

ACICA AND FTI CONSULTING LAUNCH THE 2023 EVIDENCE IN INTERNATIONAL ARBITRATION REPORT

- *Widespread support for tribunal interventions in arbitration.*
- *Sustainability and diversity lacking in Australian and global arbitration communities.*
- *Leading arbitration and legal figures provide expert commentary.*

Melbourne, Australia, Thursday 7 September 2023: The Australian Centre for International Commercial Arbitration (ACICA) in conjunction with FTI Consulting, Inc. (NYSE:FCN) launched the 2023 Evidence in International Arbitration Report (“Report”), reflecting the views of international arbitration practitioners in Australia and globally.

Developed from a global survey conducted in late 2022, the Report explores the impact of expert, lay and document evidence on case outcomes and critical trends like sustainability and equal representation.

Key findings

- 96% felt increased tribunal intervention would improve the use of evidence in international arbitration.
- 85% were satisfied with using and giving evidence in arbitration, with 64% preferring evidence in arbitration over litigation.
- Though generally in favour of sustainability, when tested, over 50% of respondents would use less sustainable practices if it were more beneficial for their case.
- Less than 1% engaged female experts more than half of the time.

Widespread support for tribunal interventions

72% of respondents showed a genuine appreciation for constructive tribunal intervention in arbitrations, with an overwhelming 96% agreeing that using procedural intervention would improve the evidential process. This includes measures such as tribunal-appointed experts, bifurcation, mock arbitration, and concurrent expert evidence.

Toby Landau KS of Duxton Hill Chambers (Singapore Practice) noted in his concluding remarks to the Report that the Report treads directly on the tension *"between the widespread agreement that arbitral tribunals need to take proactive steps in managing and intervening in arbitral proceedings, and the widespread reluctance on the part of international tribunals to do so."* He went on to note that *"rather than assume that the standardised procedure maybe applied in every case, [tribunals] need to adopt a proactive stance. They must use all tools at their disposal actively and robustly to case-manage and tailor their procedures, so as to meet the particular characteristics and needs of the particular dispute they are to resolve."*

Sustainability and diversity lacking in arbitration community

While there is recognition that sustainability should be prioritised in arbitration, with positive responses on virtual hearings and the move towards going paperless, the Report found the overall aims of the case still win out. 52% said they would use hard copy documents if preferred by the

tribunal, and 60% would opt to fly in expert witnesses for in-person hearings over a virtual appearance.

Gender diversity is still an issue, with all but one respondent reporting they engaged male experts the majority of the time.

However, initiatives including the [Equal Representation for Expert Witnesses Pledge \(ERE Pledge\)](#) and ACICA's Sustainability Taskforce have as their objective to assist with tackling some of these issues.

Expert commentary from leading arbitration and legal figures

The Report also features editorials from the following prominent members of the global arbitration and broader legal community: Martin Cairns, Benjamin Hughes, Toby Landau KC, The Hon. Wayne Martin AC KC, John Temple-Cole, Professor Kimberley Wade, Dawna Wright, Dr. Iur. Clarisse von Wunschheim.

These editorials bring to life the practical implications of the survey findings. The topics include the impact different legal, cultural and geographical backgrounds have on the use of evidence; the psychology behind evidence; the ways to maximise the impact of expert evidence as seen from the experts; the problems related to document production and proposed solutions; and the ongoing controversy around the utility of disclosure and witness testimony.

"The 2023 Evidence in International Arbitration Report provides a fascinating insight into the different evidentiary experiences of those practising in international arbitration today", Said Georgia Quick, ACICA President. *"The Report is a powerful tool for identifying trends, best practices and improvement areas in arbitration, such as the strong appetite for tribunal intervention and the ongoing need to address sustainability and diversity in the arbitration community."*

End. Media Enquiries

Deborah Tomkinson, Secretary General

t. 61 2 9223 1099 e. dtomkinson@acica.org.au

About the 2023 Evidence in International Arbitration Report

- The Report was developed from a global survey of over 100 respondents, of which 64 provided sufficient data to contribute to the overall results, regarding their experience with expert evidence in international arbitration.
- The responses were mainly from legal professionals and arbitrators, with approximately 10% of respondents identifying as experts.
- The majority of respondents were based in Australia and Asia, with a small number practising in Europe, Africa, and the Americas.
- The aims of the survey were to gather data on how evidence is treated currently and how current practice could be improved. It explores the use of mock arbitrations, the appointment of female experts, how witness statements should be drafted and whether the rules themselves needed to be changed,.
- This is the second arbitration report from ACICA and FTI Consulting, with the inaugural 2020 Australian Arbitration Report exploring the nature and extent of arbitration activity involving Australia, Australian parties and Australian practitioners.
- The 2023 Evidence in International Arbitration Report and 2020 Australian Arbitration Report can be accessed at: acica.org.au/australian-arbitration-reports

About Australian Centre for International Commercial Arbitration (ACICA)

ACICA is Australia's international dispute resolution institution. Established in 1985 as an independent, not-for-profit organisation, ACICA's objective is to promote and facilitate the efficient resolution of commercial disputes throughout Australia and internationally by arbitration and mediation, with the aim of delivering expediency and neutrality of process, enforceability of outcome and commercial privacy to parties in dispute. acica.org.au

About FTI Consulting

FTI Consulting, Inc. is a global business advisory firm dedicated to helping organisations manage change, mitigate risk and resolve disputes: financial, legal, operational, political & regulatory, reputational and transactional. With more than 7,800 employees located in 31 countries, FTI Consulting professionals work closely with clients to anticipate, illuminate and overcome complex business challenges and make the most of opportunities. The Company generated \$3.03 billion in revenues during fiscal year 2022. In certain jurisdictions, FTI Consulting's services are provided through distinct legal entities that are separately capitalised and independently managed. For more information, visit www.fticonsulting.com and connect with us on [Twitter \(@FTIConsulting\)](#), [Facebook](#) and [LinkedIn](#).