



WA ARBITRATION INITIATIVE

2019 WA Arbitration Report



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Foreword

The WA Arbitration Initiative, together with Francis Burt Chambers, FTI Consulting and ICC Australia, is pleased to present the results of the inaugural WA Arbitration Survey.

The Survey was conducted at the end of 2018 to interrogate the nature and extent of arbitration activity with a WA connection in the 2017/2018 financial year.

The results show significant arbitration activity and an active arbitration community in Western Australia.

There is significant experience both in domestic and international arbitration, particularly in the infrastructure, resources and energy sectors.

The Survey shows there exists a solid foundation from which WA Arbitration can develop and grow. The Survey data can be used to provide an evidential base for the promotion of Western Australia as an internationally recognised centre of expertise and excellence in commercial arbitration, particularly in relation to disputes arising within the mining and oil & gas industries for which Western Australia is internationally renowned.



The WA Arbitration Initiative

[LINK TO WEBSITE](#)



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The WA Arbitration Initiative arose out of the conviction that there is more arbitration in Western Australia and more arbitration expertise in Western Australia than is generally recognised.

By identifying this expertise and tapping into the experience of users of arbitration in Western Australia, we hope to promote the development of a vibrant, internationally recognised arbitration community in Western Australia and in Australia.

The objectives of the WA Arbitration Initiative are to:

- Promote the involvement of Western Australian based entities and individuals in arbitration proceedings
- Promote arbitration as a method of dispute resolution
- Educate users of arbitration as to best practice
- Facilitate stakeholder engagement
- Facilitate a coherent national approach to the promotion of arbitration and Australian based arbitration practitioners both within Australia and internationally



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The WA Arbitration Initiative intends to obtain data on a regular basis from WA based users of arbitration as to the involvement of WA entities and individuals in arbitration proceedings and to use that information to achieve those objectives.

The results of the Survey are very encouraging. They reveal a thriving arbitration community in WA. Significant expertise and experience is demonstrated in both international and domestic commercial arbitration, in particular, in the resolution of disputes arising from the energy, resources and infrastructure projects that form the backbone of the WA economy.

Although the focus of our initiative is WA based, it feeds into the larger arbitration community and broader arbitration expertise in Australia as a whole and internationally.



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The WA Arbitration Initiative seeks to work cooperatively with all stakeholders. It is 'institution and seat neutral'. The WA Arbitration Report will be made freely available. Institutions such as the Chartered Institute of Arbitrators, ACICA and the Resolution Institute are encouraged to use the WA Arbitration Report to promote the use of arbitration.

The WA Arbitration Initiative thanks all those who participated in the Inaugural WA Arbitration Survey - those who responded to our survey and those who participated in more informal discussions. We appreciate both the information they provided and their enthusiasm. We also wish to thank Francis Burt Chambers, FTI Consulting, ICC Australia, Maria Fifield and Joan Cavalieri Fernandes for their assistance and support.

The Future of Arbitration in WA

The WA arbitration community is thriving. The disputes that have arisen on WA's major resource and infrastructure projects, particularly over the last few years, have fostered the development of a pool of arbitration expertise and experience in WA.

The Report reveals opportunities for WA practitioners to increase their involvement in the international market for dispute resolution services. WA firms are taking advantage of the expertise of local practitioners, Perth's amenity and the comparative price advantage of Australian lawyers to be involved in international arbitrations that have no particular geographic or legal connection with Western Australia. The disputes in which WA practitioners have been involved are typical of disputes which arise all over the globe.

However, there is still much that needs to be done. The Report indicates that parties remain concerned by the excessive judicialisation of the arbitration process and look to arbitrators and lawyers involved in arbitrations to seek out alternative, pragmatic methods to reduce time and cost. Interrogation of the survey data also reveals significant amounts of dispute resolution work arising from WA projects being done overseas and by people with no connection to Western Australia. There is opportunity for that work to also be done in WA and to involve WA people and entities.

WA Arbitration would be further developed by Government recognition of the positive contribution that arbitration

activity can make to the WA economy. That contribution is not only direct in the form of expenditure on legal services and facilities. The promotion and development of the commercial arbitration sector in Western Australia provides benefits well beyond that sector, including benefits to the various allied service providers in areas like accommodation, transcript services, restaurants, associated tourism etc. and contributes to the recognition of WA as an international centre for the resources and energy sectors. Further, resolving disputes by arbitration, rather than litigation, conserves scarce judicial resources.

The data in the Survey can be used to promote Western Australia as a neutral venue in which there is a developed and mature profession providing all the services required for the just and efficient resolution of disputes arising within and outside Western Australia – a venue which is easily reached from the major commercial centres of Asia and which operates in the same time zone as those centres and at comparatively lower cost.

While this Report focusses on arbitration with a WA connection, the promotion of arbitration cannot be constrained by geographic constraints or jealousies. Fundamentally, the future of arbitration in WA is linked to the future of arbitration in Australia and internationally.

WA: ROOM TO GROW

- This survey reveals that Western Australia has a mature arbitration industry with many experienced practitioners.
- While domestic arbitration makes use of local expertise, there is a tendency for international disputes to involve overseas or interstate arbitrators, lawyers, and counsel.
- A perception that Perth is not an established location for arbitration reduces the likelihood that overseas parties agree to using Perth as a seat for arbitration.



FTI Consulting Findings Summary

Arbitration practitioners in Western Australia are in no doubt about the extent and quality of arbitration that occurs here and the valuable contribution of WA practitioners in international and interstate arbitration. As a firm that works closely with many of those practitioners, FTI Consulting knows first hand of the quality and expertise available in the WA market.

Notwithstanding the above, there is little data available that demonstrates the true extent of arbitration that WA practitioners are involved in, less still data that reveals the value of disputes and the economic contribution that the arbitration industry provides. We believe this report, prepared based on extensive feedback received from the industry, remedies the lack of available information and provides a valuable reference point in describing the practice of arbitration in WA.

We are encouraged by the level of engagement with the survey, with 73 respondents providing information relating to 105 unique arbitration proceedings, as well as providing general feedback on proceedings, venues, and practitioners.

It is our privilege to present the data that follows and we look forward to taking part in the future to continue providing a window into Western Australian Arbitration.

