

Reflections

*on the Last Decade of
Activity at the Australian
Centre for International
Commercial Arbitration*



ACICA

Australian Centre for
International Commercial Arbitration

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Foreword

It is with some considerable pride that I write, as President of ACICA, the foreword for this report, reflecting on the last decade of activity at ACICA. The publication of our case statistics has been an important project for ACICA for some years. 2021 marked the 10 year anniversary since significant Australian legislative changes as well as developments at ACICA, making this 10 year reporting period particularly apt. However, there is a delicate balance to strike in publishing statistics. Australia is increasingly well known abroad for the depth and quality of its legal profession. Yet, in the field of international arbitration Australia has suffered from what has been termed the 'tyranny of distance' impacting the extent to which Australian cities are chosen as arbitral seats and in turn the adoption of the ACICA Rules. Consequently, it can be expected that our case statistics may not be as striking, in some respects, as some of our counterparts. In turn this may downplay the importance of the work being carried out by the organisation. Notwithstanding this impediment it is uplifting to see how far we have come. I have been lucky enough to see much of this first hand, having joined the board in 2010 under the Presidency of Professor Doug Jones AO, and the Executive team in 2015 under the Presidency of Alex Baykitch AM.

The results detailed in this report have been achieved through the vision and determination of our past Presidents, the dedication and talent of our long serving Secretary-General, Deborah Tomkinson and the expanding Secretariat, our enthusiastic and experienced Executive team, our Corporate Members, Board and various Committees and the support of the entire extended arbitration community.

As detailed in this report, the Australian arbitration community can feel a strong sense of pride that ACICA has been involved in arbitrations concerning a collective \$24 billion over the last 10 years, covering 100 arbitrations, with over 60 of those in

the last four years, showing the pace of change in recent times. In 39% of cases, at least one party was not based in Australia and in around 11% of cases neither party was based in Australia. Other pleasing statistics include that 54% of ACICA's cases have been resolved within 12 months and in 2021 40% of arbitrator appointments in ACICA cases were to women. Anecdotally, our Board all report a significant increase in the use of ACICA arbitration clauses in contracts reviewed.

As this report shows, ACICA is far more than just its arbitration case load. We have a much-expanded portfolio of important Committees engaged in developing best practice tools and practices, education and outreach. ACICA Committees are made up of pre-eminent arbitrators, members of the judiciary, partners of each of the major law firms, senior in-house counsel and consultants as well as rising stars in the arbitral community. With an Executive team constituted of representatives from around Australia, and our new State Committees we can also be proud to be a truly national organisation. Befitting of the international nature of this field our Executive team and Committees now also include representatives who are domiciled abroad.

I hope that you find this report interesting and useful and that it may give you even greater confidence to promote the increasing use of Australian cities as seats and the ACICA Rules. With our strong legal profession, stable political system, supportive judiciary and track record of upholding the rule of law, excellent infrastructure and up to the minute arbitration rules and modern legislation we have all of the necessary attributes to continue the strides made to date. Recent experiences have lessened the importance of physical proximity and technological advances and new direct flights continue to ameliorate the challenges we have faced.

-Georgia Quick

Introduction to this Report

In 2021, ACICA released its fourth edition of the ACICA Arbitration Rules (**ACICA Rules**), 10 years after significant legislative reforms to arbitration were made in Australia. Around the same time, ACICA commenced a re-invigoration of its engagement with stakeholders to enliven arbitration activity in Australia.

In 2010 and 2011, significant efforts to build support for international arbitration in Australia led to reforms being made to the *International Arbitration Act 1974* (Cth) (**IAA**) and confirmation of ACICA as the default appointing authority under the amended IAA. In a parallel reform process, the Standing Committee of Attorneys-General agreed to implement a Model Commercial Arbitration Bill based on the UNCITRAL Model Law to apply to domestic arbitration in each Australian jurisdiction. With the implementation of the Model Bill in all Australian states and territories, Australia is now *“in the special position among federal states of having the same legislative regime for both domestic and international arbitration based on the UNCITRAL Model Law”*.¹

ACICA released the second edition of its Rules in 2011 and since that time has expanded its operations and activities significantly, including the recent initiation in 2020 of State committees in each of New South Wales, Queensland, South Australia, Victoria, and Western Australia.

It is timely therefore to reflect on the decade between 2011 and 2021, to highlight the achievements that have been accomplished, and developments made, over this period in Australia and by ACICA. In the last decade Australia has

experienced a consolidation and expansion of its status as a modern, progressive arbitral jurisdiction with a large and cohesive arbitration community. At the same time, ACICA's reputation as a widely respected international arbitration institution has strengthened.

This report describes the expansion of ACICA operations through broad-based committee work aimed at achieving a cohesive national voice for arbitration in Australia, promoting the effective use of its state-of-the-art rules and Australian seats as strong neutral options in the Asia Pacific region. It features some of the areas where Australia provides a distinctive offering and, in alignment with that offering, where ACICA presents a unique approach to engagement with practitioners, the judiciary and other users of arbitration.

The report highlights some of the many resources that have been developed to provide guidance and assistance to parties, counsel, and arbitrators, including sample documents, guidelines, and explanatory notes.

The final section of the report canvases statistics for arbitration cases that have been administered by ACICA over the last decade. From this research, trends are identified in: case numbers, key sectors engaging in arbitration with ACICA, ranges of sums in dispute, geography, and arbitrator diversity.

We hope that this report provides readers with an appreciation of all that Australia and ACICA, together with countless supporters and volunteers, have achieved over the last decade.

1 Doug Jones AO, *Arbitration in Australia - Rising to the Challenge*, Clayton Utz lecture 2019.



ACICA's History

ACICA was founded as an independent, not-for-profit organisation in 1985. ACICA was established as Australia's international dispute resolution body, with the original memorandum of association providing for Company member nominations to be made by organisations including the Institute of Arbitrators Australia (now the Resolution Institute), Law Council of Australia, the Australian Bar Association and the Commonwealth Attorney-General's Department.

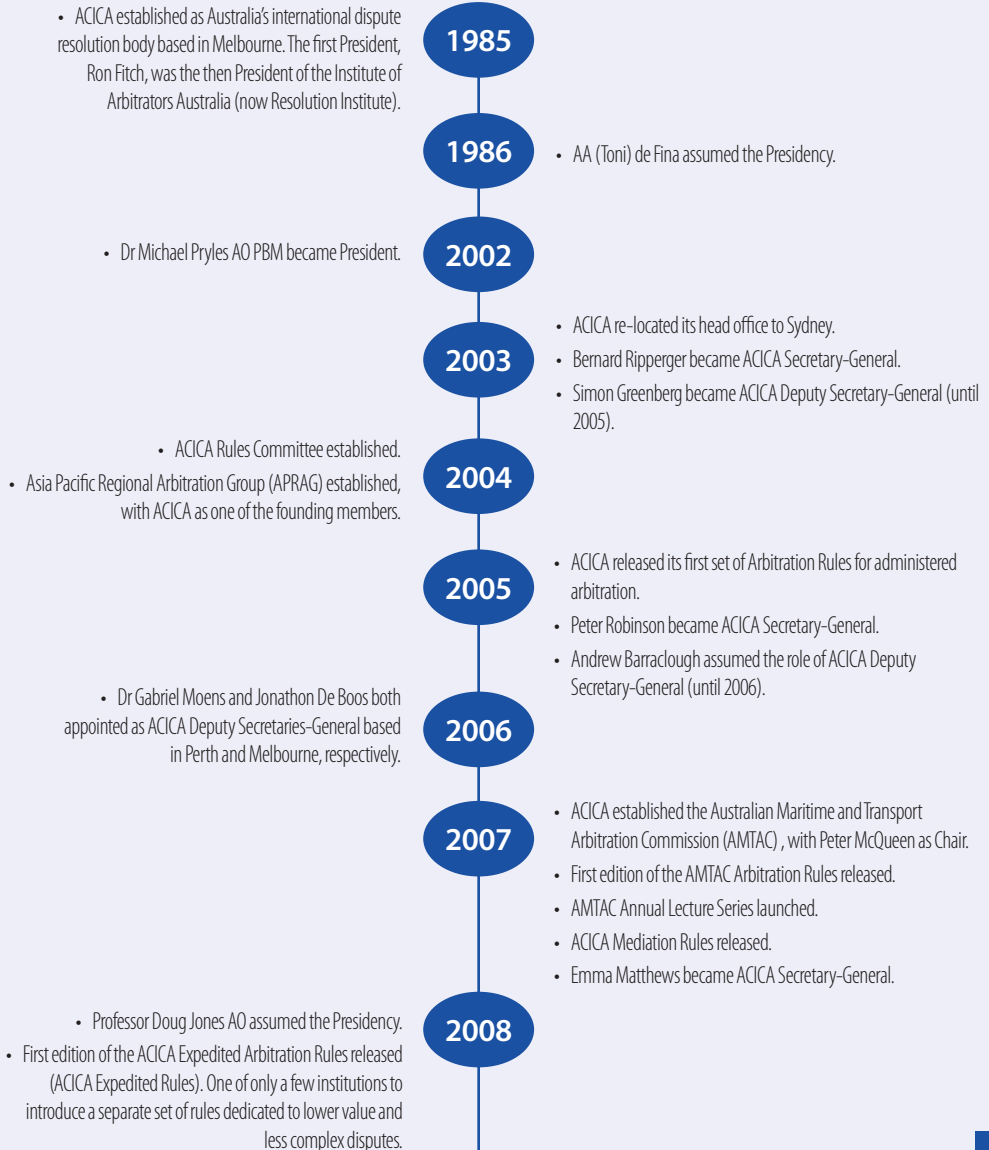
It was recognised that Australia required an institution that was dedicated to the promotion and development of arbitration and mediation in the Asia-Pacific and to advancing Australia's profile as one of the region's premier seats for resolving cross-border disputes. ACICA was founded for

