and which, at a minimum, includes those services AAT currently makes available to stevedores.

"Terminal End-User" (TU) means a person, other than an Applicant or Stevedore, with an interest in the terms and conditions of use of the Port Terminals and:



- (c) includes, but is not limited to, shipping lines, importers and exporters, and representatives of Terminal End-Users; but
- (d) does not include a person carrying on, or proposing to carry on, a stevedoring business or business as a Stevedore.

“Terminal End-User Complaint” means bona fide commercial complaints raised by the Terminal End-Users associated with the provision of Port Terminal Services by AAT as they relate to Terminal End-Users, including the terms and conditions of use of Port Terminal Services or the quality of Port Terminal Services but excludes any complaint in relation to:

- (a) the price of any Port Terminal Service; and
- (b) any agreement relating to Port Terminal Services between the parties once executed.

“Terminal End-User Dispute” means any unresolved Terminal End-User Complaint associated with the provision of Port Terminal Services by AAT as they relate to Terminal End-Users, including the terms and conditions of use of Port Terminal Services or the quality of Port Terminal Services but excludes any dispute in relation to:

- (c) the price of any Port Terminal Service; and
- (d) any agreement relating to Port Terminal Services between the parties once executed.