

EXPOSURE DRAFT



EXPOSURE DRAFT (15/10/2018)

Telecommunications (Arbitration) Regulations 1997 2018

~~Statutory Rules 1997 No. 350 as amended~~

~~made under the~~

~~*Telecommunications Act 1997*~~

~~This compilation was prepared on 21 December 2001
taking into account amendments up to SR 2001 No. 337~~

~~Prepared by the Office of Legislative Drafting,
Attorney General's Department, Canberra~~

~~I, General the Honourable Sir Peter Cosgrove AK MC (Ret'd), Governor-General of the
Commonwealth of Australia, acting with the advice of the Federal Executive Council,
make the following regulations.~~

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Dated _____ 2018

Peter Cosgrove
Governor-General

By His Excellency's Command

Mitch Fifield [DRAFT ONLY—NOT FOR SIGNATURE]
Minister for Communications and the Arts

Contents

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Page

Part 1—Preliminary

1	Name of Regulations [see Note 1]	4
2	Definitions	4

Part 2—Notification of disputes

3	Notification of disputes	6
4	Withdrawal of notices	7

Part 3—Arbitration

5	Parties to arbitration	9
6	Constitution of ACCC for arbitration	9
7	Determination of questions	9
8	Matters that ACCC must take into account	9
9	Determinations	10
10	When ACCC may terminate arbitration	10
11	ACCC may direct parties to engage in negotiations in good faith	11
12	Evidence on oath or affirmation	12
13	Parties may request ACCC to treat material as confidential	12
14	Other ACCC powers	13
15	Parties to pay costs of arbitration	13

Part 4—Arbitration hearings

16	ACCC may conduct arbitration hearings	14
17	Summons	14
18	Arbitration hearings to be in private	14
19	Right to representation	15
20	Hearing procedures	15
21	Failure to attend as witness	16
22	Failure to answer questions etc	16
25	Intimidation etc prohibited	17
26	Disturbing etc arbitration hearings prohibited	17

Schedule

Form	Summons	18
Notes		19

Field Code Changed

Part 1—Part 1—Preliminary	3
1 Name	3
2 Commencement	3
3 Authority	3
4 Schedule 2	4
5 Definitions.....	4
Part 2—Notification of disputes	6
6 Notification of disputes	6
7 Withdrawal of notifications	7
Part 3—Arbitration of disputes	9
8 Parties to arbitration	9
9 Determination by ACCC.....	9
10 Matters that ACCC must take into account	10
11 When ACCC may terminate arbitration.....	11
Part 4—Procedure in arbitrations	12
Division 1—Conduct of arbitration	12
12 Constitution of ACCC for arbitration.....	12
13 Determination of questions.....	12
14 Conduct of arbitration	12
Division 2—Powers of ACCC in conducting arbitration	14
15 Power to refer matters and give directions	14
16 Power to require person to give information or produce documents	14
17 Power to summon person to give evidence and produce documents	15
Division 3—Arbitration hearings	16
18 Conduct of arbitration hearings	16
19 Arbitration hearings to be in private.....	16
20 Right to representation	17
21 Evidence on oath or affirmation	17
Division 4—Joint arbitration of disputes	18
22 When joint arbitration may be conducted	18
23 Procedure in joint arbitration	18
24 Determination of disputes.....	19
Division 5—Offences	20
25 Contravention of a direction	20
26 Failure to comply with notice to give information or produce documents.....	20
27 Offences by witnesses	20
28 Intimidation etc	21
29 Disturbing an arbitration hearing etc.....	22
Division 6—Miscellaneous	23
30 Parties may request ACCC to treat material as confidential	23
31 Parties to pay costs of arbitration	24
Part 5—Application, savings and transitional provisions	25
32 Definitions.....	25
33 Transitional—disputes notified before commencement	26
Schedule 1—Form of summons	2
Schedule 2—Repeals	4
<i>Telecommunications (Arbitration) Regulations 1997</i>	4

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Contents

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ii ~~Telecommunications (Arbitration) Regulations 1997~~ Telecommunications
(Arbitration) Regulations 2018

EXPOSURE DRAFT

Regulation 3

Part 1—Preliminary

1 Name of Regulations [see Note 1]

~~These Regulations are the *Telecommunications (Arbitration) Regulations 1997*.~~

2 Definitions

~~In these Regulations, unless the contrary intention appears:~~

~~Act means the— This instrument is the *Telecommunications (Arbitration) Regulations 1997* 2018.~~

2 Commencement

(1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The day after this instrument is registered.	

Note: ~~This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.~~

(2) ~~Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.~~

3 Authority

~~This instrument is made under the following:~~

<i>Telecommunications (Arbitration) Regulations 1997</i>	3
<i>Telecommunications (Arbitration) Regulations 2018</i>	

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Regulation 4

- (a) ~~the Telecommunications Act 1997;~~
- (b) ~~the Telecommunications (Consumer Protection and Service Standards) Act 1999.~~

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4 Schedule 2

Each instrument that is specified in Schedule 2 to this instrument is amended or repealed as set out in the applicable items in that Schedule, and any other item in that Schedule has effect according to its terms.

