

Construction arbitration: Arbitral institutions in New Zealand

The choice between institutional and ad hoc arbitration requires careful consideration.

For parties considering arbitration in New Zealand, there are a number of local arbitral institutions for parties to consider. Each institution is subject to its own set of rules and procedures.

To assist parties in their decision between the institutions available in New Zealand, the table below compares four prominent arbitral institutions and how they differ from the default position under the Arbitration Act 1996 (the **Act**), including as to procedural rules, time limits for rendering an award, confidentiality, costs recovery and fees.

Institution	<i>Arbitration Act 1996</i>	<i>Arbitrators' and Mediators' Institute of New Zealand incorporated (AMINZ)</i>	<i>New Zealand International Arbitration Centre (NZIAC)</i>	<i>New Zealand Dispute Resolution Centre (NZDRC)</i>	<i>Resolution Institute</i>
Overview	The Act is a comprehensive statute governing arbitration in New Zealand. The Act is based on the United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration 1985 (the Model Law).	AMINZ provides various dispute resolution services, including appointing arbitrators (under the Act or an arbitration agreement). It provides the AMINZ Arbitration Protocol , the AMINZ Arbitration Rules and the AMINZ Arbitration Appeals Tribunal .	NZIAC provides arbitration services for international arbitrations that take place within New Zealand, specifically dealing with "international trade, commerce, investment, and cross-border disputes in the Trans-Pacific region". NZIAC provides four variants of Arbitration Rules that may apply depending on the value of the dispute or where the claimant seeks declaratory relief only. These consist of the standard Arbitration Rules and three Expedited Arbitration Rules (ECA45, ECA60 and ECA90).	Provides arbitration services for ad hoc and institutional arbitrations, focusing on domestic commercial arbitration. NZDRC provides four variants of Arbitration Rules that apply depending on the value of the dispute or where the claimant seeks declaratory relief only. These four variants correspond (and are mostly identical) to the four variants of the NZIAC Arbitration Rules (i.e. the standard Arbitration Rules and three Expedited Arbitration Rules: EIA60, EIA90 and EIA120). We therefore deal with these	Acts as a neutral third party to nominate arbitrators, where requested by the parties, and provides the Resolution Institute Arbitration Rules 2023 .

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				variants of rules collectively below.	
General approach to procedure	The Act provides that parties are free to agree on the procedure to be followed by the tribunal in conducting the arbitration. ¹ Failing agreement, the tribunal may conduct the arbitration in a manner it considers appropriate, including in determining the admissibility, relevance, materiality, and weight of any evidence. ²	The AMINZ Arbitration Rules, in conjunction with the AMINZ Arbitration Protocol, provides a framework for the conduct of arbitration. The Arbitration Rules encourage the parties to agree on joint proposals for the conduct of their arbitration, including in relation to the issues in dispute, timetabling, disclosure, appointment of experts, venue and timing of any hearing, and the requirement for interim measures, preliminary orders, and interim/partial awards. ³	All four variants of the NZIAC and NZDRC Arbitration Rules contain comprehensive procedural rules concerning various matters, including the arbitration's seat, language, procedural law, substantive law, issues in dispute, pleadings, jurisdiction, joinder, consolidation, disclosure, and evidence admissibility. ⁴ Many rules apply unless the parties agree otherwise.		The Resolution Institute Arbitration Rules 2023 provides that subject to applicable legislation, these Rules, and the parties' agreement, the arbitrator may conduct the arbitration in a manner they consider appropriate. ⁵ The Resolution Institute Arbitration Rules 2023 address various procedural matters, including the arbitration's seat, language, jurisdiction, pleadings, evidence, and hearings.
Discovery / document disclosure	Unless the parties agree otherwise, the tribunal can order the discovery and	The tribunal can order the production of documents, goods, samples, property,	Under the Standard Arbitration Rules (for claims exceeding NZD2.5m), unless otherwise agreed by the parties or the tribunal deems it necessary, there is to be no "formal" discovery and inspection of		The default procedure in the Resolution Institute Arbitration Rules 2023 make no

¹ Arbitration Act 1996, Schedule 1, article 19(1).

² Arbitration Act 1996, Schedule 1, article 19(2).