this purpose. The organisation is funded entirely through its own activities including case administration, membership and educational events.

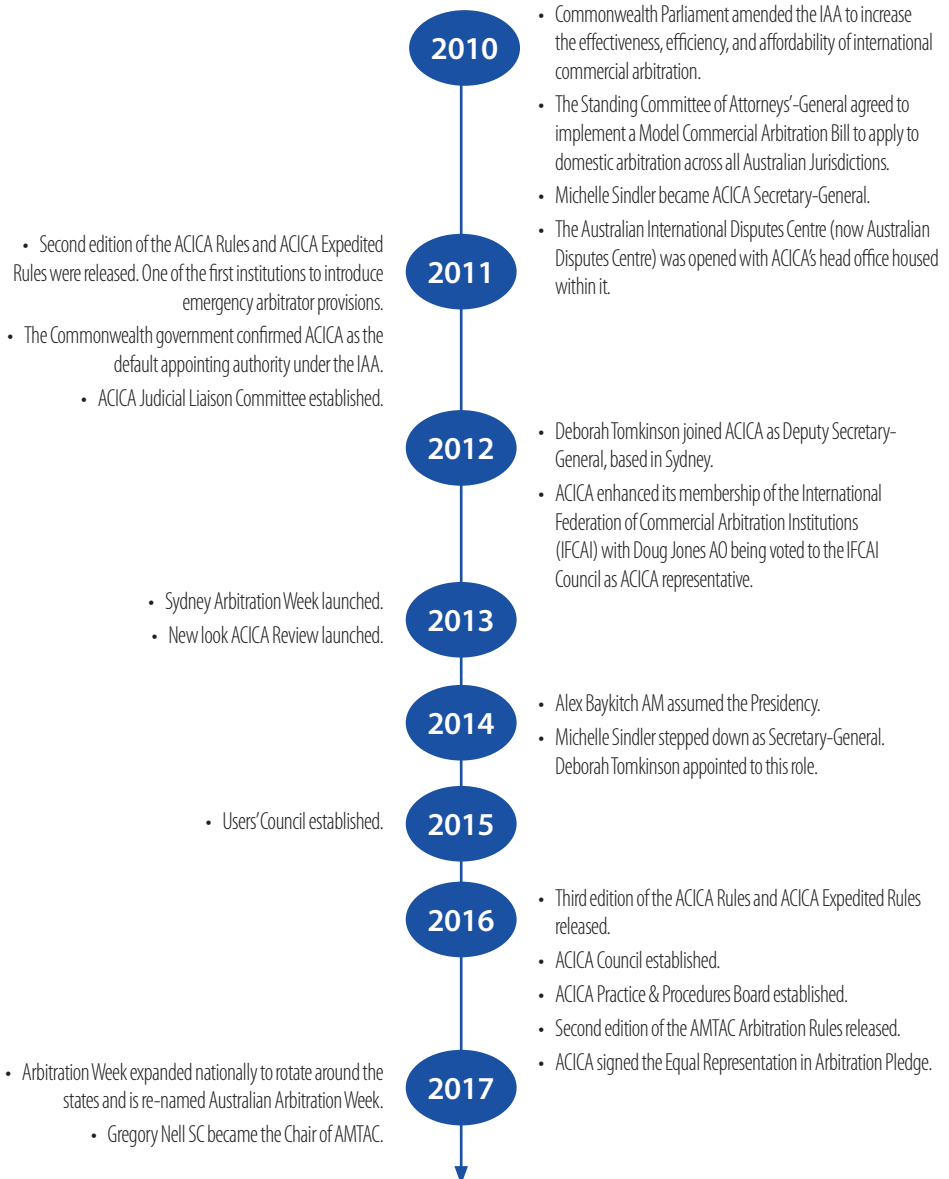
ACICA's profile and standing have been enhanced by a succession of leading arbitration practitioners who have served as President of ACICA. In addition, an active Board and targeted committee structure, consisting of prominent international arbitrators, academics and leading practitioners specialising in international dispute resolution, have seen ACICA achieve much in its nearly 40 years of operation to promote the practice of international arbitration in Australia, and position Australia as an attractive seat for international commercial dispute resolution.