KEY FINDINGS

- The inaugural WA Arbitration Survey had 73 unique respondents out of 120 response invitations, including 22 responding on behalf of law firms, a response rate of 60%.
- 105 unique arbitration proceedings were reported by respondents, including 53 domestic disputes and 52 international disputes.
- The combined value in dispute for 105 unique arbitrations reported by respondents is over AUD\$14bn in claims and an additional AUD\$8.5bn in counterclaims.
- Firms in Western Australia billed an estimated AUD\$85m on arbitration work in the 2017/2018 financial year. Other costs related to arbitration included:
 - AUD\$9m in tribunal costs
 - AUD\$13m in witness fees
 - AUD\$4.5m in other costs



eArbitration Services and Document Production

Established in 1999, Law In Order is a professional provider of solutions to courts and hearings globally. We are recognised as a leading electronic Arbitration supplier of end to end solutions in Australia and Asia whilst performing services in many other locations in the world, such as the Permanent Court of Arbitration in The Hague. Law In Order has offices in Perth, Brisbane, Sydney, Melbourne, Singapore, Hong Kong and India operating on time-zones which enable services to be rendered across different locations.

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Secure web streaming from the hearing room, enabling proceedings to be broadcast over the internet.



Document Production

Digitisation of hard copy evidence and related printing requirements supported by our Operations Team based in Mill Street, Perth.

Arbitration in Western Australia – Facts and Figures

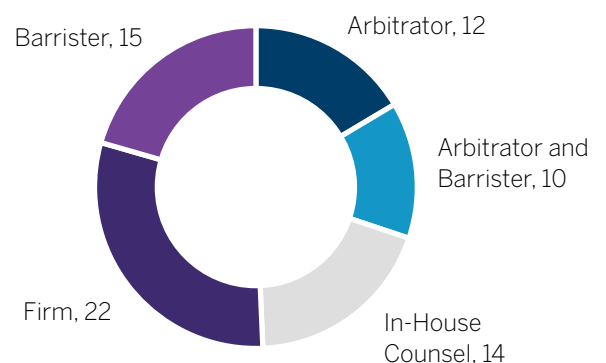
We have managed to capture a snapshot of a mature industry filled with experienced practitioners providing world class arbitration services for both domestic and international disputes.



Respondents' Profile

- The inaugural WA Arbitration Survey had 73 unique respondents out of 120 response invitations, a response rate of 60%. While the responses have given us valuable insight into arbitration in WA, we hope in future years to improve upon this even further.
- While the responses of individual practitioners are instrumental in order to review the qualitative aspects of arbitration, much quantitative information can be gathered from the responses of large institutions. To that end, we are especially grateful to the 22 firms and 14 in-house counsel that took the time to complete the survey, allowing us to review data for over 100 arbitrations in the 2017/2018 financial year. We are also grateful for responses of appointing bodies such as Resolution Institute and the ICC.
- We have also benefited greatly from the input of practitioners that act as both barristers and arbitrators. In summary we have received a balanced view of the sentiment toward arbitration from a variety of stakeholders.

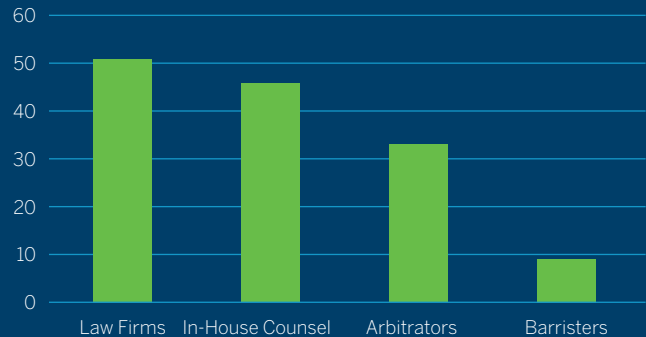
RESPONDENTS



Arbitration: A Summary of Proceedings

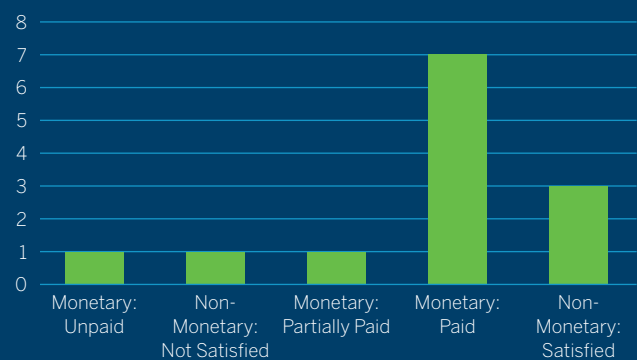
- The Arbitration Survey collated data for 105 separate arbitration proceedings that were active in the 2017/2018 financial year. The data was evenly split between domestic arbitration (53) and international arbitration (52).
- Respondents had various degrees of discretion in disclosing information regarding proceedings. As a result, not all 105 proceedings were reported in the same level of detail. The number of responses to specific questions is separately noted.
- 13 Respondents specified the nature of awards issued. Of those, the majority of awards have been satisfied.
- 39 respondents indicated whether they were acting on behalf of a claimant or respondent. Of those responses, the data was split fairly evenly (18 reported acting for a claimant, 21 for a respondent).
- Of 36 respondents, 6 indicated that arbitrators were appointed by Australian lawyers outside of Perth and 20 indicated that arbitrators were appointed by Perth based lawyers.
- 20 of the reported arbitrations settled before hearings.
- 22 of the reported arbitrations had associated litigation. Most commonly, the litigation related to:
 - Injunctions (8 reported, 2 regarding calling of securities)
 - Stay Applications (7 reported)
 - Enforcement (3 reported)
- 20 Respondents indicated the length of time that passed between final submissions and the date of the award being issued. For the most part, awards were issued within 3 months.

NUMBER OF PROCEEDINGS REPORTED

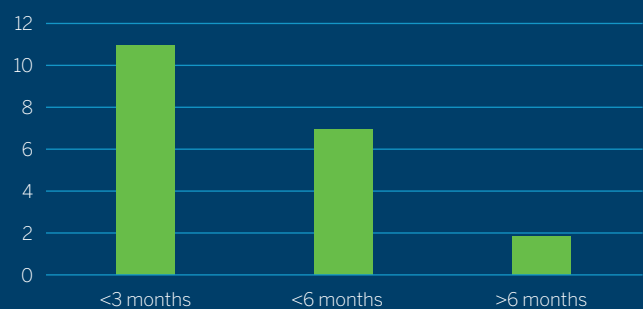


*Note: There is some duplication in the above chart as some respondents fit into more than one category (i.e. Barrister and Arbitrator).