5 Definitions

In this instrument:

arbitration means arbitration of a dispute by the ACCC under:

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- (a) section ~~267, 269,~~ 335, 351, ~~372M~~ or 462 of the Telecommunications Act; or
- (b) clause ~~18, 27, 29,~~ ~~36~~ or ~~3646~~ of Schedule ~~1~~ to the Telecommunications Act; or
- (c) clause ~~5~~ or 8 of Schedule ~~2~~ to the Telecommunications Act; or
- (d) section 149 or 151 of the Consumer Protection Act.

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Consumer Protection Act means the Telecommunications (Consumer Protection and Service Standards) Act 1999.

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determination means a determination of a dispute.

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dispute means a dispute notified under regulation 3 ~~subsection 6(1)~~.

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member, in relation to the ACCC, includes an associate member of the ACCC.

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party means a person ~~or body~~ who, under regulation 5 ~~section 8~~, is a party to an arbitration.

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service means:

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- (a) access to a service that is required to be provided under:
 - (i) ~~section 267 of the Act; or~~

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~~4 Telecommunications (Arbitration) Regulations 1997~~ Telecommunications (Arbitration) Regulations 2018

Regulation 5

- ~~(ii) clause 4 or 7 of Schedule 2 to the Telecommunications Act; or~~
- ~~(ii) section 149 of the Consumer Protection Act; or~~
- (b) access to a carriage service, facility or network that is required to be provided under:
 - (i) ~~section 269 372L~~ of the Telecommunications Act; or
 - (ii) ~~clause 17, 33, 34, 35 or 3546~~ of Schedule 1 to the Telecommunications Act; or
 - ~~(iii) section 151 of the Consumer Protection Act; or~~
- (c) a service that is required to be provided under ~~section 335 or 351~~ of the Telecommunications Act; or
- (d) compliance with ~~a requirement of a the~~ numbering plan ~~mentioned in that is required under~~ section 462 of the Telecommunications Act; or
- (e) access to information that is required to be provided under clause 21, 22, 23, 24 or 25 of Schedule 1 to the Telecommunications Act; or
- (f) consultation that is required under clause 29 of Schedule 1 to the Telecommunications Act.

service provider means a person who is required, under the Telecommunications Act or the Consumer Protection Act, to provide a service.

service seeker means a person ~~or body~~:

- (a) seeking to make or vary an agreement about provision of a service to the person ~~or body~~; or
- (b) whose service provider has changed, or proposes to change, the terms and conditions on which a service is provided by the service provider to the person ~~or body~~.

Telecommunications Act means the Telecommunications Act 1997.

~~Telecommunications (Arbitration) Regulations~~ 5

~~1997~~ Telecommunications (Arbitration) Regulations 2018

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Regulation 3

Part 2 Notification of disputes

3 Notification of disputes

- (1) A service seeker or service provider may notify the ACCC in writing that a dispute exists if ~~they~~the service seeker and the service provider are unable to agree about the terms and conditions on which a service is, or is to be, provided.
- (2) The following are examples of things on which a service seeker and service provider might disagree:
 - (a) the price, or the method of establishing the price, at which a service is provided;
 - (b) whether a previous determination should be varied.
- (3) ~~Notice~~Notification of a dispute about a service must include the following information:
 - (a) the name of the person notifying the dispute (the notifier) and, if the notifier is not an individual, the name and address of an individual who represents the notifier;
 - (b) the notifier's address for the delivery of documents in relation to the ~~notice~~notification;
 - (c) whether the notifier is the service seeker or service provider and:
 - (i) if the notifier is the service seeker ~~the~~the name and address of the service provider; or
 - (ii) if the notifier is the service provider ~~the~~the name and address of the service seeker;
 - (d) the provision of the Telecommunications Act or the Consumer Protection Act that requires the service;
 - (e) a description of the dispute, including:
 - (i) whether the dispute is about varying existing access arrangements and, if it is, a description of the arrangements; and
 - (ii) each aspect of the service on which the ~~parties~~service seeker and service provider are able to agree; and
 - (iii) each aspect of the service on which the ~~parties~~service seeker and service provider are unable to agree;

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Regulation 7

- (f) a description of any effort that has been made to resolve the dispute.
- (4) When it receives ~~notice~~notification of a dispute ~~about a service~~, the ACCC must give written notice of the dispute ~~as follows~~:
 - (a) if the service seeker notified the dispute ~~_____~~ to the service provider; ~~and~~
 - (b) if the service provider notified the dispute ~~_____~~ to the service seeker; ~~and~~
 - (c) if the ACCC considers that ~~resolution~~the determination of the dispute may ~~involve requiring~~require another person to do something ~~_____~~ to the other person; ~~and~~
 - (d) to any other person whom the ACCC considers may wish to become a party.