ACICA Timeline

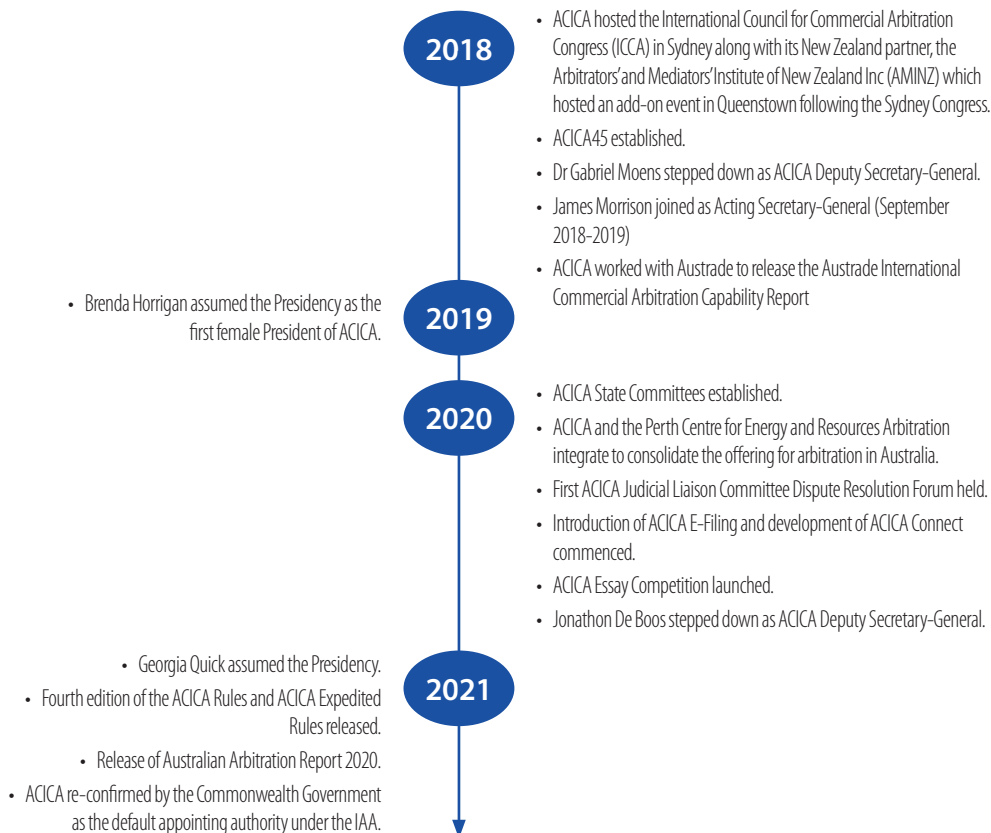
Early Days



The Last Decade

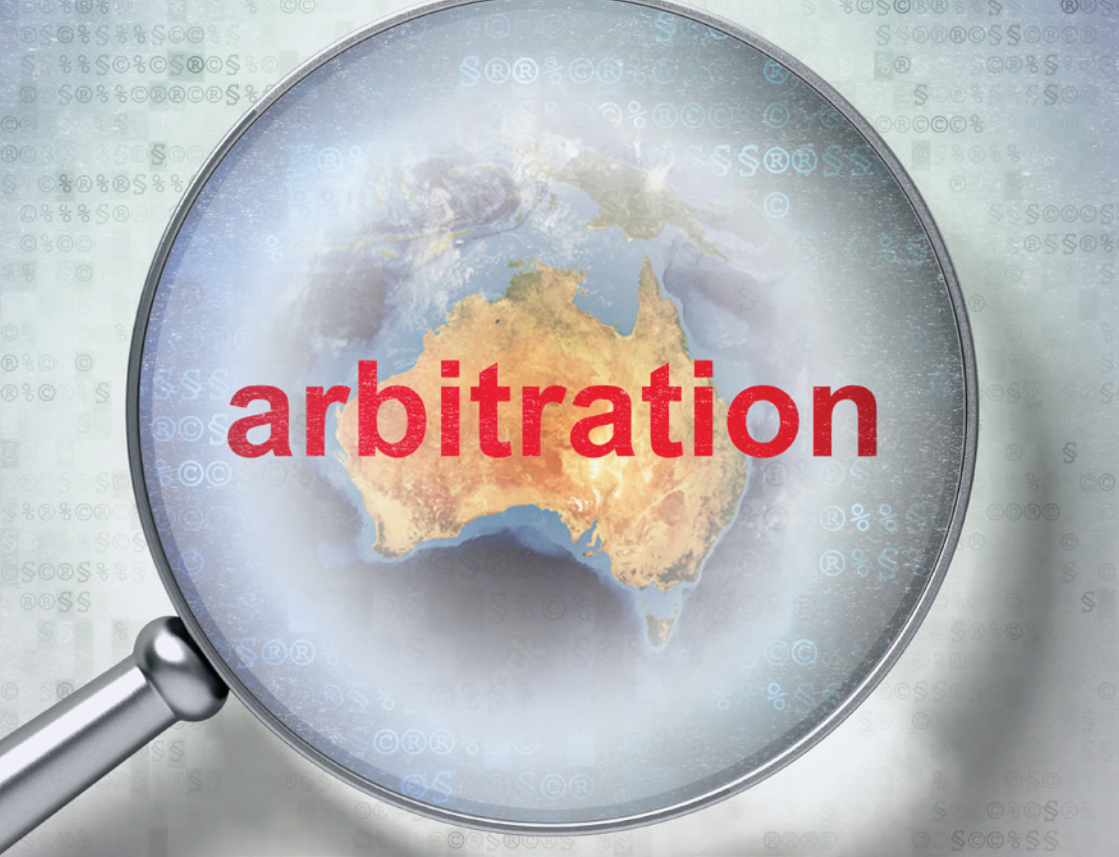


ACICA Timeline



Recent Achievements

-
- A vertical timeline with a blue line and downward-pointing arrow. The year 2022 is marked in a blue oval. Events are listed in bullet points to the left and right of the line.
- 2022**
 - ACICA Executive Committee reaches gender parity, achieves enhanced geographic diversity and includes representatives across many Australian states and territories.
 - ACICA moves to 25 Martin Place, Sydney.
 - ACICA enters into referral relationship with Dexus Place to offer world class hearing venues across Australia with discounted rates available for referrals through ACICA.
 - ACICA Legislative Committee established.
 - ACICA signed the 'Green Pledge', an initiative from the Campaign for Greener Arbitrations.
 - ACICA Diversity Committee established.
 - ACICA is again represented on the IFCAI Council, with Deborah Tomkinson elected to serve a four year term.
 - ACICA is part of the Cross-Institutional Task Force on Gender Diversity in Arbitral Appointments and Proceedings, contributing to the second edition of the ICCA Task Force Report on Gender Diversity released in September 2022.
 - ACICA signed the Equal Representation for Expert Witnesses Pledge.



Australia's Offering as an Arbitral Venue

Australia provides ideal conditions for international arbitration due to its stable and transparent legislative framework, the quality of the legal expertise of Australian practitioners and the leading internationalist approach of the judiciary. Additionally, modern domestic arbitration legislation and supportive courts have reinforced key legislative and procedural changes to ensure a harmonised and refined approach to arbitration, in line with international standards.

Australia is also in a unique position as a seat for arbitrations involving foreign parties. Gifted with abundant natural resources, Australia conducts significant trade with North and Southeast Asian countries (China, Japan, Singapore, Malaysia, India, Indonesia and others), the United States and United Kingdom, and several South American jurisdictions. Additionally, sitting on the edge of the Pacific Islands, Australia has strong relationships with countries new to the New York Convention, including

resource-rich Papua New Guinea, and Fiji, and offers a stable environment for parties based in the region to resolve their disputes.

In 2010, the IAA was amended to give effect to the 2006 UNCITRAL Model Law. These amendments limit the scope of judicial intervention in arbitral proceedings (in line with the New York Convention) and enhance party autonomy. Additionally, the Model Commercial Arbitration Bill was agreed upon by the Standing Committee of Attorneys-General in 2010. It creates a uniform domestic arbitration law in Australia. All States and Territories have enacted the bill into legislation offering a uniform framework for domestic arbitration in Australia.

Courts have been increasingly supportive of arbitration in Australia by upholding the finality of international arbitral awards. Several key decisions² in the last 10 years have demonstrated the Australian court's commitment to support the arbitral process, without excessive intervention. The extensive case law developed in the last decade also offers a level of predictability and certainty as to how applications to Australian courts will be handled and decided.

Further, the Federal Court of Australia now has a specialised international arbitration list comprised of three judges and, in December 2021, it issued a national [Commercial Arbitration Practice Note \(CA-1\)](#). The Practice Note outlines arrangements for the management of applications in the Court that concern international and domestic arbitration.

Finally, Australia benefits from the high standard of legal expertise available throughout the country. Australian legal practitioners are independent and highly trained, recognised across the globe for the excellence of their legal skills and with a reputation for fair and ethical practice. Australian law firms and members of the Australian Bar have developed considerable expertise in international arbitration practice and advocacy as well as specialist subject matter expertise in many of the industries that commonly utilise arbitration as their dispute resolution mechanism of choice (such as construction, infrastructure, energy, resources, maritime and transport). This contributes to creating a vibrant arbitration community composed of internationally recognized arbitrators, lawyers, experts and practitioners.

2 E.g. *Hui v Esposito Holdings Pty Ltd* (2017) 345 ALR 287; *TCL Air Conditioner (Zhongshan) Co Ltd v Judges of the Federal Court of Australia* (2013) 251 CLR 533; *Traxys Europe SA v Balaji Coke Industry Pvt Ltd (No 2)* (2012) 201 FCR 535; *Uganda Telecom Limited v Hi-Tech Telecom Pty Ltd* [2011] FCA 131

Achieving ACICA's purpose

Leadership & Organisational Structure

ACICA's Board is comprised of some of Australia's leading international arbitration practitioners. The current ACICA Executive team consists of the President, three Vice Presidents, Treasurer and five Executive Directors (pictured opposite). In 2022 for the first time, the ACICA Executive reached gender parity and includes representatives from the Australian Capital Territory, New South Wales, Queensland, Victoria, and Western Australia.

The Secretariat is headed by the Secretary-General, Deborah Tomkinson, who has held this position for almost 10 years – providing stability, dedication, experience and energy to the organisation. The ACICA Secretariat also includes Counsel and Associates as well as a successful internship programme involving domestic and international interns.

In addition to the Board, Executive team and Secretariat, ACICA is assisted in its work by various committees through which the institution actively engages with stakeholders and the arbitration community. Engagement with the community through active committee work has seen extraordinary growth over the last 10 years.

Current committees include:

- **ACICA Rules Committee:** established in 2004, this committee is tasked with the review of, and provision of proposed updates to, the ACICA Rules and ACICA Expedited Rules on a regular basis with the objective of ensuring that

the ACICA Rules reflect developments in international best practice. It consists of practitioners from around Australia and the region. The most recent version of the Rules was proposed by the Committee following a broad consultation period, and came into force in 2021.