³ AMINZ Arbitration Rules, r 8.2.

⁴ NZIAC Standard Arbitration Rules, rr 8.0–29.0.

⁵ Resolution Institute Arbitration Rules 2023, r 17(1).

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	<p>production of documents or materials within the possession or power of any party.⁶</p> <p>The tribunal (or a party with the tribunal's approval) may also request discovery orders from the High Court or District Court.⁷ The court has the same power to make such orders as it has for ordinary proceedings before it.</p>	<p>sites or other things under the parties' control.⁸</p> <p>The tribunal may also order the production of documents and other material it considers relevant and material to the dispute.⁹</p> <p>The AMINZ Arbitration Rules thus do not materially depart from the Act's provisions regarding discovery.</p>	<p>documents (as is typical in a court proceeding).¹⁰ That said, each party must disclose all relevant documents within their possession, power or control on an "informal basis".¹¹ The tribunal is empowered to determine disputes between the parties arising from notices to produce documents submitted by either party. The tribunal may also require a party to provide any documents or other evidence the tribunal may reasonably require.¹² If discovery and inspection are undertaken, it will be on the terms that the tribunal directs.¹³</p> <p>Under the Expedited Arbitration Rules (for claims less than NZD2.5m), there is no formal discovery or inspection of documents.¹⁴ Each party need only provide all documents relied on to support its own pleadings.¹⁵ The tribunal retains the power to require a party to provide any documents or other evidence the tribunal may reasonably require.¹⁶ Similarly, if</p>	<p>provision for discovery or disclosure.</p>	

⁶ Arbitration Act 1996, Schedule 2, article 3(1)(f).

⁷ Arbitration Act 1996, Schedule 1, article 27(2)(c)(i).

⁸ AMINZ Arbitration Rules, r 6.11(f).

⁹ AMINZ Arbitration Rules, r 8.5.

¹⁰ NZIAC and NZDRC Standard Arbitration Rules, r 22.1.

¹¹ NZIAC and NZDRC Standard Arbitration Rules, r 22.2.

¹² NZIAC and NZDRC Standard Arbitration Rules, r 22.8.

¹³ NZIAC and NZDRC Standard Arbitration Rules, r 22.10.

¹⁴ NZIAC EIA60, EIA90, EIA120 and NZDRC ECA45, ECA60, ECA90 Arbitration Rules, r 22.1.

¹⁵ NZIAC EIA60, EIA90, EIA120 and NZDRC ECA45, ECA60, ECA90 Arbitration Rules, r 22.10.

¹⁶ NZIAC EIA60, EIA90, EIA120 and NZDRC ECA45, ECA60, ECA90 Arbitration Rules, r 22.3.

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			discovery and inspection are undertaken, it will be on terms the tribunal directs. ¹⁷		
Rendering the award	<p>Unless otherwise agreed by the parties, a tribunal can award any remedy or relief that could have been ordered if the dispute were the subject of civil proceedings in the High Court.¹⁸</p> <p>The award must be in writing and state the reasons upon which it is based and the date and place of the arbitration.¹⁹</p>	<p>The AMINZ Arbitration Rules do not substantively differ from the Act's provisions for rendering an award.²⁰</p> <p>However, the AMINZ Arbitration Protocol provides that the parties may require the tribunal to provide reasons for the award, and to include the reasons in the award, or to expressly provide that the reasons are not to be included in the award. Alternatively, the parties can require the tribunal to provide an award without reasons.²¹</p>	<p>All four variants of the NZIAC and NZDRC Arbitration Rules provide that the tribunal must make one or more awards as required for the final determination of the dispute, which may include one or more of the following:²³</p> <ul style="list-style-type: none"> • Interlocutory Award: Determines procedural or jurisdictional matters and applications for interim measures pending final determination of the dispute. • Interim Award: Provisionally determines, in whole or in part, one or more matters in issue. • Partial Award: Finally determines one or more matters in issue but not the costs, fees and expenses of the arbitration. • Final Award: Finally determines all matters in issue including the costs, fees and expenses of the arbitration. • Additional Award: Finally determines claims presented but omitted from a Partial or Final Award. 	<p>The Resolution Institute Arbitration Rules 2023 do not materially differ from the Act's provisions for rendering an award.</p> <p>However, they do provide that the award shall be final and binding on the parties, and that the parties shall comply with all awards without delay.²⁶</p>	

¹⁷ NZIAC EIA60, EIA90, EIA120 and NZDRC ECA45, ECA60, ECA90 Arbitration Rules, r 22.5.