~~4~~ ~~_____~~ ~~7~~ **Withdrawal of ~~notices~~ notifications**

- (1) ~~Notice~~Notification of a dispute may ~~only~~ be withdrawn ~~only in the following manner~~:
 - (a) ~~if~~by the service seeker ~~person who~~ notified the dispute ~~_____~~ the service seeker may withdraw notice of the dispute; ~~and~~
 - ~~_____~~ (b) before the ACCC makes a determination; ~~_____~~
 - ~~_____~~ (i) the service provider may withdraw notice of the dispute before the ACCC makes a determination; ~~and~~
 - ~~_____~~ (ii) the service seeker may withdraw notice of the dispute given by the service provider after the ACCC issues a draft determination, but before it makes its final determination.
- (2) ~~Despite subparagraph (1) (b) (ii), if the service provider gave notice of a dispute about a variation of a determination, the service seeker cannot withdraw notice of the dispute by the provider.~~
- ~~_____~~ (3) Withdrawal of ~~notice~~a notification of a dispute must:
 - (a) be ~~given~~ in writing to the ACCC; and
 - (b) include the following information:

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Regulation 7

- (i) the name of the person withdrawing the ~~notice;~~
notification;
- (ii) whether the person withdrawing the ~~notice~~notification is the service ~~seeker or service~~ provider ~~or seeker;~~
- (iii) a short description of the dispute ~~to which the notice~~
relates;
- ~~(iv) a reference to the relevant provision of subregulation (1) under which the person is withdrawing the notice.~~

~~(4) (3)~~ A person who ~~gives notice of withdrawal to the~~
ACCC withdraws a notification of a dispute must give a copy of the ~~notice~~withdrawal to:

- (a) if the person is the service seeker ~~or the service~~ provider ~~who; or~~
- (b) if the person is a party to the service provider ~~the~~
dispute ~~service seeker.~~

~~(5) Notice (4) Withdrawal of a notification of withdrawal a~~
dispute takes effect when the ~~notice~~withdrawal is received by the ACCC.

~~(6) The ACCC must give a copy of the notice to a withdrawal of a~~
notification of a dispute to each person (except the person who gave ~~notice of~~ the withdrawal ~~of~~ to the ~~dispute~~ACCC) to whom the ACCC gave notice of the dispute under ~~subregulation 3 subsection 6~~(4).

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~~Telecommunications (Arbitration) Regulations 1997~~ Telecommunications
(Arbitration) Regulations 2018

Regulation 7

Part 3 — Arbitration of disputes

5 — 8 Parties to arbitration

The parties to an arbitration are:

- (a) the service seeker; and
- (b) the service provider; and
- (c) if the ACCC considers that the determination of the dispute may require another person to do something—the other person; and
- (d) any other person who applies in writing to be made a party and is accepted by the ACCC as having a sufficient interest in the dispute.

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6 — Constitution of 9 Determination by ACCC for

(1) Unless notification of the dispute is withdrawn under section 7, or the ACCC terminates the arbitration under section 11, the ACCC must make a written determination.

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(1) For an arbitration (2) Before making a determination, the ACCC may be constituted by a member, or 3 members, must give a draft of the determination to each party.

(3) When the ACCC makes a determination it must:

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(2) If the Chairperson (a) give a copy of the ACCC is a member of determination to each party; and

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(b) include the ACCC reasons for the arbitration, the Chairperson must preside over the arbitration determination.

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(3) If subregulation (2) does not apply, the Chairperson must nominate a member of the ACCC to preside over the hearing.

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7 — Determination of questions

If the ACCC is constituted for an arbitration by 3 members of the ACCC, a matter must be decided according to the opinion of the majority of the members.

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Regulation 8

10 Matters that ACCC must take into account

- (1) The ACCC must take the following matters into account in making a determination:
 - (a) the legitimate business interests of the parties, and the parties' investment in facilities used to supply the **relevant** service **that is the subject of the dispute**;
 - (b) the interests of all persons who have rights to use the service;
 - (c) the direct costs of providing access to the service;
 - (d) the operational and technical requirements **necessary** for the safe and reliable operation of a telecommunications network, or facilities used to supply carriage services;
 - (e) the economically efficient operation of a carriage service, a telecommunications network or a facility;
 - (f) whether the determination will promote the long-term interests of end-users of carriage services or **of** services supplied by means of carriage services.

- (2) For **the purposes of** paragraph ~~(1)-(f)~~, whether a determination will promote the long-term interests of end-users of carriage services or of services supplied by means of carriage services is to be determined in the same way as the question is determined for **the purposes of** Part XIC of the *Trade Practices Competition and Consumer Act 1974* ~~2010~~.

~~Note—: See *Trade Practices* section 152AB of the *Competition and Consumer Act 1974*, s. 152AB ~~2010~~.~~

- (3) The ACCC may take into account any other matters that it considers relevant.