- **Australian Maritime and Transport Arbitration Commission (AMTAC):** established in 2007, AMTAC is a special purpose commission that works closely with industry to promote an understanding of, and to provide services for, maritime and transport dispute resolution in Australia and the Asia Pacific region. AMTAC is led by its own Executive team, and offers panel membership for senior practitioners and arbitrators with experience in international arbitration in the maritime or transport fields. AMTAC provides a customised set of [Arbitration Rules](#) and a Rocket Docket for use in maritime and transport arbitration.
- **ACICA Judicial Liaison Committee:** established in 2011, this committee undertakes valuable liaison work between the courts and ACICA and is a vehicle for the exchange of information on the conduct of arbitration in Australia. The Committee consists of judicial officers from all courts in Australia as well as representatives from ACICA and an independent member. It is a unique feature of the Australian arbitration environment. This Committee was instrumental in organising the first ACICA Judicial Liaison Committee Dispute Resolution Forum at the end of 2020.



ACICA Executive Team 2022

1. President: Georgia Quick, Sydney
2. Vice President: Judith Levine, Sydney
3. Vice President: Gitanjali Bajaj, Sydney
4. Vice President: Jonathon Redwood SC, Sydney
5. Treasurer: Martin Cairns, Sydney
6. Executive Director: Brenda Horrigan, Singapore
7. Executive Director: Ian Govey AM, Canberra
8. Executive Director: Joshua Paffey, Brisbane
9. Executive Director: Nick Longley, Melbourne
10. Executive Director: Elizabeth Macknay, Perth
11. Secretary-General: Deborah Tomkinson, Sydney

- **ACICA Statutory Arbitrator Appointment Committee:** established in 2011, this committee is made up of the ACICA President, ACICA Secretary-General (ex officio) up to six members of the ACICA Board, and an independent member. The Statutory Appointment Committee operates under terms of reference set out in the [ACICA Statutory Appointment of Arbitrator Rules](#) to nominate an arbitrator or arbitrators in individual cases for consideration and approval by the ACICA Executive when ACICA is called upon to appoint in its role as the default appointing authority under the IAA.
- **ACICA Statutory Appointment Advisory Board:** established in 2011, this Board is made up of independent

nominees, from time to time, of the Federal Attorney-General, the Chief Justice of Australia, the Chief Justice of the Federal Court, the President of the Australian Bar Association, the President of the Law Council of Australia, the Resolution Institute, the Chartered Institute of Arbitrators Australia Branch and a number of industry bodies (namely the Australian Industry Group, the Minerals Council of Australia and the Australian Maritime and Transport Arbitration Commission). The Board is consulted by the Statutory Arbitrator Appointment Committee on potential arbitrator nominees for appointment under the [ACICA Statutory Appointment of Arbitrator Rules](#).

- **ACICA Users' Council:** established in 2015 to provide an opportunity for the exchange of views and expertise in relation to developments of interest in the region amongst users of the ACICA Rules and international arbitration more broadly. The Committee consists of leading in-house practitioners and service providers from Australia and around the world.
- **ACICA Council:** established in 2016, the ACICA Council is comprised of leading international commercial arbitration practitioners from Australia and around the world. The Council acts in a general advisory capacity with regard to ACICA initiatives and assists in accordance with the [Protocol for decisions on applications for consolidation and joinder and challenges to arbitrators under the ACICA Rules 2021](#), with recommendations to the ACICA Executive on such determinations under the ACICA Rules and ACICA Expedited Rules.
- **ACICA Practice & Procedures Board:** established in 2016 to assist with ACICA initiatives aimed at providing thought leadership and guidance on best practice standards to parties involved in arbitration in Australia and the region. The Practice & Procedures Board consists of representatives from around Australia and the Asia-Pacific who are experienced international arbitration practitioners. This Committee is the key driver behind the [Practice & Procedures toolkit](#), a collection of guidance notes and sample material found on the ACICA website.
- **ACICA45:** is a group established in 2018 to encourage engagement with, and educate, young and emerging practitioners in international arbitration. With a Steering Committee comprising lawyers from around Australia and overseas, ACICA45 is rapidly growing in Australia and beyond.
- **ACICA State Committees:** established in 2020, the State Committees in Western Australia, Victoria, South Australia, Queensland and New South Wales assist ACICA in the carrying out of its objectives and foster greater cooperation and engagement across all jurisdictions in Australia. The State Committees may also act in a general advisory capacity in relation to ACICA initiatives and Rules development. Committees are headed by a Patron and a Chair and made up of experienced practitioners. The establishment of a committee in the Australian Capital Territory is underway.
- **ACICA Legislative Committee:** established in 2022, this committee is a key part of ACICA's engagement with the Australian Government regarding the legislative framework for arbitration in Australia. Its objective is to provide timely and balanced recommendations for legislative reform to the Commonwealth Attorney-General's Department, having regard to international best practice and regional legislative developments. The Committee also monitors and considers the potential implication of cases before the Australian courts that may impact Australia's arbitration regime.
- **ACICA Diversity Committee:** established in 2022, the Diversity Committee aims to assist ACICA ensure that it achieves its objectives as an inclusive, equitable, culturally competent, and supportive arbitration institution.

ACICA Services

To deliver on ACICA's objective of promoting and facilitating the efficient resolution of commercial disputes, ACICA provides the following services:

- **Acting as an impartial appointing and administering body** for all forms of alternative dispute resolution (ADR), under its own sets of Rules as well as ad hoc processes, including under the UNCITRAL Arbitration Rules.
- **Maintaining panels of international arbitrators and mediators** which may be used as a resource for party appointments. ACICA does not operate a closed panel listing. Parties may nominate arbitrators and mediators from on and off the relevant panels in ACICA cases. Equally, ACICA will appoint off panel if the circumstances of a particular case require it.
- **Providing rules and model clauses** to facilitate best practice in the conduct of arbitration and mediation.
- **Assisting parties in arranging facilities** to manage their ADR processes, including room hire, transcription and translation services.
- **Acting as deposit-holder** for tribunal and mediator fees in ADR processes, including cases being administered under other institutional rules, or being conducted ad hoc.

- **Providing an electronic return address for subpoenas** issued in aid of arbitrations, whether administered by ACICA or otherwise.
- **Hosting seminars, conferences and training** to provide thought leadership in international arbitration and mediation.
- **Maintaining a Tribunal Secretary Panel** as a resource for tribunals and parties undertaking arbitration in Australia and the region, and providing training for tribunal secretaries.

ACICA is also the sole default appointing authority competent to perform the arbitrator appointment functions under the IAA.

ACICA assists at all stages of arbitral proceedings, from when a party files a Notice of Arbitration under ACICA Rules or requests ACICA to administer an arbitration, during the Arbitral Tribunal appointment process, and through to final award. ACICA provides financial and time management assistance throughout. ACICA has developed a document outlining the [Value of ACICA Input on the Lifecycle of an Arbitration](#) which summarises the advantages of institutional involvement in arbitration with particular reference to ACICA's administrative role under its Rules.

ACICA Membership

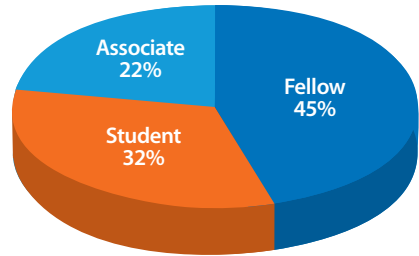
Individual Membership

ACICA offers various levels of individual subscriber membership:

- **Fellow member:** constituting the ACICA Panel of Arbitrators who comply with the [ACICA Fellowship criteria](#).
- **AMTAC Panel member:** constituting the AMTAC Panel of Arbitrators, all AMTAC Panelists must also comply with the criteria for ACICA Fellowship and are listed on the ACICA Panel of Arbitrators.
- **Mediator Panel member:** constituting the ACICA Panel of Mediators who comply with the [ACICA Mediator Panel criteria](#).
- **Associate member:** for those interested in international arbitration who may not yet comply with the Fellow membership criteria.
- **Student member:** full time students interested in international arbitration (complimentary membership).

All applications for individual membership may be made online through the [ACICA website](#).

