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## Member Update

**Title:** Appointment of NACMA Arbitrators

**Update No.:** 35 of 08

**Date of Issue:** 21<sup>st</sup> October 2008

### Distribution

- NACMA Members – primary contact list. Please circulate to all appropriate internal parties

### Issue

Due to the unprecedented call on the NACMA Dispute Resolution Service, NACMA is in urgent need of additional arbitrators. NACMA would encourage senior personnel from across the grain supply chain to become an arbitrator. Although there is time involved (usually about 10 hours over the a three month period) you will derive invaluable experience should your organisation subsequently become involved in an arbitration as you will have the understanding as to how the process works and what arbitrators look for in deciding their award.

The NACMA Dispute Resolution Service is a core activity of NACMA and is reliant on the nomination and subsequent appointment of arbitrators from the grain industry who are prepared to act in this important capacity.

### Requirements to be an Arbitrator

Recognised AC Arbitrators may be Members of National Agricultural Commodities Marketing Association Limited [NACMA] or Non-Members and shall meet the following criteria:

- be well versed in the practices and customs of the grain trade;
- have a thorough understanding of the NACMA Trade Rules and NACMA Arbitration Rules;
- have not less than five years experience in the grain trade or grain related industry, OR is a professional arbitrator;
- not be a bankrupt, insolvent, or in receivership; and
- not be convicted of a felony.

### Appointment and duration

- Recognised AC Arbitrators shall be approved by the NACMA Limited Board.
- Appointments as a Recognised NACMA Arbitrator shall remain valid for a period of three years.

### Nomination

A Nomination Form and Arbitrator Q & A is attached.



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## NACMA Arbitrator – Q & A

### ***Do I need to be a trained arbitrator to nominate?***

No – however you must be able to make the following declaration.

*I declare that I:*

- (a) *am well versed in the practices and customs of the grain trade;*
- (b) *have a understanding of the NACMA Trade Rules & Contracts and NACMA Arbitration Rules;*
- (c) *have not less than five years experience in the grain trade or grain related industry, OR are a professional arbitrator;*
- (d) *am not a bankrupt, insolvent, or in receivership; and*
- (e) *have not been convicted of a felony.*

### ***Can I be personally liable if the panel's decision is shown by subsequent appeal to have been wrong?***

No – Section 51 of the Commercial Arbitration Act states:

*"An arbitrator or umpire is not liable for negligence in respect of anything done or omitted to be done by the arbitrator or umpire in the capacity of arbitrator or umpire but is liable for fraud in respect of anything done or omitted to be done in that capacity."*

### ***What are an arbitrators' duties?***

An arbitrator has to ensure that the arbitration is conducted in accordance with the principle of natural justice and procedural fairness. That is that both parties are treated fairly, equally and the arbitration is transparent. Arbitrators are also required to give reasons for any decision made.

### ***Do I have to travel to participate in an arbitration hearing?***

No (generally) – all arbitrations are document based with the arbitration panel meeting via teleconference. However, a party to an arbitration is entitled to an oral hearing. If this is to occur travel will be required. In the last four years this right has not been exercised by any party. In the case of an oral hearing all your travel and accommodation expenses would be covered.

### ***How much time is required as an arbitrator in hearing a dispute?***

Time varies according to the complexity of the case, but as a general guideline the following would apply:

- There is approximately 5 to 10 hours preparation time;
- The arbitration hearing typically consists of one, possibly two teleconferences of approximately 1 hour duration. Teleconferences are paid by NACMA.

### ***How long does an arbitration take to be settled?***

Again this depends on the complexity of the matter, as a general rule an arbitration can take between 12 to 16 weeks.

### ***What if I don't understand a legal issue? Do I have access to legal advice?***

Yes – NACMA's legal counsel is available to provide advice in relation to legal issues. However, legal counsel will not make a direction as to how the arbitrator should, or should not, use this information. This is the responsibility of the arbitrator.

### ***Do I get paid?***

No – NACMA arbitrators participate in arbitrations for the benefit of the industry as it provides a dispute resolution method for the grain industry. Many arbitrators feel that it is their way to "put back" to the industry, whilst others participate as it hones their business skills.

### ***Do NACMA Arbitration Awards have a basis in law?***

Yes - All arbitrations are conducted pursuant to the NACMA Trade Rules and NACMA Dispute Resolution Rules and the laws of the applicable jurisdiction, including the relevant *Commercial Arbitration Act*.

### ***Do I represent the organisation that nominated me?***

No – as an arbitrator you act independently of the nominating party. Your decisions are based on the submissions lodged by the parties. This may or may not be favourable to the organisation that nominated you as an arbitrator.

### ***Can I make my own enquiries independent of the arbitration process***

No – if you have any questions relating to the Process they must be addressed via the NACMA CEO.

### ***Is all documentation shared to all the parties?***

Yes – copies of all the documents tendered to the Arbitration Committee are forwarded to the respective parties, the members of the Arbitration Committee and the NACMA Legal Counsel. An arbitration process must be transparent to all involved.

### ***Am I able to talk about the Arbitration with other members of the industry?***

No – you have been selected as an arbitrator for your technical skills. If you require legal advice, that is available via the NACMA Legal Counsel who will issue advice to the Arbitration Committee as a whole. This is to ensure that all Arbitration Committee members have access to exactly the same information.

### ***Does an Arbitration Award have to be unanimous?***

No – you can have an award that has a dissenting opinion.



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## Nomination Form – NACMA Arbitrator

I, \_\_\_\_\_ of \_\_\_\_\_

consent to Act as a NACMA arbitrator.

I declare that I:

- (a) am well versed in the practices and customs of the grain trade;
- (b) have a thorough understanding of the NACMA Trade Rules and NACMA Arbitration Rules;
- (c) have not less than five years experience in the grain trade or grain related industry, OR are a professional arbitrator;
- (d) am not a bankrupt, insolvent, or in receivership; and
- (e) have not been convicted of a felony.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Contact details:

Address \_\_\_\_\_ Postcode \_\_\_\_\_

Tel: \_\_\_\_\_ Email: \_\_\_\_\_

### Proposer – must be a NACMA member

Signed \_\_\_\_\_

Name (please print) \_\_\_\_\_

Date \_\_\_\_\_

### Seconder – must be a NACMA member and not employed by the same company as the proposer

Signed \_\_\_\_\_

Name (please print) \_\_\_\_\_

Date \_\_\_\_\_

**Completed nomination forms must be mailed or faxed to NACMA**