NUMBER OF AWARDS & SATISFACTION OF AWARDS

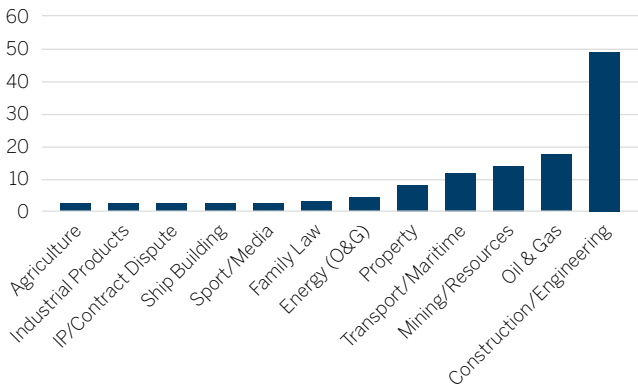


NUMBER OF AWARDS VS ELAPSED PERIOD FROM FINAL SUBMISSION

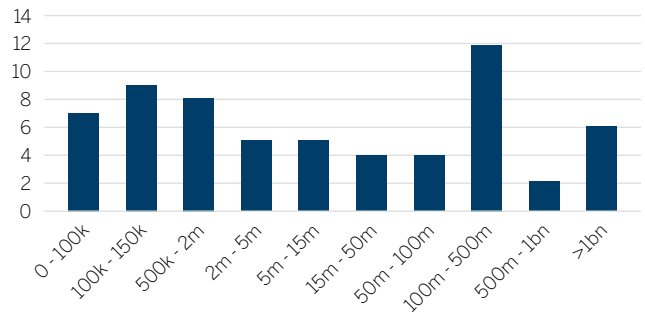


Industries and Value

NUMBER OF RECORDED ARBITRATIONS BY INDUSTRY



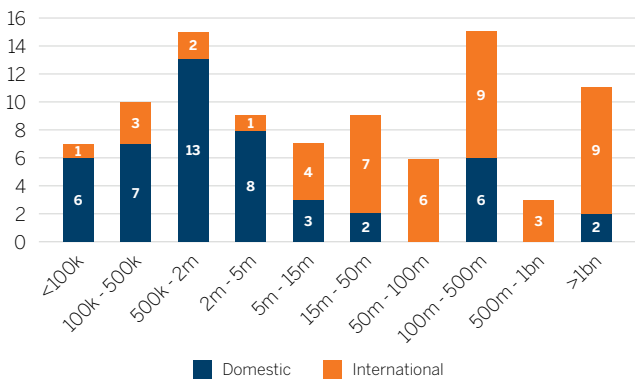
NUMBER OF COUNTERCLAIMS BY VALUE



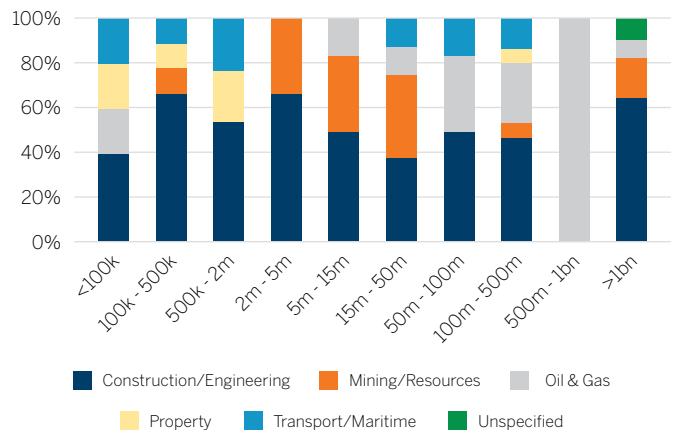
The 105 unique arbitrations reported by respondents to the Arbitration Survey have a combined total value in excess of AUD\$14bn in claims, with an additional amount in counterclaims of over AUD\$8.5bn.

- There were 11 individual disputes where the value of the claim was in excess of AUD\$1bn.
- The value of disputes was heavily skewed toward international arbitration.
- The construction/engineering sector accounted for almost 50% of entries alone. 75% of all reported arbitrations related either to the construction/engineering or Oil & Gas and Mining/Resources industries.
- The value of disputes across industries had a relatively even distribution and are more likely to reveal the general value of disputes in those industries generally, rather than the propensity to use arbitration as a dispute resolution method contingent on the dispute value. Notably, Construction/Engineering disputes are represented across the whole range of dispute values.

DISPUTE VALUE BY ARBITRATION TYPE



DISPUTE VALUE BY INDUSTRY

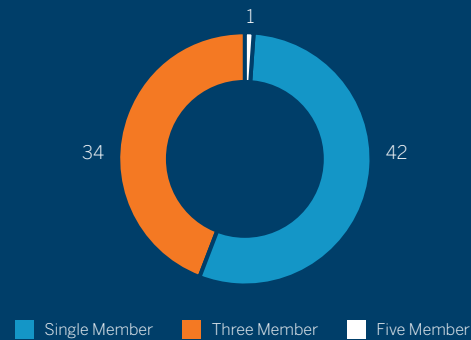


*Note: For clarity, industries the subject of fewer than three disputes have been excluded from the above chart.