9 Determinations

- ~~(1) Before making a determination, the ACCC must give a draft determination to the parties.~~
- ~~(2) Unless a notice is withdrawn under regulation 4 or the ACCC terminates an arbitration under regulation 10, the ACCC must:~~
 - ~~(a) make a written determination; and~~
 - ~~(b) give a copy of the determination to each party; and~~
 - ~~(c) include the reasons for the determination.~~

~~10 *Telecommunications (Arbitration) Regulations 1997* *Telecommunications (Arbitration) Regulations 2018*~~

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Regulation 11

~~10~~ **11 When ACCC may terminate arbitration**

- (1) The ACCC may terminate an arbitration (without making a determination) if it considers that:
 - (a) the notification of the dispute was vexatious; or
 - (b) the subject matter of the dispute is trivial, misconceived or lacking in substance; or
 - (c) a party has not engaged in negotiations in relation to the dispute in good faith; or
 - (d) the service that is the subject of the dispute should continue to be provided under an existing arrangement between the service seeker and service provider.
- (2) In addition, if the dispute is about varying an existing determination, the ACCC may terminate the arbitration if it considers that there is no sufficient reason why the existing determination should not continue to have effect.

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~~11~~ **ACCC may direct parties to engage in negotiations in good faith**

- ~~(1) If the ACCC suspects that a person who is or was a party is not engaging or has not engaged in negotiations in good faith, the ACCC may, to facilitate the negotiations, give the person a written procedural direction requiring the person to do, or refrain from doing, a stated act or thing relating to the conduct of those negotiations.~~

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Regulation 12

~~(2) In deciding whether to give a direction under subregulation (1), Part 4—
Procedure in arbitrations~~

Division 1—Conduct of arbitration

12 Constitution of ACCC for arbitration

~~(1) For the purposes of an arbitration, the ACCC may be constituted by a member, or 3 members, of the ACCC nominated in writing by the Chairperson of the ACCC.~~

~~(2) If the Chairperson of the ACCC must have regard to:~~

~~(a) any guidelines in force under subsection 152CT(6) is a member of the *Trade Practices Act 1974*, to ACCC for the extent that they are applicable; and purposes of an arbitration, the Chairperson must preside at the arbitration.~~

~~(b) other relevant matters.~~

~~(3) A person must not contravene a direction under subregulation (1).~~

~~Penalty: 10 penalty units.~~

~~(4) (3) If subsection (2) does not apply, the Chairperson must nominate a member of the ACCC to preside at the arbitration.~~

13 Determination of questions

~~If the ACCC is constituted by 3 members of the ACCC for the purposes of an arbitration, a matter must be decided according to the opinion of the majority of the members.~~

14 Conduct of arbitration

~~(1) The ACCC may conduct an arbitration:~~

~~(a) on the papers; or~~

~~(b) by holding an arbitration hearing; or~~

~~12. *Telecommunications (Arbitration) Regulations 1997* Telecommunications
(Arbitration) Regulations 2018~~

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Regulation 14

(c) in part on the papers and in part by holding an arbitration hearing.

Note: See section 22 for when the ACCC may conduct a joint arbitration.

(2) In conducting an arbitration, the ACCC:

(a) is not bound by technicalities, legal forms or rules of evidence; and

(b) must act as speedily as a proper consideration of the dispute allows, having regard to the need to inquire into and investigate carefully and quickly the dispute and all matters affecting the merits, and a fair settlement, of the dispute; and

(c) may inform itself of any matter relevant to the dispute in any way it considers appropriate.

(3) The ACCC may determine the periods that are reasonably necessary for the fair and adequate presentation of the respective cases of the parties, and may require that their cases be presented within those periods.

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Regulation 15

Division 2—Powers of ACCC in conducting arbitration

15 Power to refer matters and give directions

The ACCC may do any of the following ~~are examples of the kinds of procedural directions that may be given under subregulation (1);~~ things for the purposes of an arbitration:

- (a) ~~a direction requiring a party to give relevant information to 1 or more other parties;~~
- (a) refer any matter to an expert and accept the expert's report as evidence;
- (b) ~~a direction requiring~~ direct a party to conduct research or investigations to obtain relevant information;
- (c) ~~direct a direction requiring~~ person who is, or was, a party to give relevant information to one or more other parties;
- (d) direct a person not to ~~impose unreasonable procedural conditions on the party's participation in negotiations~~ divulge, or communicate to anyone else, stated information that was given to the person for the purposes of an arbitration unless the person is permitted by the ACCC;
- (e) give any other such direction, and do any such thing, as is necessary or expedient to make a determination.

Note: A person may commit an offence if the person does an act, or omits to do an act, that contravenes a direction under any of paragraphs (b) to (e) (see section 25).