MEMBERSHIP

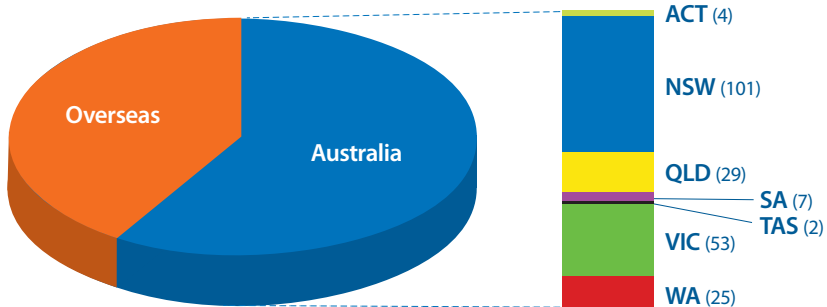


ACICA celebrates a diverse membership made up of 375 student, associate, and fellow members.³

Fellows are the largest portion of ACICA's membership with 170 Fellows constituting 45% of ACICA's membership. Students, who enjoy complimentary membership, account for 32% of ACICA's membership with Associates comprising 22% of ACICA's membership base.

ACICA has a large overseas following with 41% of its members located outside of Australia. Many of ACICA's overseas members reside in India, Singapore, the United Kingdom and the United States. As for members residing in Australia,

ACICA MEMBERS – OVERSEAS AND AUSTRALIA



³ As at October 2022.

the majority are based in New South Wales, with the next highest percentages of members then based in Victoria, Queensland, and Western Australia.

Of ACICA's Fellow members, who constitute ACICA's Panel of Arbitrators, there is again a high percentage (35%) of Fellows based overseas. The trend in domestic Fellow member numbers generally follows that of the overall membership, with the highest percentage of Fellows being from New South Wales, followed by strong member numbers in Victoria, Western Australia, and Queensland.

Corporate Membership

ACICA offers two levels of corporate membership: Corporate membership and Ordinary membership.

ACICA currently has 14 Corporate members and three Ordinary members comprising leading law firms, bar associations and specialist accounting firms with arbitration and ADR specialisations. Many of ACICA's Corporate and Ordinary members are part of global firms or networks which assists with ACICA's outreach beyond Australia.

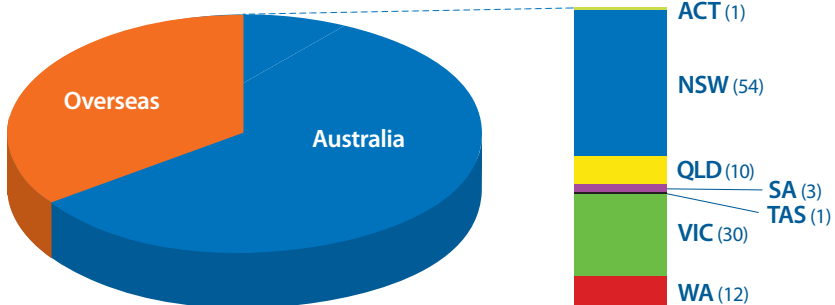
Expressions of interest in either of these membership offerings may be directed to the [Secretariat](#).

ACICA45 Membership

ACICA45 was established in 2018 with the aim of responding to the needs of young and emerging practitioners keen to be involved in the arbitration community and learn more about arbitration. ACICA45 organises activities and events around Australia to encourage participation in arbitration and provide educational opportunities for emerging practitioners interested in arbitration. ACICA45 is led by a steering committee comprised of representatives based around Australia and internationally and works closely with other young member groups of international and regional arbitral institutions and professional bodies.

ACICA encourages young and emerging practitioners from around the world to join the ACICA45 mailing list through [the ACICA website](#).

ACICA FELLOWS – OVERSEAS AND AUSTRALIA



ACICA Intern Programme

ACICA runs a voluntary internship programme (in-person in Sydney and online subject to the organisation's requirements), accepting a limited number of both Australian and international applicants who are currently studying law or are recent law graduates and have an active interest in arbitration and ADR.

The programme dates and application deadlines may be found on the [ACICA website](#).

The ACICA Review

The ACICA Review is a bi-annual publication aimed at providing arbitration news and updates to ACICA members. Since its launch in December 2013, ACICA has published 19 editions of the ACICA Review. The original editorial board consisted of Dr Gabriel Moens as Editor In Chief, Professor Philip Evans, Professor Doug Jones AO, Peter Megens and Deborah Tomkinson. In 2017, Erika Williams and Erin Eckhoff joined the Editorial Board, with Doug Jones AO stepping down. Dr Gabriel Moens retired from the Editorial Board in 2018. In March 2020, Erika Williams was appointed General Editor and was joined by Julian Sher, Meghan Keary, Guillermo Garcia-Perrote and Gianluca Rossi on the Editorial Board. In 2022, Dr Benjamin Hayward took the reigns as General Editor; Cara North and Stewart McWilliam joined the Editorial Board, upon the retirement of Erika Williams and Guillermo Garcia-Perrote.

All editions of the ACICA Review are available on the [ACICA website](#).

ICCA2018 Sydney

In 2018, ACICA hosted the [ICCA Congress in Sydney](#) which focused on the theme of "Evolution and Adaptation: The Future of International Arbitration". A follow on event was held in Queenstown hosted by AMINZ.

The ICCA Congress is a biennial event held around the world for the presentation and discussion of papers on different aspects of international dispute resolution, and is widely considered the premier international arbitration conference in the year in which it is held.

Hosting the ICCA Congress in Australia brought delegates from all over the world to Sydney, showcasing the benefits and opportunities for international arbitration in the region, the expertise of Australian practitioners and Australia as a neutral venue for international arbitration.

The Australian Arbitration Report 2020

In 2021, ACICA published the [Australian Arbitration Report 2020](#), with the support of FTI Consulting, the WA Arbitration Initiative, Francis Burt Chambers and the Australian Bar Association. The Report represents the first empirical evaluation of arbitration across Australia and uncovered some key insights including:

- There is a high volume of arbitration (more than 200 cases over three years) with an Australian connection. The total reported amount in dispute is over \$35 billion.

- Arbitration is used frequently in construction and engineering disputes and oil and gas disputes, with over 50% of all reported cases relating to those industries.
- The inherent advantages of arbitration – confidentiality and international enforceability – are key factors encouraging its use.
- Parties involved in arbitration embraced the use of technology to facilitate remote hearings even before the impact of COVID-19, highlighting the robustness and flexibility of the arbitration process in the face of adverse circumstances.
- The Australian arbitration industry is maturing, and the Report highlights the appetite of Australian practitioners and users to embrace modern international best practice in process and case management. Most Australian participants have been satisfied with their experience with the arbitration process.
- The Australian arbitration industry has a way to go with respect to gender equality.

The Report confirmed the depth of arbitration experience in Australia and provides a positive outlook for the future use of arbitration in Australia.

ACICA Arbitration Rules 2021

The [2021 edition of the ACICA Rules](#), came into effect on 1 April 2021. The ACICA Rules 2021 reflect developments in international best practice and build on ACICA's established practice of providing an effective, efficient and fair arbitral process.

Amendments include:

- improved online practices (developed during COVID-19) in relation to virtual hearings, paperless filing and electronic execution;
- expanded scope for consolidation and multi-contract arbitrations, including the addition of the ability to commence one arbitration in respect of disputes under multiple contracts and the ability to consolidate arbitrations when the parties to the arbitrations are not the same (subject to satisfaction of certain criteria);
- effective case management through:
 - › increased institutional supervision of tribunal appointments;
 - › a requirement that tribunals raise with parties the possibility of early resolution through other alternative dispute resolution methods such as mediation;
 - › a time frame for the rendering of an arbitral award (which may be extended as reasonably required)
- a requirement that third party funding arrangements are disclosed;
- enhanced oversight of costs to assist with appropriate management of time and cost; and
- the introduction of an early dismissal procedure expressly recognising a tribunal's power to make an award granting early dismissal or termination of any claim, defence or counterclaim.

ACICA has set out an explanation of the key amendments in an [explanatory note](#) which is available on the ACICA website. The new edition of the ACICA Rules aims to further enhance the arbitration experience for all users.