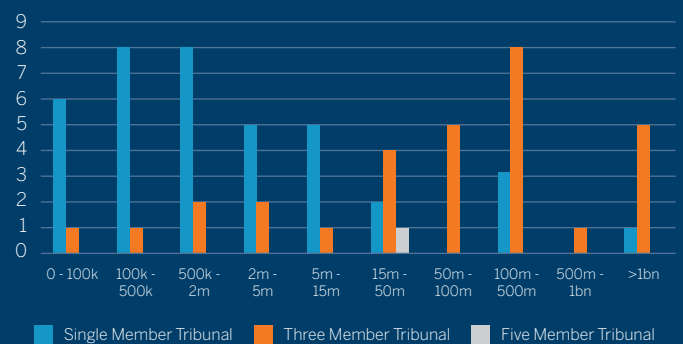
Tribunal Composition

- The majority of reported proceedings had a single member tribunal, although the split was relatively close (42 vs 34). Only a single five member tribunal was reported.
- The number of tribunal members was generally related to the claim value (i.e. more valuable disputes are more likely to have a three member tribunal).
- Where arbitrator qualifications were reported, all but 2 sole tribunal members were of a legal background.
- Three member tribunal members were also primarily from a legal background. The breakdown (for all reported backgrounds) was as follows:
 - 27 former judges
 - 73 solicitors and barristers (including 12 silks)
 - 1 Engineer
 - 1 Academic
- Arbitrator appointments were primarily by party nomination or party agreement, followed by appointment by appointing body. 14 were selected by other tribunal members or appointed by the chair.
- 17 appointments by an appointing body were reported, spread between 11 different appointing bodies. Most of the reported appointments were by the Resolution Institute, but other institutes included:
 - Legal Aid
 - ICC
 - ACICA
 - AFSA
 - HIA
 - SIAC
- The nationality of arbitrators was overwhelmingly Australian, with British arbitrators following. Arbitrators of other nationalities, while not uncommon, were less common and more varied.
- Of 72 Australian arbitrators reported, 44 were involved in a domestic arbitration. By contrast, 32 of 39 British arbitrators were involved in International parties. This suggests that despite a pool of available Australian arbitrations, arbitrations tend to nominate overseas tribunal members in international disputes.
- Of 149 tribunal members reported, only 9 were female.

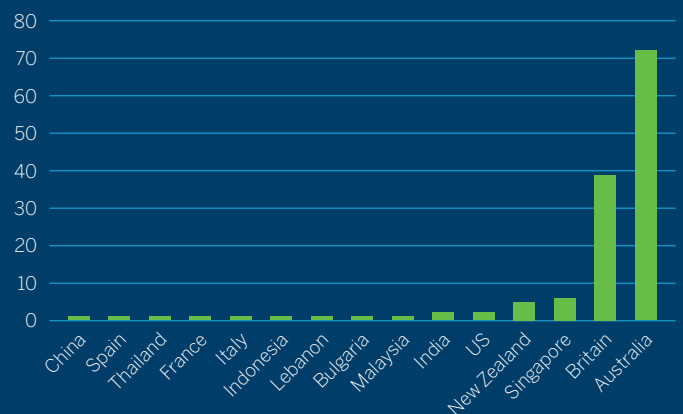
TRIBUNAL COMPOSITION: NUMBER OF MEMBERS



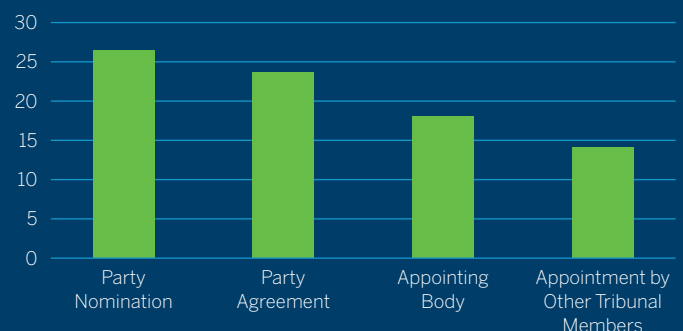
TRIBUNAL COMPOSITION BY CLAIM VALUE



NUMBER OF ARBITRATORS BY NATIONALITY



NUMBER OF ARBITRATORS BY METHOD OF APPOINTMENT

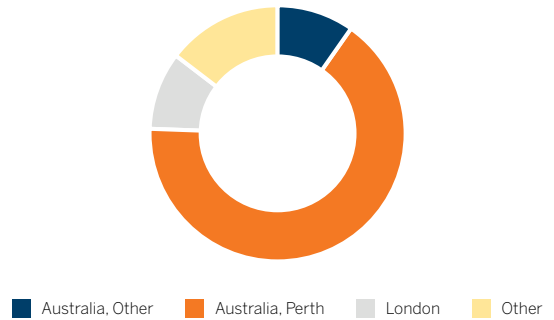


Representation

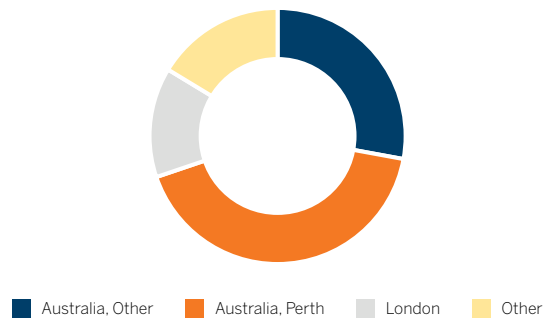
- Respondents reported the nature of their representation in 44 of 105 arbitrations. Of those, 41 relied on external legal representation.
- Of 77 responses, 43 respondents indicated that external counsel was used, while 34 reported that external counsel was not used.
- Legal representation was primarily by lawyers based in Perth. (This includes legal representation by combined location teams). However, when divided into domestic arbitration and international arbitration, a propensity to use overseas legal representation is revealed.
- Two trends are revealed in the data regarding external counsel. Firstly, compared with lawyers, there is a stronger tendency to use legal counsel from interstate. Similarly, when disputes are international, there appears to be a propensity to use overseas external counsel.



