

syrup produced at ██████ refinery. ██████ ceased production at the plant on or about mid-June 2020 leaving significant tonnage undelivered. ██████ claims compensation.

8. The parties have chosen to resolve any disputes in accordance with the DR Rules in force at 27 May 2020. As a result, the May 2020 version of the DR Rules govern this reference.
9. Pursuant to Article 13 of the DR Rules (headed ‘Governing Legislation’) the provisions of the *Commercial Arbitration Act 2010 (NSW) (CAA)* shall apply. The parties having chosen the NSW legislation to govern these arbitrations and I find that NSW and specifically Sydney is the seat of this Arbitration as that term is defined in Article 38(1)(a) of the DR Rules.
10. I am listed on the GTA list of arbitrators under Article 6.1 of the DR Rules. I have been nominated by GTA to Chair this Tribunal and I am authorised to make this Final Award pursuant to Article 20(7) of those Rules.
11. The other members of this Tribunal (also drawn from the GTA list of arbitrators) are:
 - Christopher Whitwell**, Basis Commodities Pty Ltd – nominated by GTA at the request of ██████; and
 - Guy Allen**, Advance Trading Australasia Pty Ltd – nominated by ██████.
12. For the reasons set out above I find therefore that this is a validly constituted Tribunal under the CAA with jurisdiction to determine all issues in dispute between the parties, including the jurisdiction of this Tribunal.

Conduct of Arbitration

13. As noted above, this reference concerns a dispute with its origin in the year 2000.
14. The dispute was referred to arbitration in 2021. Apart from publishing our Interim Award, and despite the best efforts of Grain Trade Australia as the administrators of this process, there has been little substantive progress.
15. This is exacerbated by the fact that, despite repeated requests, both parties are in default of payment of fees payable to GTA invoiced as follows;

ARB33802 = \$12,600 GST inc for administration and process fees owed by the Respondent (dated 11/01/2021)

ARB39001 = \$8,250 GST inc for additional process fees owed by the Claimant (dated 22/08/2023)

ARB39002 = \$8,250 GST inc for additional process fees owed by the Respondent (dated 22/08/2023).

16. As mentioned above, this reference is subject to the provisions of the CAA.
17. The following provisions of that Act (with emphasis added) are relevant.

1C Paramount object of Act

- (1) The paramount object of this Act is to facilitate the fair and final resolution of commercial disputes by impartial arbitral tribunals without unnecessary delay or expense.
- (2) This Act aims to achieve its paramount object by:

- (a) enabling parties to agree about how their commercial disputes are to be resolved (subject to subsection (3) and such safeguards as are necessary in the public interest), and
- (b) providing arbitration procedures that enable commercial disputes to be resolved in a cost effective manner, informally and quickly.

(3) This Act must be interpreted, and **the functions of an arbitral tribunal must be exercised**, so that (as far as practicable) the paramount object of this Act is achieved.

18. As is apparent from section 1C (3) of the CAA, this Tribunal has a statutory obligation to facilitate the paramount object of the CAA.

19. Sections 24B, 25 and 33B of the CAA are also relevant.

24B General duties of parties

(1) The parties must do all things necessary for the proper and expeditious conduct of the arbitral proceedings.

(2) Without limitation, the parties must:

(a) comply without undue delay with any order or direction of the arbitral tribunal with respect to any procedural, evidentiary or other matter, and

(b) take without undue delay any necessary steps to obtain a decision (if required) of the Court with respect to any function conferred on the Court under section 6.

(3) A party must not willfully do or cause to be done any act to delay or prevent an award being made.

25 Default of a party

(1) Unless otherwise agreed by the parties, if, without showing sufficient cause:

(a) the claimant fails to communicate the claimant’s statement of claim in accordance with section 23 (1)—the arbitral tribunal may terminate the proceedings, or

(b) the respondent fails to communicate the respondent’s statement of defence in accordance with section 23 (1)—the arbitral tribunal may continue the proceedings without treating such failure in itself as an admission of the claimant’s allegations, or

(c) any party fails to appear at a hearing or to produce documentary evidence—the arbitral tribunal may continue the proceedings and make the award on the evidence before it.