ACICA Resources

Practice & Procedures toolkit

Unique to the organisation is the [ACICA Practice & Procedures toolkit](#), a publicly available set of resources developed by ACICA, with the assistance of its [Practice & Procedures Board](#) and others, to assist parties conducting arbitration regardless of location. The Practice & Procedures toolkit includes, amongst other items:

- model clauses;
- sample submission agreements;
- sample Notices of Arbitration and Answers to Notice of Arbitration;

- Guideline on the Use of Tribunal Secretaries;
- Guidance Note for Online Arbitration;
- Guidance Note on the Appointment of Arbitrators;
- Checklist for Preliminary Meetings and Procedural Orders;
- Explanatory Note: Memorials or Pleadings;
- Explanatory Note: Litigation and Arbitration – A Step by Step Comparison.

The Practice & Procedures Board helps ACICA realise its goal of helping parties better understand how and when to use arbitration.

Tribunal Secretaries

ACICA operates a [Tribunal Secretary Panel](#) as a resource for parties and tribunals. The Tribunal Secretary Panel recognises the widespread use of tribunal secretaries and the useful role that tribunal secretaries can play in ensuring the efficacy of arbitral proceedings.

ACICA also conducts training for tribunal secretaries through its Tribunal Secretary Courses. This provides valuable practical education for young practitioners interested in tribunal secretary work and potentially transitioning to accepting arbitrator appointments.

ACICA Webinars

ACICA and ACICA45 run webinars each year on topics of interest and developing practice. In 2021 alone, ACICA and ACICA45 ran more than 10 webinars on various topics. Select ACICA and ACICA45 webinars are available to view on the [ACICA website](#).

ACICA South Pacific Series

ACICA is currently running, in conjunction with Hemmant's List (Brisbane) a five-part series focused on conducting arbitration in the Pacific. The programme features leading arbitration practitioners from across the South Pacific to provide capacity building for practitioners of all levels and interests in the region. The first event was held on 4 August 2022, with the second to be held during Australian Arbitration Week 2022. ACICA will be developing a set of resources arising from this series, to be available on its website.

Quick links to external resources

The ACICA website also contains quick links to useful external resources including:

- Australian arbitration legislation.
- International Bar Association Guidelines.
- Chartered Institute of Arbitrators Guidelines.
- UNCITRAL Notes and Guides.
- ICCA Guides.

ACICA's New Office and Signing the Green Pledge

In April 2022, ACICA moved to 25 Martin Place, the iconic Harry Seidler building in the heart of Sydney. ACICA has also signed the Green Pledge, committing to recognise, institute and encourage sustainable practices in arbitration. The new office is managed by Dexus and maintains a 5.5 star Nabers electricity rating. ACICA's office is powered by a carbon-neutral energy provider and the workplace is designed with significant natural light to minimise electricity usage.

ACICA recognises that sustainability practices should not just affect the immediate workplace but should also guide the industry toward sustainability:

- ACICA's 2021 Rules expressly provide for virtual hearings, paperless filing, transmittal of awards by electronic means, and the use of electronic signatures on awards.
- ACICA's Practice & Procedures toolkit contains guidance for the conduct of online hearings.

- ACICA has transitioned to operate almost entirely online, with case files maintained and secured digitally.
- ACICA aims to provide thought leadership through educational events with topics relevant to renewables and the energy transition, climate change, and the future.
- ACICA conducts its board and committee meetings online to eliminate the requirement for members to travel for meetings.
- ACICA limits the printing of documents within the Secretariat. When printing is necessary, ACICA uses 100% recycled paper.

World Class Venues for Arbitration

In 2022, ACICA formalised a referral relationship with Dexus Place to assist parties looking for high-quality, full-service facilities for their arbitration hearings and mediations. Dexus Place offers convenient premier locations in Brisbane, Melbourne, Perth, and Sydney and will offer discounted rates to parties referred through ACICA.

The ACICA Rules provide parties with the freedom to choose the applicable seat of the arbitration which may be within Australia or outside. Parties may choose to hold arbitration conferences and hearings at the seat or at other locations. To support the promotion and facilitation of hearings in Australia, ACICA has developed this referral relationship with Dexus Place.

Dexus Place provides purpose-built meeting and hearing rooms of varying sizes through its network of venues across

major CBD locations. Dexus Place offers an individualised concierge service, a seasonal catering menu for in-person hearings, and premium video conferencing technology to facilitate seamless online/hybrid hearings.

All bookings made through the referral arrangement will be provided a discounted price structure which is offered at varying levels, with ACICA members and users able to access the greatest rate reduction.

Australian Arbitration Week and the International Arbitration Conference

Australian Arbitration Week (**AAW**) was launched in 2013 in Sydney (as Sydney Arbitration Week) and has developed to now rotate around the major cities of Sydney, Melbourne, Perth and Brisbane each year. In 2022, AAW is being held in Melbourne from 7 to 11 November 2022.

Australian Arbitration Week has been growing steadily every year since it commenced with new events and participating organisations being added to the programme. The lead event for the week is the ACICA/CI Arb Australia International Arbitration Conference which brings together eminent speakers from around the world to discuss current and evolving topics of interest in international arbitration. In 2021, ACICA and CI Arb Australia introduced a 'Next Generation' panel to the conference programme to showcase new ideas from, and the talent of, the next generation of arbitration thought leaders.

In 2022, the AAW calendar of events contains more than 25 additional events to be held over the remainder of the week.

Casework

Over the last 10 years, ACICA has administered a wide range of cases. The statistics compiled show trends in the number of these cases, the industries they arise from, as well as the nationality of the parties and the profiles of the arbitrators.

Case referrals

More than 100 cases have been submitted to ACICA over the last decade with a cumulative value of almost \$24 billion. Casework has increased steadily with around 60 cases having been referred in the last four years. These cases have predominantly been administered under the ACICA Rules but also include a small number of cases administered under the UNCITRAL Rules and applications for Arbitral Tribunal appointments. ACICA has also separately received a small number of submissions to administer mediations under the ACICA Mediation Rules 2007.

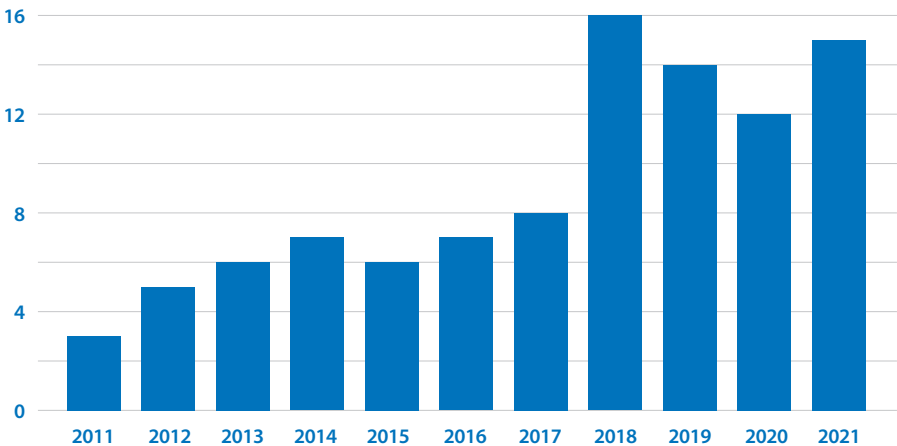
Since the 2021 ACICA Rules came into effect on 1 April 2021, ACICA has received 21 referrals to arbitration, with all but one case being administered under the new edition of the Rules. The total amount in dispute across these 21 cases is just over \$911 million.

Relief Sought

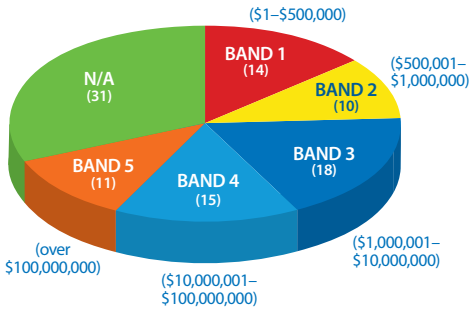
While the case numbers are modest compared to some other well-known arbitral institutions, the amount in dispute in cases brought to ACICA is regularly very high. This section outlines information about the relief sought in arbitrations where quantified. ACICA notes that claims can be amended, and those amendments may not necessarily be captured in this data.

ACICA has administered cases totalling almost \$24 billion in the last 10 years. In around 10% of ACICA administered cases

NUMBER OF CASE REFERRALS PER YEAR



SUMS IN DISPUTE PER CASE



the monetary relief sought exceeded \$100 million. Some 15% of disputes involved sums between \$10 million and \$100 million, and approximately 20% involved sums between \$1 million and \$10 million. In just over 30% of ACICA administered cases, claims were either unquantified or the relief sought was non-monetary. Where declaratory relief was sought, this has been noted as unquantified in the chart above.