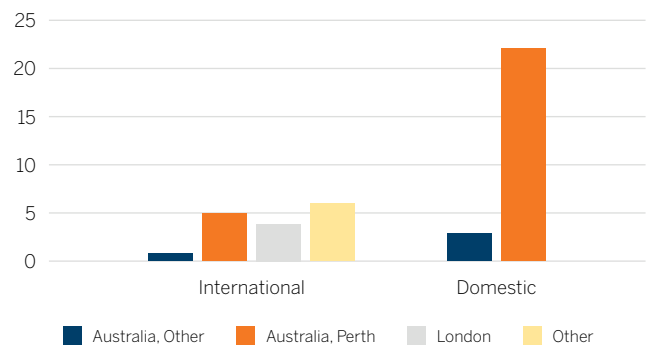
LAWYERS REPRESENTING PARTIES BY LAWYER LOCATION



EXTERNAL COUNSEL REPRESENTING PARTIES BY COUNSEL LOCATION



LAWYER LOCATION BY ARBITRATION TYPE



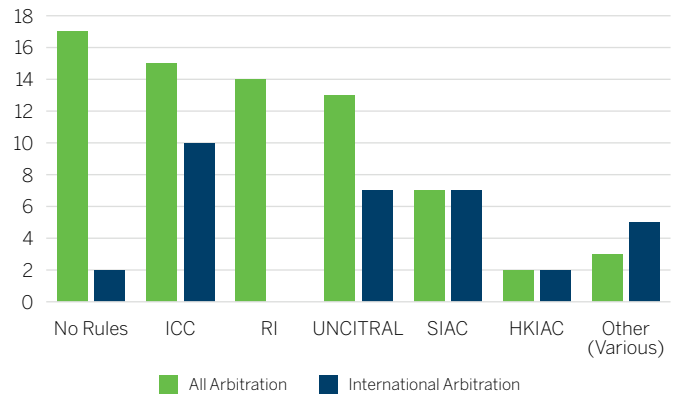
COUNSEL LOCATION BY ARBITRATION TYPE



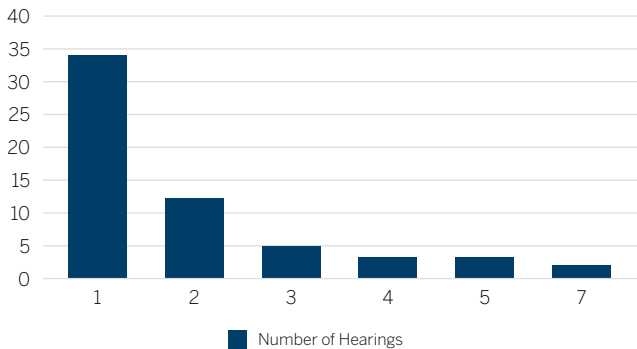
Rules and Locations

The selection of arbitration rules was reported for 71 of 105 arbitrations. The relative majority were carried out without formal rules, with the next most common being ICC Rules.

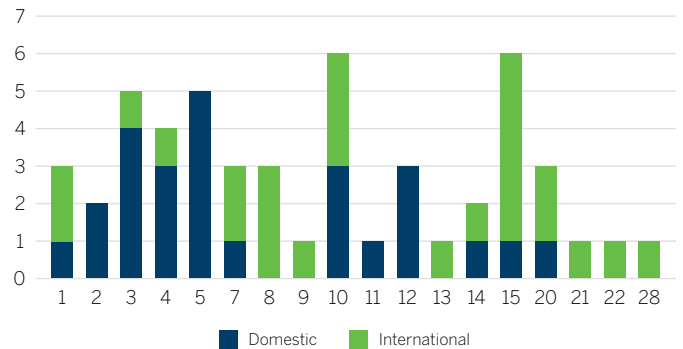
RULES USED FOR ARBITRATION



PROCEDURAL HEARINGS: LENGTH (IN DAYS)



SUBSTANTIVE HEARINGS: LENGTH (IN DAYS) BY ARBITRATION TYPE



- However, arbitration proceedings that do not adhere to formal rules appear to be generally reserved for domestic arbitration, with international arbitration far more likely to be conducted following institutional or UNCITRAL rules.
- The use of Perth as a location for hearings is reportedly common, either where the hearing is primarily conducted in Perth or where parties in Perth participate via teleconferencing facilities. While only 25 of 67 identified oral hearings on procedural issues were held in Perth, 50 involved Perth based participants. 14 hearings were held in Singapore, with the balance spread among several locations (London, Hong Kong, New York, Sydney, Delhi.)

- Similarly, of 55 identified oral hearings on substantive matters, 32 involved Perth participants, with 26 hearings held primarily in Perth. 9 hearings were held in Singapore, with the balance spread amount several locations (Hong Kong, Singapore, Sydney, London, New York.)

However, when focusing on international arbitration only, we found that substantive hearings were held only in Perth for only 5 of the cited matters, out of 36 for which hearing information was provided.

- Hearings on substantive issues tended to be longer for international arbitration than for domestic arbitration. This is consistent with the dispute value of international arbitrations being generally higher than that of domestic arbitrations.

52
Total International Arbitrations

5 Held procedural hearings only in Perth

5 Held substantive hearings only in Perth

2 Held procedural & substantive hearings only in Perth

The Arbitration Process

- All respondents were asked a set of general questions regarding their sentiment toward arbitration as a method of dispute resolution generally and of arbitration in Western Australia in particular. 32 respondents provided general comments regarding arbitration.
- Responses revealed positive attitudes toward arbitration with most criticism reserved for arbitration proceedings that too closely mirror the court process. That is, arbitration is strongly preferred as a method of dispute resolution when the process takes advantage of the less formal and more flexible potential of arbitration. Responses revealed that the perceived cost and speed benefits of arbitration decline insofar as proceedings mirror court processes.
- Accordingly, arbitrators should adopt principles of proportionality and procedural economy.
- In general, the parties considered the major benefits of arbitration to be:
 - Less formal procedural and evidentiary rules
 - Pragmatism and efficiency
 - Confidentiality
 - Ease of international enforcement
- However, responses also revealed that the above benefits are not always realised. Factors that impact the degree to which the benefits of arbitration are realised include:
 - Tribunal members unfamiliar with the laws governing the contract
 - Technical experience of Tribunal members
 - Limited entry of new arbitrators into the pool of International and local arbitrators
 - Arbitrators' limited flexibility with regard to hearing dates



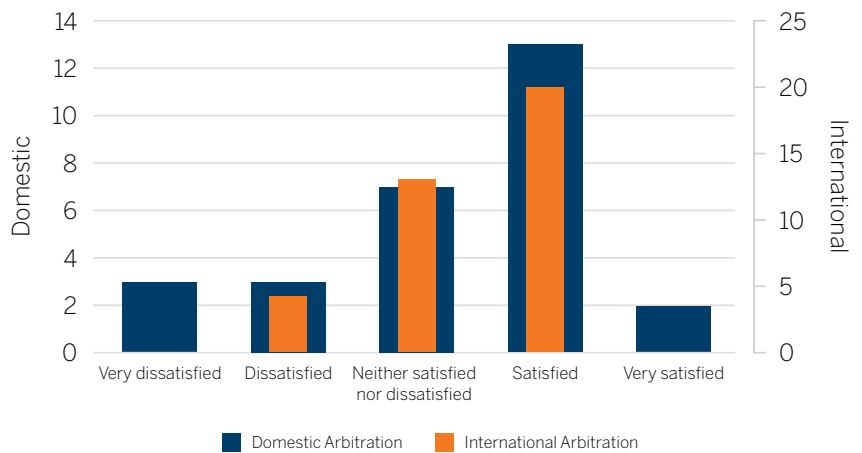
For 65 of 105 arbitrations reported, respondents indicated their level of satisfaction. While only 15% (10 arbitrations across 8 respondents, 3 firms, 4 barristers, 1 in-house counsel) were dissatisfied, some common themes were evident regarding how arbitration processes might be improved.