¹⁸ Arbitration Act 1996, s 12(1)(a).

¹⁹ Arbitration Act 1996, Schedule 1, art 33.

²⁰ AMINZ Arbitration Rules, r 15.

²¹ AMINZ Arbitration Protocol, r 12.2.

²³ NZIAC and NZDRC Arbitration Rules, r 34.

²⁶ Resolution Institute Arbitration Rules 2023, r 34(5).

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		Where appropriate, the tribunal may issue an interim or partial award. ²²	The extent of reasons given by the tribunal for the findings in any award must be proportionate to the time available to the tribunal, the nature and number of matters for determination, and the amount of money in issue. ²⁴ Before an award is finalised the tribunal must submit it in draft form to the Registrar for scrutiny and no award shall be issued until approved by the Registrar. ²⁵		
Time limit for rendering award	The Act does not prescribe a time limit for rendering an award.	The AMINZ Arbitration Rules do not prescribe any time limit for rendering an award. However, the AMINZ Arbitration Protocol provides that the award will be made available without undue delay and the tribunal will publish the award within 3 months of the conclusion of the hearing, or within such extended time as the tribunal may reasonably require. ²⁷	The NZIAC and NZDRC Arbitration Rules provide that the tribunal must make an award as soon as practicable after considering all submissions and evidence. ²⁸		The Resolution Institute Arbitration Rules 2023 do not prescribe any time limit for rendering an award.
Expedited procedure	The Act makes no provision for	The AMINZ Arbitration Rules provide expedited and	The NZIAC and NZDRC Expedited Rules (EIA60, EIA90, EIA120 and ECA45, ECA60, ECA90) provide a		The Resolution Institute Arbitration

²² AMINZ Arbitration Protocol, r 12.1.

²⁴ NZIAC and NZDRC Arbitration Rules, r 34.

²⁵ NZIAC and NZDRC Arbitration Rules, r 34.10–34.12.

²⁷ AMINZ Arbitration Protocol, r 12.1.

²⁸ NZIAC and NZDRC Arbitration Rules, r 34.1.

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	expedited procedure. That said, the Act contemplates interim measures and preliminary orders being issued by the tribunal or the courts in certain circumstances. ²⁹	<p>emergency arbitration procedures.³⁰</p> <p>The expedited procedures include the following features:</p> <ul style="list-style-type: none"> • The tribunal shall consult with the parties on how it will conduct the arbitration. • The tribunal shall direct what written statements the parties will submit (and may limit the volume of evidence and submissions). • There shall be no requests for documentary disclosure. The parties are to produce all documents and evidence on which they rely, and the tribunal may direct what other additional documents, exhibits or evidence the parties should produce. 	<p>procedure designed to finally determine the substantive matters in dispute within 45, 60, 90 or 120 working days from the commencement date (i.e. the date the arbitrator's appointment is communicated to the parties). To that end, the rules provide that the tribunal will use its best endeavours to provide an award that finally determines the substantive matters in dispute within the applicable timeframe.³¹</p> <p>The Expedited Rules do not provide for joinder, consolidation, formal discovery or inspection of documents, or an agreed bundle of documents.³²</p>	<p>Rules 2023 contains an Expedited Procedure, which provides that:³³</p> <ul style="list-style-type: none"> • The arbitrator will determine whether there shall be a hearing and whether this will be in-person. • Disclosure of documents will be highly limited. • Procedural disputes will be resolved on the papers or on a video conference within five business days of being raised. The arbitration must be conducted within four months from the first procedural conference to the completion of the 	

²⁹ Arbitration Act 1996, Schedule 1, art 17–17M.

³⁰ AMINZ Arbitration Rules, rr 11–12.

³¹ NZIAC EIA60, EIA90, EIA120 and NZDRC ECA45, ECA60, ECA90 Arbitration Rules, r 34.2.

