

A. Overview of VCAS

1. The Victorian Commercial Arbitration Scheme ("**VCAS**") has been established by the Victorian Bar to provide qualified arbitrators to resolve disputes out of Court. The scheme caps the amount of the arbitrator's fees. Arbitration is a private process where parties agree to resolve a dispute by referring it to an arbitrator who makes a binding decision on the dispute which can be enforced in Court. VCAS is designed to provide for a final, fast, cost effective and fair arbitration of disputes as an alternative to having the dispute resolved by the Court.
2. Victoria has a legislative framework to support arbitration under the *Commercial Arbitration Act 2011* (Vic) ("**the Act**"). The Act is designed to enable parties to agree to have their dispute resolved by arbitration.¹ The Act provides that an arbitral award will be recognised in Victoria as binding and will be enforced on application in writing to the Court, subject to certain limited exceptions.²
3. VCAS has established a set of rules for the arbitration of disputes through VCAS ("**VCAS Rules**"). The VCAS Rules have been prepared in alignment with the Act. A copy of the VCAS Rules and a VCAS User Guide is available at www.vcas.net.au.

Parties must agree to refer dispute to VCAS

4. A key requirement for arbitration under the Act and the VCAS Rules is that the parties agree to have their dispute resolved by arbitration. The parties must agree in writing for their dispute to be referred to arbitration.³ If one party does not agree to refer the dispute to arbitration, then the dispute will remain to be determined by the County Court.
5. Only certain kinds of civil proceedings are suitable for referral to arbitration through VCAS. More information on the kinds of proceedings that may be referred to arbitration is set out in Section C below.

Appointing an arbitrator

6. The Victorian Bar Council ("**Bar Council**") on behalf of the Victorian Bar Inc has established, and will maintain, a panel of arbitrators with the assistance of VCAS ("**the Panel**") comprising barristers each of whom has satisfied the criteria for Panel membership (available at www.vcas.net.au). All Panel members have agreed to provide arbitration services in accordance with the VCAS Rules as a precondition to Panel membership.
7. The parties may choose an arbitrator, not necessarily from the Panel established by the Bar Council, provided that the chosen arbitrator agrees to abide by the VCAS Rules. Where the parties are unable to agree to the appointment of an arbitrator, the President of Victorian Bar (or his or her delegate) will appoint an arbitrator of the Panel and notify the parties.⁴

¹ See, for example, s 1AC(2) of the Act.

² Act, s 35(1).

³ VCAS Rules, r 1.

⁴ VCAS Rules, r 17.

8. Any arbitrator conducting a VCAS arbitration must follow the VCAS Rules concerning fees and costs. This flows from the fact that the parties have agreed to follow the VCAS Rules.

Fees and costs

9. The VCAS Rules provide that arbitrators' fees are fixed according to a scale set by VCAS.⁵ The current VCAS Scale Fees can be found in Part 8 of the VCAS User Guide. Subject to a minimum of \$3,000 (ex. GST) fees are capped 10% of the total amount in dispute.⁶
10. The arbitrator may make an order about which party or parties are to pay the costs of the arbitration, including the arbitrator's fees. The starting position is that the parties are jointly and severally liable for the arbitrator's fees and expenses, subject to any order on costs that the arbitrator may make.⁷

Availability of urgent relief

11. Under the VCAS Rules, a party that wishes to seek emergency interim relief prior to the appointment of the arbitrator may apply for such relief pursuant to the "emergency arbitration procedures". These procedures are set out in Appendix 1 of the VCAS Rules.
12. Emergency interim relief can be sought pursuant to the VCAS Rules as soon as the parties have agreed to refer their matter to arbitration through VCAS.

Procedure in the arbitration

13. The arbitration procedure is set out in the VCAS Rules and VCAS User Guide. The VCAS Rules provide for a relatively short timeframe for each stage of the arbitration to be completed. The substantive hearing of the arbitration is to be heard as soon as reasonably practicable, and ordinarily no later than 90 days from the commencement of the arbitration.⁸
14. Arbitrations involving a sum in dispute not exceeding \$50,000 (claim plus counterclaim) will ordinarily be conducted on a "Documents-Only" basis, however the arbitrator may determine that an oral hearing is necessary.⁹ Parties may agree to a "Documents-Only" arbitration even if the sum in dispute exceeds this amount.
15. The arbitration will be confidential unless otherwise agreed by the parties, or where a party makes an application to enforce (or set aside) the arbitrator's award.¹⁰
16. An award is required to be published as soon as practicable, and ordinarily no later than 90 days from the commencement of the arbitration in a "Documents-Only" arbitration, or 120 days from the commencement of the arbitration where a substantive hearing occurs.¹¹

Enforcement of arbitral awards

17. The parties will be required to agree on which Court is to have supervisory jurisdiction for the arbitration. The parties will generally choose the Court form which their dispute is referred as the

⁵ VCAS Rules, r 19.