16 Power to require person to give information or produce documents

- (1) The ACCC may give a notice to a person under subsection (2) if the ACCC has reason to believe that the person has information, or a document, relevant to an arbitration.
- (2) The ACCC may, by written notice given to the person, require the person:
 - (a) to give any such information to the ACCC; or
 - (b) to produce any such document to the ACCC; for the purposes of the arbitration.
- (3) The notice must:

¹⁴ ~~Telecommunications (Arbitration) Regulations 1997~~ Telecommunications (Arbitration) Regulations 2018

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Regulation 17

- (a) specify the period (which must be at least 14 days after the notice is given to the person) within which the person is required to comply with the notice; and
- (b) specify the manner in which the person is required to comply with the notice; and
- (c) state the effect of section 26 (offence for failure to comply with a notice).

Note: A person may commit an offence if the person fails to comply with a notice (see section 26).

17 Power to summon person to give evidence and produce documents

- (1) The member of the ACCC who is presiding at an arbitration may, for the purposes of the arbitration, summon a person to:
 - (a) attend before the ACCC to give evidence; and
 - (b) produce such documents (if any) as are referred to in the summons.
- (2) A summons must be in the form set out in Schedule 1.
- (3) A summons must be served on a person by:
 - (a) delivering a copy of the summons to the person personally; and
 - (b) showing the original of the summons to the person when the copy is delivered to the person.
 - (d) ~~a direction requiring a party-~~ Note: A person may commit an offence if the person fails to respond comply with a summons (see section 27).

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Regulation 18

Division 3—Arbitration hearings

18 Conduct of arbitration hearings

(1) The ACCC may do any of the following things for the purposes of an arbitration hearing:

- (a) require evidence or argument to be presented in writing to another party's proposal;
- (b) decide the matters on which it will hear oral evidence or request argument;
- (c) hear and determine the dispute in relation to the absence of a person who has been summoned to attend before the ACCC;
- (d) sit at any place;
- (e) adjourn to the any time and place of a meeting;

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(2) The ACCC may determine that an arbitration hearing is to be conducted by:

- (a) telephone; or
- (b) closed-circuit television; or
- (c) any other means of communication;
- (e) a direction requiring a party, or a representative of a party, to attend a mediation conference;

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(f) a direction requiring a party, or a representative of a party, to attend a mediation conference.

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(1) Subject to attend a conciliation conference.

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(5) If subsection (2), an arbitration hearing is terminated, a reference in subsection (4) to a party is a reference to a former party be conducted in private.

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(2) If the parties agree, an arbitration hearing, or part of an arbitration hearing, may be conducted in public.

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(3) The member of the ACCC who is presiding at an arbitration hearing conducted in private may give written directions about the persons who may be present at the hearing.

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Regulation 21

(4) In giving directions under subsection (3), the member presiding must have regard to the wishes of the parties and the need for commercial confidentiality.

20 Right to representation

A party may appear in person at an arbitration hearing, or be represented by someone else.

21 Evidence on oath or affirmation

(1) The ACCC may take evidence on oath ~~for~~ or affirmation at an arbitration.

~~(2) An ACCC hearing and, for that purpose, a member for~~ of the arbitration ACCC may administer the oath or affirmation.

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Regulation 13

13—Division 4—Joint arbitration of disputes

22 When joint arbitration may be conducted

- (1) If:
- (a) the ACCC is arbitrating 2 or more disputes at a particular time; and
 - (b) one or more matters are common to those disputes; the Chairperson of the ACCC may, by notice in writing, decide that the ACCC must conduct a joint arbitration of such of those disputes (the *nominated disputes*) as are specified in the notice.
- (2) The Chairperson may decide that the ACCC must conduct a joint arbitration of the nominated disputes only if the Chairperson considers this would be likely to result in the nominated disputes being resolved in a more efficient and timely manner.
- (3) Before deciding that the ACCC must conduct a joint arbitration of the nominated disputes, the Chairperson must give each party to the arbitration of each nominated dispute a notice in writing:
- (a) specifying what the Chairperson is proposing to do; and
 - (b) inviting the party to make a written submission on the proposal to the Chairperson within 14 days after the notice is given.
- (4) The Chairperson must have regard to any submission so made in deciding whether the ACCC must conduct a joint arbitration of the nominated disputes. The Chairperson may have regard to any other matter the Chairperson considers relevant.

23 Procedure in joint arbitration

- (1) Sections 12 to 21 and 25 to 31 apply to a joint arbitration in a corresponding way to the way in which they apply to a particular arbitration.
- (2) The Chairperson of the ACCC may, for the purposes of the conduct of a joint arbitration, give written directions to the member of the ACCC presiding at the arbitration.

~~18 Telecommunications (Arbitration) Regulations 1997~~ Telecommunications
(Arbitration) Regulations 2018

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Regulation 24

(3) The ACCC as constituted for the purposes of a joint arbitration of 2 or more disputes may have regard to any record of the proceedings of the arbitration of any of those disputes.

