



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

*Te Mana Kaiwhakatau, Takawaenga o Aotearoa*

# AMINZ Emergency Arbitration Protocol



## Emergency Arbitration Protocol

### 1. Interim measures and preliminary orders

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- 1.1 Any Party may, concurrent with or after the submission of the Notice of Arbitration but before the appointment of the Arbitral Tribunal, apply to AMINZ for the appointment of an Emergency Arbitrator to award interim measures or preliminary orders in terms of [Chapter 4A of Schedule 1 to the Arbitration Act 1996](#). All terms and expressions defined in Chapter 4A will have the same meanings in this Protocol, unless the context requires otherwise.
- 1.2 The application under Article 1.1 above should be made electronically and in the case of an application for preliminary orders must, save where to give notice would defeat the entire purpose of the application, be copied to the other Parties at the same time as it is submitted to AMINZ.
- 1.3 Any application for interim measures or preliminary orders made after the appointment of the Arbitral Tribunal shall, unless there are exceptional circumstances, be dealt with by the Arbitral Tribunal.
- 1.4 The application for the appointment of the Emergency Arbitrator must specify the following:
- If the Answer has not, as yet, been served, such of the information to be contained in the Answer as is known or apparent to the applicant.
  - Any preference the applicant may have for any person to be appointed as the Emergency Arbitrator.
  - The interim measures or preliminary orders sought by the applicant, and the reasons for them to be dealt with as a matter of urgency, rather than by the Arbitral Tribunal.
  - Whether or not the application is to be heard on notice to the other Parties, and if not why not.
- 1.5 The AMINZ Court of Arbitration will determine the application as expeditiously as possible, and if granted will appoint an Emergency Arbitrator in terms of Article 2 below within 48 hours of the later of:
- (a) receipt of the application; and
  - (b) payment of the relevant advance against the Emergency Arbitrator's costs and expenses.

### 2. Appointment of the Emergency Arbitrator

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- 2.1 The AMINZ Court of Arbitration will appoint the Emergency Arbitrator in accordance with [the AMINZ Appointments Policy](#).
- 2.2 The Emergency Arbitrator will sit as a sole arbitrator, and must not subsequently be nominated to be a member, or become a member, of the Arbitral Tribunal.

- 2.3 The seat of the emergency arbitration will be as specified in the agreement to arbitrate, and if not specified, it will be Auckland, New Zealand.
- 2.4 On appointment, the Emergency Arbitrator accepts a continuing duty to discharge his or her functions as arbitrator until the emergency arbitration is completed and the emergency award issued.
- 2.5 The Emergency Arbitrator shall be, and will remain at all times, impartial and independent and is not to advise or to act as advocate for or representative of any Party, nor is the Emergency Arbitrator to have any direct contact with any Party or their legal representatives in relation to the arbitration or the dispute, save through AMINZ as part of the arbitral proceedings.
- 2.6 If any circumstance arises which has the potential or gives the appearance of casting doubt on the declarations made by the Emergency Arbitrator, he or she is to disclose such circumstance to AMINZ. The AMINZ Court of Arbitration, in consultation with the applicant, will consider whether or not such circumstance is sufficient to require the replacement of that Emergency Arbitrator.

### **3. Proceedings of the Emergency Arbitrator**

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- 3.1 The Emergency Arbitrator is to conduct the emergency proceedings in the manner which he or she determines to be appropriate in the circumstances, taking into account:
- The interim measures and/or preliminary orders sought.
  - The need for the Parties to be heard, if possible.
  - The reasons for the emergency relief and the submissions of the applicant.
- 3.2 The Emergency Arbitrator may grant the interim measures or preliminary orders without notice to the other Parties and without the requirement for an oral hearing.
- 3.3 The Emergency Arbitrator is to determine the application and issue an award no later than 14 days following the date of application in terms of Article 1.1 above.
- 3.4 The award of the Emergency Arbitrator is to be in writing and provide reasons.

### **4. Effect of an award of the Emergency Arbitrator**

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- 4.1 The Emergency Arbitrator shall be considered to be an arbitral tribunal under the applicable law, and until such time as the Emergency Arbitrator's award is varied, discharged or revoked as contemplated in Article 4.2 below, such award shall be binding on the Parties and the Parties agree to comply with the award without delay.
- 4.2 The Emergency Arbitrator's award (once it has been issued) may be confirmed, varied, discharged or revoked in whole or in part by the Arbitral Tribunal on application by any Party, or on its own initiative.
- 4.3 If the Arbitral Tribunal is appointed before the Emergency Arbitrator issues the award, the Emergency Arbitrator's proceedings are not to be stayed, and the Arbitral Tribunal will not

make any order discharging the Emergency Arbitrator's appointment, discharging, revoking or varying any order or award of the Emergency Arbitrator under Article 4.2 above until the Emergency Arbitrator has issued a final award in relation to the interim measures and/or preliminary orders.

- 4.4 The Parties agree that, to the fullest extent permitted by law, they will not apply to the courts for interim measures or for preliminary orders, the preference being for all such matters to be dealt with by the Emergency Arbitrator, the Arbitral Tribunal or the AMINZ Arbitration Appeals Tribunal, as appropriate.
- 4.5 Any interim measures or preliminary orders made by the Emergency Arbitrator will expire automatically, and shall be of no further effect, if the Notice of Arbitration is not issued within 60 days of the issue of the Emergency Arbitrator's final award.