

**STATE OF VICTORIA V SEAL ROCKS VICTORIA [2001] VSC 76**

Supreme Court of Victoria – 23 March 2001

**FACTS**

The State had entered into a contract with Seal Rocks to design, construct, operate and maintain tourist amenities on Phillip Island.

Some disputes arose between the parties and they referred the dispute to arbitration as required by the arbitration clause in the contract.

The State claimed that certain documents should not be produced or disclosed to Seal Rocks as they were protected by public interest immunity. Seal Rocks disputed this claim and the Arbitrator heard evidence and submissions on this matter and then determined that the documents should be produced and disclosed to Seal Rocks.

The State sought a declaration that the documents were protected by the public interest immunity and sought orders that the determination of the arbitrator be set aside.

**ISSUES**

Was the determination made by the Arbitrator an interim award that could be reviewed by the Court?

Did the Court have a general power to supervise arbitrations and make interlocutory orders?

**FINDING**

The determination made by the arbitrator was not an interim award as it did not involve the resolution of any issue referred to arbitration and only involved resolving an incidental matter.

The Court does not have a general power to supervise arbitrations and it cannot review an interlocutory decision made by an arbitrator.

**QUOTE**

Bryne said:

*“Faced with a strong line of authority which would deny to the court any inherent jurisdiction generally to review a procedural determination or evidentiary ruling of an arbitrator, I would be very reluctant to act upon the distinction which these submissions would require the court to draw. ... The acceptance of such a distinction would place an intolerable burden on the arbitrator and perhaps on the parties an unacceptable prospect of interruption to the arbitral process by application to the Court.”*

## **IMPACT**

In this case the Court was unwilling to interfere with decisions made by the arbitrator during the interlocutory stages of the arbitration.

A Court should allow the arbitrator to control the conduct of the arbitration without being subject to the constant risk of being subject to review.

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