24 Determination of disputes

(1) The ACCC as constituted for the purposes of the joint arbitration of 2 or more disputes may make a single determination that covers all of the disputes.

(2) If the ACCC does not make a single determination that covers all of the disputes, the ACCC as constituted for the purposes of the arbitration of each dispute may, for the purposes of making a determination of the dispute:

(a) have regard to any record of the proceedings of the joint arbitration; and

(b) adopt any findings of fact made by the ACCC as constituted for the purposes of the joint arbitration.

Note: See also sections 9 and 10 in relation to the making of determinations.

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Regulation 25

Division 5—Offences

25 Contravention of a direction

A person commits an offence if:

- (a) the person is given a direction under any of paragraphs 15(b) to (e); and
- (b) the person does an act or omits to do an act; and
- (c) the act or omission contravenes the direction.

Penalty: 10 penalty units.

26 Failure to comply with notice to give information or produce documents

A person commits an offence of strict liability if:

- (a) the person is given a notice under section 16; and
- (b) the person fails to comply with the notice.

Penalty: 10 penalty units.

27 Offences by witnesses

Failure to appear

(1) A person commits an offence of strict liability if:

- (a) the person is served with a summons under section 17 to attend before the ACCC to give evidence; and
- (b) the person has not been excused, or released from further attendance, by a member of the ACCC; and
- (c) the person fails to attend as required by the summons.

Penalty: 10 penalty units.

Failure to answer questions etc.

(2) A person commits an offence of strict liability if:

- (a) the person is served with a summons under section 17 to attend before the ACCC to give evidence; and
- (b) either:

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Regulation 28

- (i) the person fails to be sworn or to make an affirmation;
or
- (ii) the person fails to answer a question that the person is required to answer by the ACCC.

Penalty: 10 penalty units.

Failure to produce document

- (3) A person commits an offence of strict liability if:
 - (a) the person is served with a summons under section 17 to produce a document; and
 - (b) the person fails to produce the document as required by the summons.

Penalty: 10 penalty units.

28 Intimidation etc.

- (1) A person (the *first person*) commits an offence if:
 - (a) the first person engages in conduct that:
 - (i) threatens, intimidates or coerces another person; or
 - (ii) causes damage, disadvantage or loss to another person;
and
 - (b) the first person does so because the other person:
 - (i) has attended, or proposes to attend, before the ACCC to give evidence at an arbitration hearing; or
 - (ii) has produced, or proposes to produce, a document to the ACCC.

Penalty: 10 penalty units.

- (2) Strict liability applies to the physical element in paragraph (1)(b) that the other person:
 - (a) has attended, or proposes to attend, before the ACCC to give evidence at an arbitration hearing; or
 - (b) has produced, or proposes to produce, a document to the ACCC.

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Regulation 29

29 Disturbing an arbitration hearing etc.

A person commits an offence if the person:

- (a) insults, disturbs or uses insulting language towards a member of the ACCC who is exercising powers, or performing functions or duties, as a member of the ACCC for the purposes of an arbitration hearing; or
- (b) interrupts an arbitration hearing; or
- (c) creates a disturbance, or participates in creating or continuing a disturbance, in a place where an arbitration hearing is being conducted.

Penalty: 10 penalty units.

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~~22 Telecommunications (Arbitration) Regulations 1997~~ Telecommunications
(Arbitration) Regulations 2018

Regulation 14

Division 6—Miscellaneous

30 Parties may request ACCC to treat material as confidential

- (1) A party may:
 - (a) inform the ACCC that, in the opinion of the party, a stated part of a document contains confidential commercial information; and
 - (b) request the ACCC not to give a copy of that part of the document to another party.
- (2) On receiving athe request, the ACCC must:
 - (a) inform the other party that the request has been made and of the general nature of the matters to which the relevant part of the document relates; and
 - (b) ask the other party whether it objects to the ACCC complying with the request.
- (3) If there is an objection to the ACCC complying with the request, the party having the objection may inform the ACCC of its objection and of the reasons for it.
- (4) The ACCC may decide not to give to the other party a copy of so much of the document as contains confidential commercial information that the ACCC considers should not be ~~so~~ given after considering:
 - (a) the request; and
 - (b) any objection; and
 - (c) any further submissions that any party has made in relation to the request.

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14 Other ACCC powers

- ~~(1) The ACCC may:~~
 - ~~(a) refer any matter to an expert and accept the expert's report as evidence; and~~
 - ~~(b) direct a person not to divulge or communicate to anyone else stated information that was given to the person for an arbitration unless the person is permitted by the ACCC; and~~

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Regulation 15

~~(c) give any other such direction, and do any such thing, as is necessary or expedient to determine a dispute.~~

~~(2) Subregulation (1) has effect subject to any other provision of these Regulations.~~

~~(3) A person must not contravene a direction under paragraph (1) (b) or (c).~~

~~Penalty: 10 penalty units.~~

15 31 Parties to pay costs of arbitration

The ACCC may:

- (a) charge the ~~persons who are, or were,~~ parties to an arbitration for ~~its~~the ACCC's costs in conducting the arbitration; and
- (b) apportion the amount of the charge between ~~the parties~~those persons.