³² NZIAC EIA60, EIA90, EIA120 and NZDRC ECA45, ECA60, ECA90 Arbitration Rules, r 20–23.

³³ Resolution Institute Arbitration Rules 2023, r 48.

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		<ul style="list-style-type: none"> The tribunal may decide whether hearings should be held and if so, which witnesses shall give evidence. The award shall be made within 6 months from the date of the tribunal's appointment. <p>The emergency procedures include the following features:</p> <ul style="list-style-type: none"> A party may apply to AMINZ to appoint an emergency arbitrator to award interim measures in accordance with Article 17A of Schedule 1 to the Act. The emergency arbitrator will conduct the proceedings in the manner they determine to be appropriate in the circumstances. The application may be determined without an oral hearing. The emergency arbitrator will determine the application and issue an order within 14 days of their appointment. 			<p>hearing (or delivery of the last closing submission).</p> <ul style="list-style-type: none"> The award must be delivered within one month of the completion of the hearing.

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		<ul style="list-style-type: none"> The emergency arbitrator's order shall be in writing and include reasons. 			
Confidentiality	<p>The Act provides that every arbitration agreement is deemed to provide that the parties and the tribunal must not disclose confidential information (i.e. information relating to the proceedings).³⁴ There are some exceptions outlined in sections 14B–14E of the Act.</p>	<p>The AMINZ Arbitration Rules provide that the parties agree to use all reasonable efforts to maintain the confidentiality of the dispute and the arbitral proceedings, including any orders or awards issued.³⁵ To that end, the parties agree to (a) refer all legal issues to the tribunal and appeals to the AMINZ Arbitration Appeals Tribunal rather than the courts; and (b) agree that when instituting any court proceedings, they will not object if any party applies for confidentiality to be maintained during such proceedings.³⁶</p>	<p>The NZIAC and NZDRC Arbitration Rules provide that the arbitration must be conducted in private and that the parties, their representatives, the tribunal, the institute, and any other person involved in the arbitration must keep confidential and not disclose confidential information (i.e. any non-public materials and information that relates to the arbitration) to any non-party.³⁸</p> <p>There are limited reasons for which a party may disclose confidential information, which include enforcing the arbitral award, pursuing a legal right, protecting a party's legal rights against a third party, or complying with a court order.³⁹</p>	<p>The Resolution Institute Arbitration Rules 2023 provide that, if the seat of the arbitration is not in Australia or New Zealand, and the Act (or any of the Australian Arbitration Acts) does not apply to it, then the parties, arbitrator and Resolution Institute undertake to keep confidential the existence of the arbitration, all awards and rulings, all documents created for the purpose of the arbitration, and all other documents produced by any other</p>	

³⁴ Arbitration Act 1996, s 14B.

³⁵ AMINZ Arbitration Rules, r 17.11.

³⁶ AMINZ Arbitration Rules, r 17.12.

³⁸ NZIAC and NZDRC Arbitration Rules, rr 38.1–38.2.

³⁹ NZIAC and NZDRC Arbitration Rules, rr 384.

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		Further, the AMINZ Arbitration Protocol provides that the parties and the tribunal shall maintain privacy and will not divulge any aspect of the arbitration to those not involved with the process, without the parties' prior agreement. ³⁷			party in the arbitration not otherwise in the public domain. The exception is to the extent disclosure is required by legal duty, to pursue a legal right, or to enforce or challenge an award. ⁴⁰
Costs allocation	Unless the parties agree otherwise, the costs and expenses of the arbitration (i.e. the parties' legal and other expenses, the tribunal's fees and expenses, and any other expenses) shall be fixed and allocated by the arbitral tribunal. ⁴¹ If not, each party is responsible for its own legal and other expenses and for an equal share of the	Unless the parties agree otherwise, the costs of the arbitration and parties' legal costs will be fixed and allocated by the tribunal in accordance with the AMINZ Rules for Awarding Costs in Arbitration and the AMINZ Guidelines to Awarding Costs in Arbitration guidelines. ⁴³ The tribunal has broad authority in this regard, with the costs of arbitration	Unless the parties otherwise agree, the tribunal will fix the costs and expenses of the arbitration (i.e. the parties' legal and other fees and expenses, the fees and expenses of the tribunal, NZDRC's administrative fees, and any other costs related to the arbitration). The tribunal must direct which party is to pay all or part of the costs and expenses of the arbitration, and may make an order for costs in favour of any party. ⁴⁴ Unless the parties otherwise agree, the costs of the arbitration reasonably and properly incurred by the successful party will be borne by the unsuccessful party. However, the tribunal may apportion such costs if it would be just in the circumstances. ⁴⁵		The Resolution Institute Arbitration Rules 2023 provide that the costs of an arbitration are at the discretion of the arbitrator, but the rules do not provide any further guidance on how the arbitrator is to determine them, nor do the rules address costs allocation between the parties.

