

## STAKEHOLDER NOTICE

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20 December 2021

### DBCT arbitration guideline

#### **Final version 3 published to promote speedy dispute resolution**

Our updated Dalrymple Bay Coal Terminal (DBCT) arbitration guideline is now available. In version 3 of the guideline, we have added material to promote speedy resolution of disputes. The changes include:

- stronger emphasis on the role of alternative dispute resolution (ADR), including mediation, in achieving negotiated outcomes
- advice on how to lodge a dispute
- templates of documents we expect parties to complete before and during the dispute resolution process.

The updated guideline is available at <https://www.qca.org.au/project/disputes/dbct-arbitration-guideline-2/>.

## Changes from draft update published in October

We published a draft update to the DBCT arbitration guideline on 22 October 2021. We received one submission on the draft, from the Dalrymple Bay Coal Terminal User Group (the user group). The user group generally supported the changes in the draft, but raised concerns that:

- conducting mediation and arbitration in parallel would result in substantial, and potentially unnecessary, costs for the parties, and might undermine the prospects for mediation
- requiring that without prejudice information be disclosed at the start of a dispute might have a chilling effect on negotiations.

### **Parallel mediation and arbitration**

We remain committed to making any dispute process as speedy as proper consideration allows. The best way for the parties to address the user group's concern about parallel mediation and arbitration is to pursue mediation, or other alternative dispute resolution, before bringing a dispute to us. However, if that has not happened, and the parties are amenable to attempting mediation, we consider that it is appropriate to conduct some parts of the processes in parallel. This applies particularly to preparing statements of facts, issues and contentions, and completing a list of agreed issues.

We have amended the language in the arbitration guideline to emphasise that we will have regard to the wishes of the parties to a dispute when we determine the timing and sequencing of mediation and arbitration. The user group's comments refer to a dispute about determining a new terminal infrastructure charge for existing access holders. However, that is not the only matter that could be brought to us for arbitration. For some disputes, conducting mediation and arbitration in parallel may be an appropriate way to speed the process.

### **Without prejudice material**

We support measures that encourage parties to share material during negotiations that might lead to an agreement without the parties resorting to dispute resolution. We have therefore amended the arbitration guideline to make it clear that we do not expect parties that share offers or correspondence on a without prejudice basis during negotiations to include that material in a package of initial information they provide to us when they lodge a dispute notice or respond to such a notice.

### **Other matters**

We have also amended the final version of the updated guideline to make it clear that any negotiated terms or conditions that differ from those established by us in a decision, position paper or other document should not be seen as setting a precedent for future decisions or determinations by us.

The changes from the draft updated guideline are shown in a tracked document available on our website at:

<https://www.qca.org.au/project/disputes/dbct-arbitration-guideline-2/>.