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~~24 Telecommunications (Arbitration) Regulations 1997 Telecommunications (Arbitration) Regulations 2018~~

Regulation 32

Part 4—Part 5—Application, savings and transitional provisions

32 Definitions

In this Part:

commencement means the day this instrument commences.

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<i>Telecommunications (Arbitration) Regulations</i>	25
1997 <i>Telecommunications (Arbitration) Regulations 2018</i>	

Regulation 16

***old law means the Telecommunications
(Arbitration) hearings***

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16 — ACCC may conduct arbitration hearings

- (1) The ACCC may:
 - (a) conduct an arbitration hearing; and
 - (b) hear and determine the arbitration in the absence of a person who has been summoned to appear at the hearing;
 - (c) conduct the hearing at any place;
 - (d) adjourn the hearing to any time and place.
- (2) Subregulation (1) has effect subject to any other provision of these Regulations 1997, as in force immediately before commencement.

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17 — Summons

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(1) For an arbitration hearing, Transitional—disputes notified before commencement

- Despite the presiding member may:
- (a) summon a person to attend ~~repeal of~~ the hearing; and
 - (b) require the person to produce a document mentioned in the summons.
- (2) A summons must be in the form set out in the ~~old law by~~ Schedule.
- (3) A summons must be served on a person by:
- (a) delivering a copy of the summons to the person personally; and
 - (b) showing the original of the summons to the person when the copy is delivered to the person.

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~~26 Telecommunications (Arbitration) Regulations 1997 Telecommunications (Arbitration) Regulations 2018~~

Regulation 20

~~18 — Arbitration hearings 2 to be in private~~

- ~~(1) An arbitration hearing is to be conducted in private.~~
- ~~(2) However, if this instrument, the parties agree, a hearing, or part of a hearing, may be conducted in public.~~
- ~~(3) The presiding member for an arbitration hearing conducted in private may give written directions about the persons who may be present at the hearing.~~
- ~~(4) In giving directions, the presiding member must have regard to the wishes of the parties and the need for commercial confidentiality.~~

~~19 — Right to representation~~

~~A party may appear in person or be represented by someone else at an arbitration hearing.~~

~~20 — Hearing procedures~~

- ~~(1) In an arbitration hearing, the ACCC:

 - ~~(a) is not bound by technicalities, legal forms or rules of evidence; and~~
 - ~~(b) must act as speedily as a proper consideration of the dispute allows, having regard to the need to inquire into and investigate carefully and quickly the dispute and all matters affecting the merits, and a fair settlement, of the dispute; and~~
 - ~~(c) may inform itself of any matter relevant to the dispute in any way it considers appropriate.~~~~
- ~~(2) The ACCC may determine the periods that are reasonably necessary for the fair and adequate presentation of the respective cases of the parties, and may require that their cases be presented within those periods.~~
- ~~(3) The ACCC may require evidence or argument to be presented in writing, and may decide the matters on which it will hear oral evidence or argument.~~

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Regulation 20

~~(4) The ACCC may determine that an arbitration hearing is to be conducted by:~~

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~~(a) telephone; or~~

~~(b) closed circuit television; or~~

~~(c) any other means of communication.~~

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21 Failureold law continues to attend as witness

~~(1) A person who:~~

~~(a) is summoned under regulation 17 to attend an arbitration hearing; and~~

~~(b) has not been excused, or released from further attendance, by a member of the ACCC for the arbitration;~~

~~must attend the hearing as required by the summons.~~

~~Penalty: 10 penalty units.~~

~~(2) Strict liability applies to subregulation (1).~~

~~(3) It is a defence to a prosecution for an offence against subregulation (1) if the person had a reasonable excuse.~~

Note ~~A defendant bears an evidential burden apply in relation to the question whether he or she had a reasonable excuse (see section 13.3 of the Criminal Code): a dispute if, immediately before commencement:~~

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22 Failure to answer questions etc

~~(1) A witness at an arbitration hearing must not:~~

~~(a) fail to be sworn or to make an affirmation; or~~

~~(a) notification of the dispute had been given to the ACCC; and~~

~~(b) fail to answer a question that the witness is required withdrawal of the notification of the dispute had not been received by the ACCC to answer; or; and~~

~~(c) fail to produce a document that the witness is required to produce by a summons under paragraph 17 (1) (b).~~

~~Penalty: 10 penalty units.~~

Regulation 26

~~(2) Without limiting subregulation (4), paragraph (1) (b) or (c) does not require a witness to answer a question or produce a document if the answer or the production of the document might tend to incriminate the witness or expose him or her to a penalty.~~

~~(3) Strict liability applies to subregulation (1).~~

~~(4) It is a defence to a prosecution for an offence against subregulation (1) if the witness had a reasonable excuse.~~

Note A defendant bears an evidential burden in relation to the question whether he or she had a reasonable excuse (see section 13.3 of the *Criminal Code*).