⁶ VCAS Rules, r 19; and page 12 of the VCAS User Guide (VCAS scale of fees).

⁷ VCAS Rules, r 19.

⁸ VCAS Rules, r 47.

⁹ VCAS Rules, r 39.

¹⁰ VCAS Rules, r 62.

¹¹ VCAS Rules, rr 55 and 56.

supervisory Court. The Court chosen to have supervisory jurisdiction will have jurisdiction to hear any application to enforce (or to set aside) an arbitral award made following a referral to VCAS, or to carry out any other functions to be performed by 'the Court' under the Act.

Appeals and related rights

18. There are limited rights of appeal from or review of an arbitral award. Under s. 34A of the Act, an appeal lies to the Court on a question of law if the parties agree before the end of the appeal period and the Court grants leave. The appeal period is 3 months from the date that the award was received or 3 months from the date that a request for correction or interpretation of the award was determined by the arbitrator. The criteria which must exist in order for the Court to grant leave to appeal on the question of law are set out in s. 34A(3) of the Act.
19. The Act also provides that an award may be set aside in limited circumstances. These are identified in s. 34 of the Act.

B. Mechanism for referral to VCAS

20. In suitable civil proceedings, the County Court will invite the parties to agree to have their matter resolved through VCAS arbitration. Consideration of whether a matter is suitable for referral to VCAS may be part of the Commercial Division's first administrative mention procedure.
21. The parties' consent will be required in any case before the matter can be referred to arbitration. A reference to arbitration is usually final and, therefore, subject to exercising any supervisory role, the Court will no longer be involved in resolving the dispute the subject of the reference.
22. If the parties agree for the matter to proceed to arbitration through VCAS, the parties will be required to file consent orders with the County Court Commercial Registry, signed by all parties, which provide for the proceeding to be stayed or discontinued. Standard orders for referral of a matter to arbitration can be found Schedules 1 to 3 of the Arbitration Referral Information Sheet published by the County Court of Victoria.
23. A Dispute Referral Notice must be filled out by the parties and/or their representatives and sent to the selected arbitrator and VCAS (these forms are found in Part 5 and 6 of VCAS User Guide). An overview of the process for referring a case to VCAS is set out in the flowchart attached to this information sheet.
24. Unless the arbitrator directs otherwise, steps having already been undertaken in the proceeding prior to the referral to VCAS will be taken to be steps also taken in the arbitration.

C. What kinds of matters can be referred to arbitration?

25. Any matter to which the Act will apply can be referred to arbitration through VCAS. The Act applies to 'domestic commercial arbitrations'.¹² An arbitration is 'domestic' if it involves a dispute between parties whose places of business are within Australia, or are normally resident within Australia.¹³

¹² Act, s 1(1).

¹³ Act, s 1(4).

Although 'commercial' is not defined in the Act, it is to be given a wide interpretation to include matters arising from all relationships of a commercial nature, whether contractual or not.¹⁴

26. Examples of matters that may be suitable for referral as a 'domestic commercial arbitration' include disputes concerning:

- a. any trade transaction for the supply or exchange of goods or services;
- b. commercial representation or agency;
- c. commercial leasing;
- d. engineering or construction of works;
- e. consulting;
- f. licensing, franchising or distribution agreements;
- g. banking, finance or investment related matters;
- h. insurance;
- i. joint venture and other forms of industrial or business co-operation; and
- j. carriage of goods or passengers by air, sea, rail or road.¹⁵

27. This list is not exhaustive; there are many kinds of disputes that may be suitable for referral to arbitration.

28. Examples of the kinds of matters that are generally not suitable for referral to arbitration include disputes regarding employment, consumer claims, bankruptcy and insolvency, illegality and fraud.

D. Contacts

29. Any queries regarding the operation of VCAS should be directed to:

- (a) VCAS by email to VCAS@vicbar.com.au
- (b) County Court of Victoria, Commercial Registry, 250 William Street, Melbourne VIC 3000, T 03 8636 6690 || E commercial.registry@countycourt.vic.gov.au

¹⁴ Act, s 1, Model Law Note.

¹⁵ Act, s 1, Model Law Note.

The process for referring a case to VCAS from the County Court of Victoria