Of the \$24 billion claimed in ACICA administered cases, energy and resources disputes accounted for \$18.8 billion with construction and infrastructure disputes following at almost \$4 billion.

Industry Sectors

When compiling case data ACICA undertakes to record the most appropriate industry classification for a case, even where there are multiple sectors that may be involved. For the purposes of this report, cases are categorised by the sector that is most representative of the case.

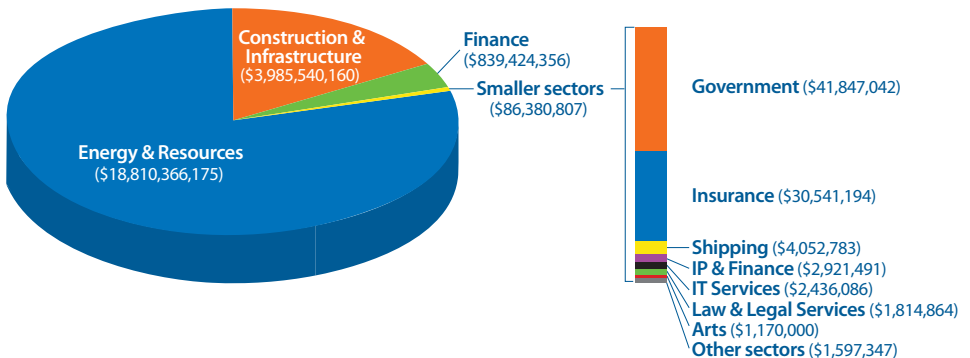
The industries that dominate ACICA cases are energy and resources, construction and infrastructure and maritime. Together these industries make up around 69% of all ACICA administered cases.

Construction and infrastructure accounted for 43% of all cases administered by ACICA, with energy and resources disputes and maritime disputes in second place, both at around 13%. Other sectors represent significantly lower percentages of the ACICA caseload and cover a broad range of industries including legal services, health and wellness, share sales, IT services, and arts.

Rules

The first edition of the ACICA Rules came into force on 1 August 2005, with the ACICA Expedited Rules first being

SUMS IN DISPUTE PER SECTOR



introduced in 2008. These were followed by the introduction in August 2011 of the 2011 ACICA Rules, which incorporated Emergency Arbitrator provisions and the second edition of the ACICA Expedited Rules. The 2016 ACICA Rules followed on 1 January 2016, and most recently the 2021 ACICA Rules came into effect on 1 April 2021. ACICA also administers cases under the UNCITRAL Rules.

Given the increase in the number of arbitrations over the years, it is not surprising that the majority of disputes submitted to ACICA to date were referred to arbitration under the 2016 ACICA Rules (54%). Around 22% of disputes were administered under the 2011 ACICA Rules. 5% of cases were submitted under the UNCITRAL Rules.

Seat

Parties to ACICA administered cases for the most part chose Australian capital cities for their seats. Sydney was the most popular seat, with 42% of cases seated there. Melbourne followed with 20% of administered cases seated in the Victorian capital. Adelaide was the seat for 17% of cases, although this number was impacted by a group of related cases. Perth followed

with 10% of cases and Brisbane with 7%. A small number of arbitrations administered under the ACICA Rules (2%) were seated in Papua New Guinea.

Parties

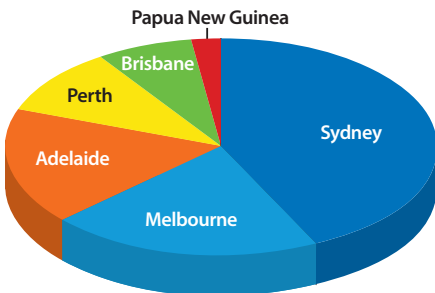
The majority of parties to ACICA administered arbitrations are Australian. However, it is common practice for foreign entities involved in major projects in Australia to register a local entity or subsidiary vehicle for contracting purposes. Whether that has occurred in a particular matter is not necessarily information made available to ACICA. As such, for the purposes of this report, corporate nationality is drawn solely from the relevant claimant and respondent parties.

With that caveat, 39% of ACICA cases had at least one party who was not based in Australia and in around 11% of cases neither party was based in Australia.

After Australia, the most represented nationalities for claimant parties are American and Singaporean, each at 4%. ACICA's cases also involved claimant parties from Germany, Switzerland, Fiji, Hong Kong, Italy, Philippines, Spain, Malaysia, British Virgin Islands, Papua New Guinea and Cyprus.

Singaporean parties were again the highest represented amongst respondent parties at 4% followed closely by Papua New Guinean parties at 3%. The balance of respondent party nationalities includes parties from Korea, Indonesia, the United States of America, the United Kingdom, Germany, New Zealand, China, Greece, Fiji, Malaysia and India.

SEAT FOR EACH CASE



Arbitrator appointments

The ACICA Rules provide freedom to the parties to agree to the number of arbitrators. If agreement is not reached within a set time frame, a determination will be made by ACICA.

The vast majority of cases administered by ACICA were submitted to sole arbitrators for determination (83%). 14% of cases were referred to three-member tribunals. There were a small number of cases (2%) that settled before the number of arbitrators was determined.

In most cases (51%) the appointment of the tribunal was done by the parties, with ACICA appointing an arbitrator in 30% of cases. In the remaining cases, the matter either settled before a tribunal was appointed or the tribunal had not been appointed at the time of publication of this report.

ACICA signed the Equal Representation in Arbitration Pledge in 2016 and has taken active steps to consider and appoint diverse candidates to tribunals as often as possible. When making an appointment, ACICA will take a holistic approach by considering the various unique factors of the case, including the amount in dispute, the jurisdiction of the parties, complexity, expertise and any required or specified qualifications. ACICA draws from its publicly available panel of arbitrators (ACICA Fellows) as a resource for appointments made by the institution, but is not limited by it. The Secretariat's practice is to try to achieve parity in male and female candidates put to the Executive for consideration, where possible (subject to expertise, geographic and fee-related restrictions). ACICA also seeks to increase

diversity in appointments in relation to legal, cultural and geographic background. This remains strongly influenced by the parties and their counsel, but is an area that ACICA is dedicated to improving. For example, ACICA is developing capacity building in the region to assist local practitioners with building their international arbitration skills, visibility and confidence. It is hoped that this will ultimately lead to increased diversity in appointments.

Lack of diversity, however, continues to be an issue in party-nominations. To address this, ACICA continues to encourage more women to become Fellows of ACICA in order to raise their profile and party awareness of the broader range of candidates available for appointments. For example, on International Women's Day this year, ACICA emailed its Fellow members encouraging them to reach out to accomplished female arbitration practitioners who were not yet Fellows of ACICA to suggest those women apply for Fellow Membership. ACICA is looking to expand this initiative to focus on diversifying the panel in terms of geographical, legal and cultural backgrounds as well.

In 2022, ACICA released a [Guidance Note on the Appointment of Arbitrators](#) that encourages parties to consider diversity and issues of equal representation, such as gender, age, geography, culture, ethnicity and professional background of the arbitrator.

Over the course of the last decade, 86% of total appointments in cases administered by ACICA were male arbitrators and less than 14% of appointments were female arbitrators. The steps being taken by ACICA

to drive the diversity of its appointments clearly have had an impact given that 23% of ACICA appointed arbitrators over that time were female as compared to 9% of party appointed arbitrators.

Significant improvements have been made in the last few years with female appointments in ACICA cases at 27% in 2019, 38% in 2020 and 40% in 2021.

In terms of geographic diversity, of the arbitrators where their nationality is known, around 9% of appointments were overseas arbitrators, from London, Singapore and Hong Kong. Of the Australian based arbitrators, almost 60% of those arbitrators were from New South Wales, followed by 25% from Victoria and around 8% from each of Queensland and Western Australia.

Consolidation and Joinder

Consolidation and joinder provisions were first introduced in the 2016 ACICA Rules. The 2016 ACICA Rules provided that, upon the request of a party, ACICA could consolidate two or more arbitrations into a single arbitration in three circumstances:

1. with the agreement of the parties;
2. if all the claims were under the same arbitration agreement; or
3. if the claims were under more than one arbitration agreement, **and the arbitrations were between the same parties**, and a common question of law or fact arises in both or all of the arbitrations, the rights to relief claimed are in respect of, or arise out of, the same transaction or series of transactions, and ACICA finds the arbitration agreements to be compatible.