25 Intimidation etc prohibited

~~(1) This regulation applies if a person:~~

~~(a) has produced, or proposes to produce, documents to the ACCC; or~~

~~(b) has appeared, or proposes to appear, as a witness at an arbitration hearing.~~

~~(2) A person must not engage in conduct that:~~

~~(a) threatens, intimidates, or coerces a person mentioned in subregulation (1); or~~

~~(b) causes damage, disadvantage or loss to the person.~~

~~Penalty: 10 penalty units.~~

~~(3) Strict liability applies to the physical element in paragraph (2) (a) that the person is a person mentioned in subregulation (1).~~

26 Disturbing etc arbitration hearings prohibited

~~A person must not, in relation to an arbitration hearing:~~

~~(a) insult or disturb an ACCC member exercising powers or performing functions or duties as an ACCC member; or~~

~~(b) interrupt the hearing; or~~

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Regulation 26

- ~~(c) use insulting language towards an ACCC member exercising powers, or performing functions or duties, as an ACCC member; or~~
- ~~(d) create a disturbance, or participate in creating or continuing a disturbance, where the hearing is being conducted.~~

~~Penalty: 10 penalty units.~~

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~~30 Telecommunications (Arbitration) Regulations 1997 Telecommunications (Arbitration) Regulations 2018~~

EXPOSURE DRAFT

Arbitration hearings

Part 4

Regulation 26

hearings Part 5

Section 26

- (c) the arbitration of the dispute had not been terminated by the ACCC; and
- (d) a determination of the dispute had not been made.

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Telecommunications (Arbitration) Regulations 2018

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EXPOSURE DRAFT

Schedule
Form Summons

Schedule_Form

Schedule

(subregulation 17 (2))

1 Form Summons of summons

COMMONWEALTH OF AUSTRALIA

Note: See subsection 17(2).

Commonwealth of Australia

Telecommunications Act 1997

SUMMONS

(Telecommunications (Consumer Protection and Service Standards) Act 1999

Summons

[Title of matter]

To

Name of witness: (insert full: [name of witness])

Address of witness: (insert and address of witness)

1. You are summoned to attend **before** the Australian Competition and Consumer Commission, (insert address), for an arbitration hearing in this matter on (insert date) at (insert time) and then from day to day until the hearing is completed or until you are released from further attendance.
2. You are required to attend **before** the Commission to give evidence at the hearing.
- *3. You are required to bring with you and produce the following documents: [set out the documents required] (specify the documents required).

Dated _____

Date:

Presiding Member
Australian Competition and Consumer Commission

2 Telecommunications (Arbitration) Regulations 1997
Telecommunications (Arbitration) Regulations 2018

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EXPOSURE DRAFT

Summons Schedule
Form

of summons

~~*Omit, if inapplicable.~~

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~~Telecommunications (Arbitration) Regulations 1997~~ Telecommunications
(Arbitration) Regulations 2018

EXPOSURE DRAFT

Table of Statutory Rules

~~Notes to the *Telecommunications (Arbitration) Regulations 1997*~~
~~Note Schedule 2—Repeals~~

Telecommunications (Arbitration) Regulations 1997

1

~~The *Telecommunications (Arbitration) Regulations 1997* (in force under the *Telecommunications Act 1997*) as shown in this compilation comprise Statutory Rules 1997 No. 350 amended as indicated in the Tables below. whole of the instrument~~

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Table of Statutory Rules

Year and number	Date of notification in Gazette	Date of commencement	Application, saving or transitional provisions
1997 No. 350	15 Dec 1997	15 Dec 1997	
2001 No. 337 (a)	21 Dec 2001	21 Dec 2001	—

~~(a) Statutory Rules 2001 No. 337 was made under the *Australian National Maritime Museum Act 1990*, the *National Gallery Act 1975*, the *National Library Act 1960*, the *Radiocommunications Act 1992* and the *Telecommunications Act 1997*.~~

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~~*Telecommunications (Arbitration) Regulations 1997*~~ *Telecommunications (Arbitration) Regulations 2018*

EXPOSURE DRAFT

Table of Amendments

Table of Amendments

ad. = added or inserted — am. = amended — rep. = repealed — rs. = repealed and substituted

Provision affected	How affected
R. 1.....	rs. 2001 No. 337
Rr. 21, 22.....	rs. 2001 No. 337
Rr. 23, 24.....	rep. 2001 No. 337
R. 25.....	am. 2001 No. 337

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~~Telecommunications (Arbitration) Regulations 1997~~ Telecommunications (Arbitration) Regulations 2018 5

EXPOSURE DRAFT

~~Notes to the Telecommunications (Arbitration) Regulations 1997~~

Table of Amendments

Schedule 2_Repeals

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