Respondents' tips for a more successful Arbitration:

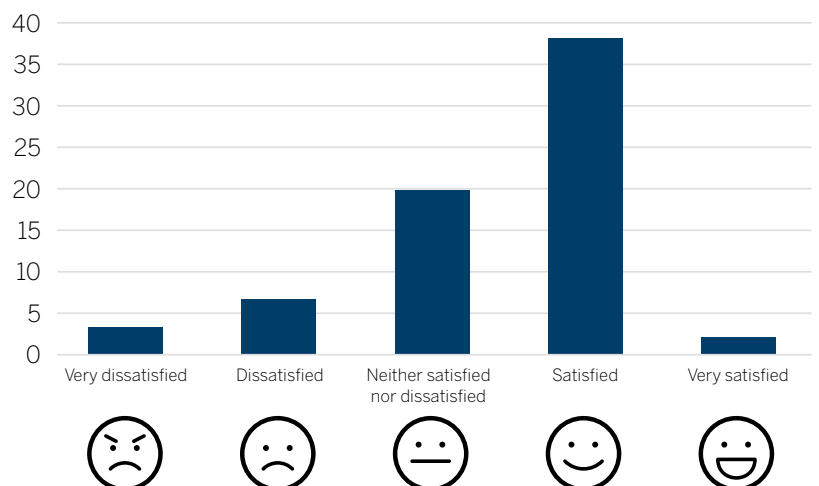
- Agree timetables early
- Narrow the issues in dispute
- Limit hearing time
- Be proactive

- Respondents reported that the inflexibility and lack of availability of arbitrators for hearings were sometimes detrimental to the process, especially when combined with initial timetables that are too optimistic.
- Respondents remarked that undue hearing time and expense was afforded to issues that could have been resolved on the papers.
- Respondents cited the lack of avenues to appeal decisions as a disincentive to use arbitration.
- Respondents were not always happy with the outcome. Some indicated a desire to receive more detailed written reasons for decision.

RESPONDENTS' SATISFACTION WITH ARBITRATION BY ARBITRATION TYPE



OVERALL RESPONDENT'S SATISFACTION WITH ARBITRATION



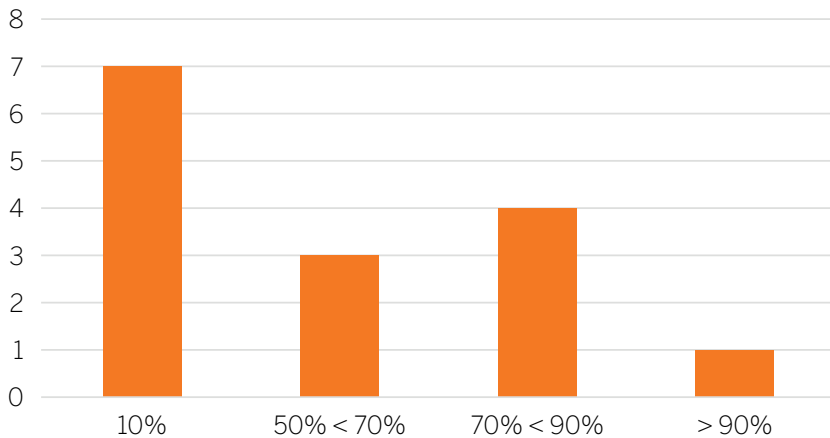
Costs

Of costs excluding legal representation, respondents reported that most costs were for witness fees, followed by tribunal costs, followed by all other costs (transport, accommodation, document control, etc.)

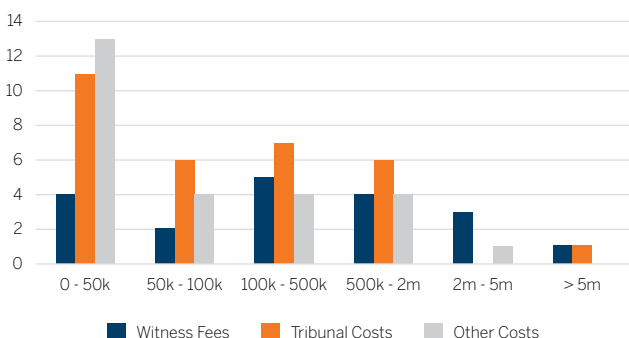


Though a limited number of respondents indicated the percentage of costs (including legal representation costs) recovered by way of a costs award, almost half reported receiving less than 10%.

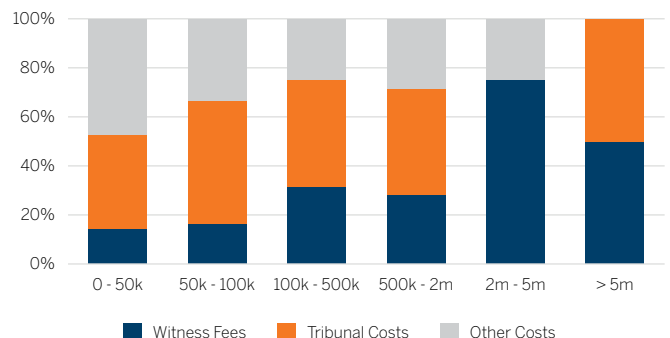
PERCENTAGE OF COSTS RECOVERED BY COSTS AWARD



ADDITIONAL COSTS BY CATEGORY



PERCENTAGE OF ADDITIONAL COSTS BY CATEGORY



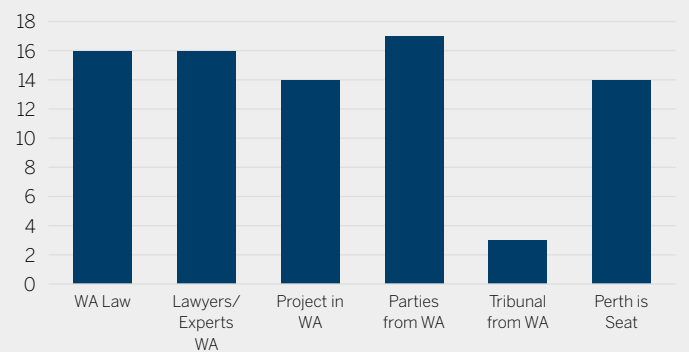
Firm Respondents

- 22 law firms responded to the Arbitration Survey. Of those, over half were international firms and seven were Western Australia only firms.
- Involvement in arbitration was heavily skewed toward international firms. This is indicated by the number of FTE practitioners involved in arbitration in Western Australian offices.
- Of the 22 law firm respondents, 17 were involved in arbitration in Western Australia in 2017/2018.
- Even more than with the number of practitioners, the billing data indicates that international firms perform most of the arbitration work in Western Australia.
- On a conservative estimate, firms in Western Australia billed AUD\$85m on arbitration work in the 2017/2018 financial year.