In determining consolidation and joinder applications, ACICA refers to the [Protocol for decisions on applications for consolidation and joinder and challenges to arbitrators under the ACICA Rules](#) (either the 2016 or 2021 version depending on the applicable Rules) (**Protocol**). Under the Protocol, applications are referred to the ACICA Council to be determined. The ACICA Council must make a recommendation to ACICA within 20 days of the members of Council receiving the application. The ACICA Executive then has final decision-making power in relation to such applications.

ACICA has dealt with 10 applications for consolidation under the 2016 ACICA Rules. The consolidation applications in relation to all but two cases were successful. In terms of the two cases that were not consolidated, the same arbitrator was appointed, and the matters run concurrently. This demonstrates how the parties can agree to adopt efficient procedures where the ACICA Rules do not allow for consolidation due to, for example, a difference in the parties to the contracts.

The consolidation provision was updated under the 2021 ACICA Rules to remove the requirement that the arbitrations were between the same parties (text in bold, previous column). This amendment was adopted to allow the consolidation of arbitrations where there are multiple contracts / arbitration agreements with different parties but which meet the remaining criteria of common questions of law, rights to relief or same transactions and where ACICA finds the arbitration agreements to be compatible. This scenario is relatively common in several commercial sectors in which ACICA is active, such as

construction and mergers and acquisitions. ACICA has not yet received a request for consolidation under the 2021 ACICA Rules.

Joinder was also introduced in the 2016 ACICA Rules. The joinder provision allows an Arbitral Tribunal to allow an additional party to be joined to the arbitration provided that the additional party is bound by the same arbitration agreement as the existing parties to the arbitration. There is also a provision for ACICA to determine an application for joinder if it is made prior to the constitution of the Arbitral Tribunal. There has been one application for joinder under the 2016 ACICA Rules, which was successful.

In the 2021 ACICA Rules, the joinder provision was revised to make it clear that when determining a joinder application, the Arbitral Tribunal or ACICA must give all of the parties an opportunity to be heard, including the additional party to be joined. The 2021 ACICA Rules also clarify that if ACICA rejects a joinder application prior to the constitution of the Arbitral Tribunal, that does not prevent a party from applying to the Arbitral Tribunal for joinder once it has been constituted. There has not been any application for joinder under the 2021 ACICA Rules at the time of this Report.

Expedited Proceedings

The ACICA Expedited Rules were introduced in 2008 (and first updated in 2011) in response to the need of business people to have smaller disputes resolved more quickly and efficiently. ACICA is one of the few arbitral institutions to have a set of rules dedicated to an expedited process.

In the 2011 iteration, the Expedited Rules applied only where parties agreed in writing that disputes were to be referred to arbitration under the ACICA Expedited Rules. In the 2016 revision of the Expedited Rules, ACICA introduced a provision in the main ACICA Rules which allowed a party to apply to ACICA for an arbitration to be conducted in accordance with the Expedited Rules where the amount in dispute is less than \$5 million, or if the parties agree, or in a case of exceptional urgency. This provision was retained in the 2021 ACICA Rules. This application process has proven to be the most common way for matters to move into the expedited process, rather than the specification of the application of the ACICA Expedited Rules in parties' arbitration agreements.

Some of the key features of the ACICA Expedited Rules include that the Notice of Arbitration is to include the Statement of Claim, whereas these can be two separate procedural steps in a non-expedited arbitration. Because of this, there is no separate Answer to the Notice followed by a Statement of Defence, the Respondent is simply required to submit a Statement of Defence within 28 days of the Notice of Arbitration.

In relation to hearings, the default position under the Expedited Rules is that there will be no hearing unless exceptional circumstances exist, **and** either the arbitrator or the parties require a hearing. Hearings are also limited to one day unless the arbitrator decides otherwise.

The Expedited Rules also state that there shall be no discovery. Instead, the arbitrator may order production of particular documents that they believe to be relevant.

The time frames provided in the Expedited Rules are important to ensure the expedited nature of the proceeding. The Expedited Rules only allow variations to the time frames provided as agreed by the parties, or in exceptional circumstances, the arbitrator can vary the times fixed for a party's action by up to 14 days and for an arbitrator's action, by up to 30 days only.

Finally, since amendment in 2011, the Expedited Rules require the arbitrator to make their award within four months of appointment, unless there is a counterclaim in which case the award must be made within five months of appointment. The Expedited Rules also curtail any delay that may occur with parties attempting to agree an arbitrator as they provide for ACICA to make the appointment within 14 days of the Notice of Arbitration.

Since their amendment in 2011, six cases have proceeded to be administered under the Expedited Rules. Two matters were initiated under the Expedited Rules and the remaining four matters proceeded under the Expedited Rules following successful applications to do so. There was one unsuccessful application for an arbitration to be conducted under the Expedited Rules due to issues of complexity.

The average recorded time for rendering an award under the Expedited Rules is five and a half months. This corresponds

to the time allowed for an arbitration with a counterclaim (two weeks to appoint an arbitrator followed by five months for the arbitrator to make the award).

Time for rendering of awards

Until the implementation of the 2021 edition of the ACICA Rules, there was no time frame in which arbitral awards were required to be made (except for expedited arbitrations). The introduction in 2021 of Article 39.3 results in a requirement that a final award be made by no later than nine months from the date the file was transmitted to the Arbitral Tribunal or no later than three months from the date the Arbitral Tribunal declares the proceedings closed, whichever is the **earlier**. ACICA has the power to extend this time upon a reasoned request from the Arbitral Tribunal or if ACICA otherwise deems it necessary.

Nevertheless, it is pleasing to note that more than half of all ACICA administered arbitrations that proceeded to awards were concluded within 12 months (54%). Another 29% of arbitrations resulted in awards in less than two years. While these statistics were not tied to sectors, it is likely that many of the cases where awards were rendered in more than 12 months involved large projects and were quite complex. With the introduction of Article 39.3 in the 2021 ACICA Rules, the ACICA Secretariat has a more active role in the management of time to award and ACICA hopes this will be reflected in the average time to award going forward.

Looking Forward – A Word from the Secretary-General

Upon joining ACICA in 2012, I could not have imagined the journey the next 10 years would take me on and it is difficult to describe the level of change that has taken place at the organisation and within the arbitration space in Australia in that time. This report touches on much of the work that has been done but does not adequately attribute these advancements to the efforts made by so many in the Australian arbitration community and a network of international and Australian practitioners and supporters. ACICA has been, and continues to be, the beneficiary of the wealth of knowledge that resides in this broad network, generously shared with the organisation through a Board, Executive team and wide structure of Committees that are all voluntary but without which the organisation could not achieve as much as it does.

It has long been said that Australians punch above their weight in international arbitration; they can be found in every major arbitration hub across the world, in some of the foremost practice groups, and are prominent in every directory listing that identifies leading practitioners in arbitration. While it was the case when I was a young lawyer that emerging practitioners were often told that in order to establish a career in international arbitration, they should leave Australian shores, that is no longer true and we are increasingly seeing Australians develop their practices and thrive here, as well as welcoming back many who did leave.

There is now significant momentum behind the use of Australian seats, Australian practitioners and the ACICA Rules for international disputes, and this momentum will be driven forward. Peter Drucker famously said that the best way to predict the future is to create it. At ACICA, we look forward to playing a key role in the ongoing creation of a bright future for Australian arbitration by deepening our engagement with all stakeholders, collaborating with current partners and building new partnerships, supporting the next generation of practitioners in their growth, adapting with the constant evolution of international best practice, and continuing to build on a strong practice of excellence in the provision of case administration services.

Some current areas of particular focus for ACICA are to broaden our engagement with the Commonwealth Government and appropriate agencies through the establishment of an ACT Committee and the recently formed Legislative Committee, the promotion of greater diversity across all organisational activity through a newly formed Diversity Committee and to drive change through thought leadership in the areas of sustainability, renewables and the energy transition, and climate change.

ACICA knows it can rely on the support of the vibrant and active arbitration community working together to create this bright future.

– *Deborah Tomkinson*

Acknowledgements

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www.acica.org.au/acica-reflections-report/

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ACICA

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