(2) Unless otherwise agreed by the parties, if a party fails to do any other thing necessary for the proper and expeditious conduct of the arbitration the arbitral tribunal:

(a) if satisfied that there has been inordinate and inexcusable delay on the part of the claimant in pursuing the claim—may make an award dismissing the claim or may give directions (with or without conditions) for the speedy determination of the claim, or

(b) if without sufficient cause a party fails to comply with any order or direction of the arbitral tribunal—may make an order requiring the party to comply with the terms of the earlier order or direction within the period specified by the arbitral tribunal (a peremptory order).

(3) If a party fails to comply with a peremptory order, the arbitral tribunal may do any of the following:

- (a) direct that the party in default is not to be entitled to rely on any allegation or material which was the subject matter of the peremptory order,
- (b) draw such adverse inferences from the failure to comply as the circumstances justify,
- (c) proceed to an award on the basis of any materials that have been properly provided to the arbitral tribunal,
- (d) without limiting section 33B (4), in making an award give any direction or order that it thinks fit as to the payment of the costs of the arbitration incurred in consequence of the non-compliance.

33B Costs

- (1) Unless otherwise agreed by the parties, the costs of an arbitration (including the fees and expenses of the arbitrator or arbitrators) are to be in the discretion of the arbitral tribunal.
 - (2) Unless otherwise agreed by the parties, the arbitral tribunal may direct that the costs of an arbitration, or of any part of the arbitral proceedings, are to be limited to a specified amount.
 - (3) A direction under subsection (2) may be varied at any stage, but this must be done sufficiently in advance of the incurring of costs to which it relates, or the taking of any steps in the proceedings which may be affected by it, for the limit to be taken into account.
 - (4) The arbitral tribunal may, in making an award:
 - (a) direct to whom, by whom, and in what manner, the whole or any part of the costs that it awards are to be paid, and
 - (b) tax or settle the amount of costs to be paid or any part of those costs, and
 - (c) award costs to be taxed or settled as between party and party or as between legal practitioner and client.
 - (5) Any costs of an arbitration (other than the fees or expenses of an arbitrator) that are directed to be paid by an award are, to the extent that they have not been taxed or settled by the arbitral tribunal, to be assessed in accordance with section 33C.
 - (6) If no provision is made by an award with respect to the costs of the arbitration, a party may, within 14 days after receiving the award, apply to the arbitral tribunal for directions as to the payment of those costs.
 - (7) The arbitral tribunal must, after hearing any party who wishes to be heard, amend the award by adding to it such directions as the arbitral tribunal thinks proper with respect to the payment of the costs of the arbitration.
20. On 30 May 2024 GTA convened a teleconference of the parties to attempt to progress this matter. While the Respondent appeared by its solicitor, the Claimant did not appear.
21. On 26 June 2024, GTA wrote to the parties (by email, and post) to advise that it intended to close the arbitration due to inactivity, allowing the parties until 10 July 2024 to respond. A copy of that notice is annexed to this Award, marked "A".
22. Neither party has responded to this notice.

23. I note in passing either party may have wished to take the opportunity to make submissions in relation to costs. In the event, neither party has done so, so with the finalisation of this reference, any liability for costs payable, including to GTA, will lie where they fall.

Conclusion

24. There is no doubt that parties have failed in their obligations under sub-sections 24B (1) and (2) of the CAA.

25. They have been given ample opportunity to address and remedy their default and have chosen not to do so.

26. This is particularly the case where a full Tribunal has been empanelled and which has obligations under section 1C(3) of the CAA.

27. I have decided therefore that there has been an inordinate and inexcusable delay in the conduct of this matter for the purposes of sub-section 25(2)(a) of the CAA and therefore make an order dismissing the claim.

Final Award

For the reasons stated above, I make the following Final Award;

1. The Claimant's claim is dismissed.
2. The Claimant pay to GTA \$8,250 forthwith.
3. The Respondent pay to GTA \$20,850 forthwith.

This award is published at Sydney, the day of August 2024.

Mr Gerard Langtry, Chair