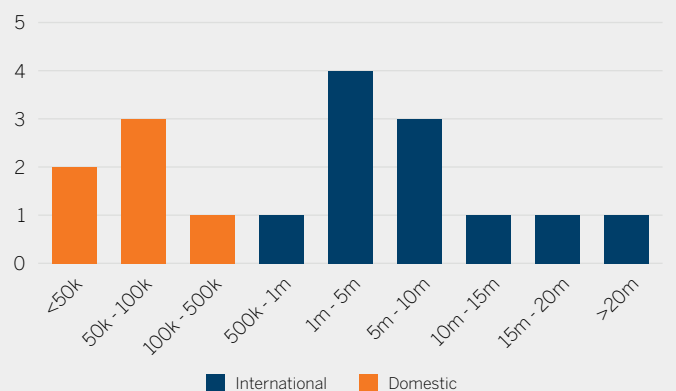
FIRMS AND NUMBER OF PRACTITIONERS BY FIRM TYPE



RESPONDENTS INVOLVED IN ARBITRATION VS NATURE OF WA CONNECTION

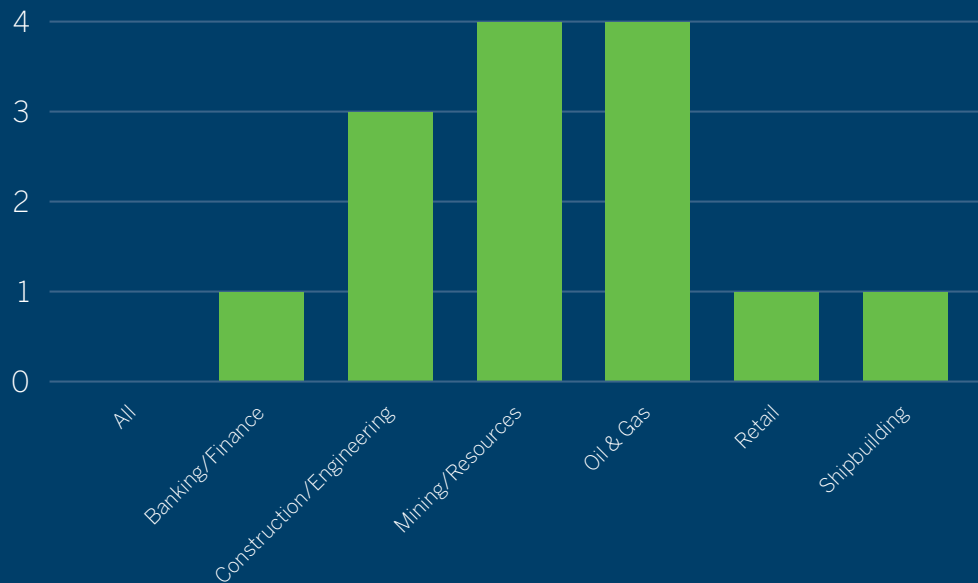


NUMBER OF FIRMS VS ARBITRATION BILLING 2017/2018 (\$AUD)



In-House Counsel Respondents

RESPONDENTS BY INDUSTRY



- The survey had 14 in-house counsel respondents of which 13 were responsible for the drafting of arbitration clauses in contracts entered into by their companies. The combined annual turnover of respondent companies was in excess of AUD\$9bn with a combined 91 lawyers in Western Australian offices.
- Six of the in-house counsel respondents were also involved in arbitration proceedings in the 2017/2018 financial year.



Barrister Respondents

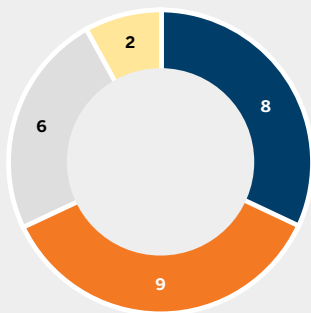
25

25 Barristers responded to the Arbitration Survey, of which 19 were involved in Arbitration in the 2017/2018 financial year.

9

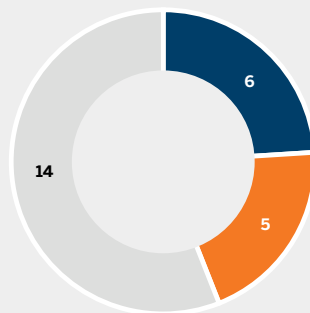
Of 9 barristers that reported their charges in relation to arbitration, 6 charged between AUD\$100k and AUD\$500k, 2 charged less than AUD\$100k, and one respondent charged more than AUD\$2m.

EXPERIENCE



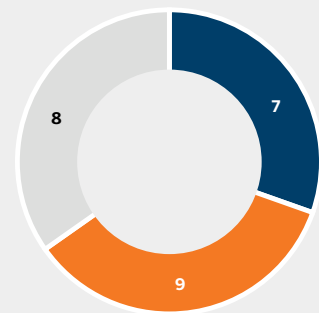
■ Less than 5 Years ■ More than 5 Years
■ More than 10 Years ■ More than 20 Years