³⁷ AMINZ Arbitration Protocol, r 9.1.

⁴⁰ Resolution Institute Arbitration Rules 2023, r 46.

⁴¹ Arbitration Act 1996, Schedule 2, art 6(1)(a).

⁴³ AMINZ Arbitration Rules, r 14.3.

⁴⁴ NZIAC and NZDRC Arbitration Rules, r 37.1.

⁴⁵ NZIAC and NZDRC Arbitration Rules, r 37.2.

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	tribunal's fees and expenses and any other arbitration-related expenses. ⁴²	typically borne by the unsuccessful party.			
Fees	There are no fees prescribed under the Act.	The fixed fee for having AMINZ appoint an arbitrator on the parties' behalf is \$575.00. There are otherwise no prescribed fees.	NZIAC and NZDRC provide a fully administered arbitration service. Appendix 1 of the NZIAC and NZDRC Arbitration Rules provides that the parties must make a Preliminary Payment consisting of a Registration Fee, Administration Fee, and the Arbitral Tribunal's Fees and Expenses. The Registration Fee is fixed depending on the number of arbitrators. The Administration Fee and the Arbitral Tribunal's Fees and Expenses are determined according to the amount in dispute, with the tiers ranging from disputed amounts below \$250,000 to above \$100m. This ensures the costs of the arbitration remain proportional to the amount in dispute. Additional fees may apply for interim relief, early dismissal of claims, consolidation, and joinder. Appendix 1 of the NZIAC and NZDRC Arbitration Rules contains tables recording the exact fees for each band.	NZIAC and NZDRC provide a fully administered arbitration service. Appendix 1 of the NZIAC and NZDRC Arbitration Rules provides that the parties must make a Preliminary Payment consisting of a Registration Fee, Administration Fee, and the Arbitral Tribunal's Fees and Expenses. The Registration Fee is fixed depending on the number of arbitrators. The Administration Fee and the Arbitral Tribunal's Fees and Expenses are determined according to the amount in dispute, with the tiers ranging from disputed amounts below \$250,000 to above \$100m. This ensures the costs of the arbitration remain proportional to the amount in dispute. Additional fees may apply for interim relief, early dismissal of claims, consolidation, and joinder. Appendix 1 of the NZIAC and NZDRC Arbitration Rules contains tables recording the exact fees for each band.	If the Resolution Institute nominates the arbitrator, the arbitrator must pay the institute a nomination fee of 10% of the total fees invoiced by the arbitrator to conduct the arbitration. ⁴⁷ The costs of the arbitration (including the tribunal's fees and expenses) are at the tribunal's discretion. ⁴⁸ The fixed fee of having the Resolution Institute nominate or appoint an arbitrator is \$550 (including GST). ⁴⁹ The Institute's guide to commercial arbitration suggests that parties

⁴² Arbitration Act, Schedule 2, art 6(1)(b).

⁴⁷ Resolution Institute Arbitration Rules 2023, r 41.

⁴⁸ Resolution Institute Arbitration Rules 2023, r 40.

⁴⁹ [Resolution Institute Guide to Commercial Arbitration](#) at 8.

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			<p>Where the arbitration is concluded before an award is made, the parties will be jointly and severally liable to pay the NZIAC or NZDRC's administrative fees and the tribunal's Fees and Expenses.⁴⁶</p>	<p>can generally expect an arbitrator to charge between \$250 and \$450 (including GST) per hour.</p>	

⁴⁶ NZIAC and NZDRC Arbitration Rules, r 37.7.