TYPE OF ARBITRATION



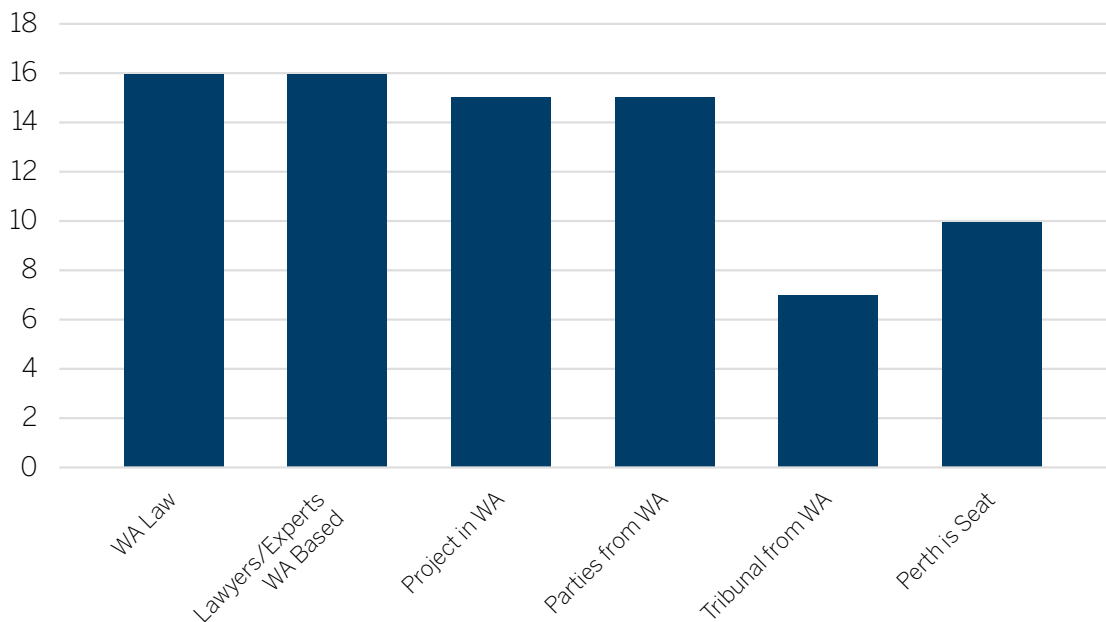
■ Domestic ■ International
■ Both

PROPORTION OF TIME SPENT ON ARBITRATION



■ Most ■ Some
■ Little

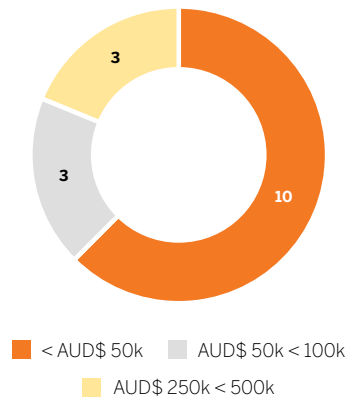
RESPONDENTS INVOLVED IN ARBITRATION VS NATURE OF WA CONNECTION



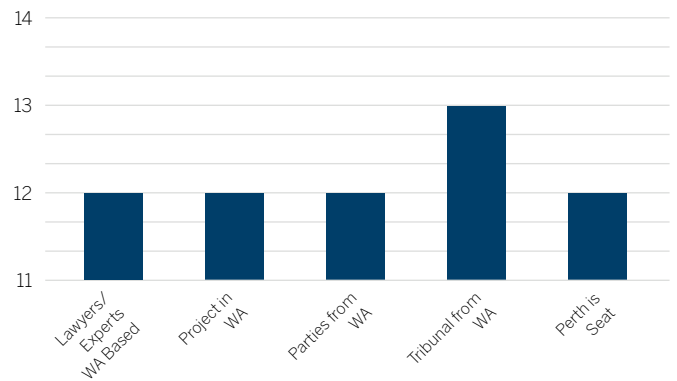
Arbitrator Respondents

- 22 Arbitrators responded to the Arbitration Survey. Of these, the vast majority (20 of 22) are qualified lawyers or barristers. One of the respondents was a lawyer and an engineer, and the final respondent was a qualified architect. Of those, 14 were involved in an arbitration connected to WA in the 2017/2018 financial year.
- The arbitration experience of respondents suggests that new arbitrators are entering the market after a period of relatively few newcomers. We note however that the relatively small number of arbitrator respondents makes industry wide conclusions difficult to draw.
- The majority of arbitrators spent only a portion of their professional time acting as an arbitrator. This is largely consistent with the prior experience and training of 12 arbitrators, who for the most part are lawyers.
- Respondents were most typically members of CI Arb (10 of 22) with the balance of respondents being members of a wide variety of organisations (5 Resolution Institute, 1 SI Arb, 1 ACICA).
- 17 of the respondents were based in Perth. The balance of respondents came from Melbourne (3), Singapore (1), and Hong Kong (1).
- The data for 19 arbitration proceedings was entered by arbitrators. With respect to those proceedings, most arbitrators charged less than AUD\$50k in total.

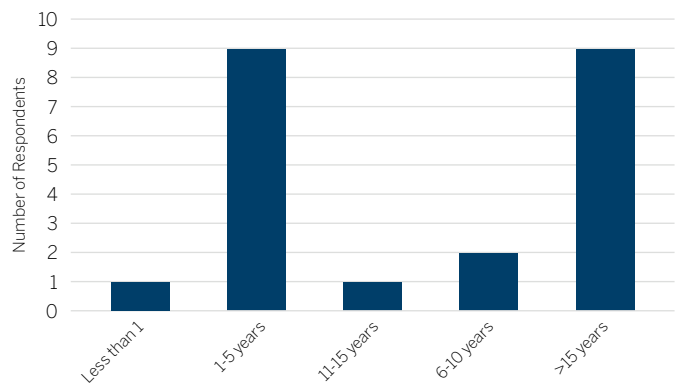
ARBITRATOR CHARGES VS NUMBER OF ARBITRATIONS



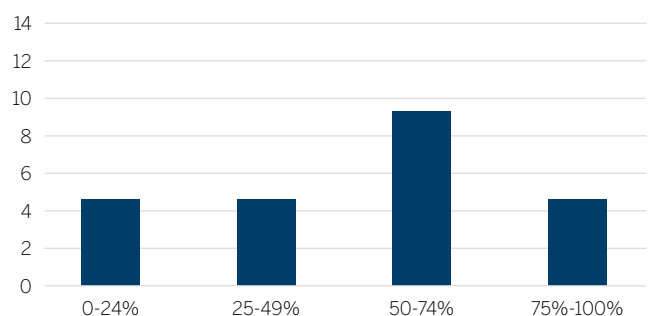
RESPONDENTS INVOLVED IN ARBITRATION VS NATURE OF WA CONNECTION



YEARS OF EXPERIENCE



PROPORTION OF PROFESSIONAL TIME SPENT ON ARBITRATION



The Value of Experience and Predictability

- 27 of the survey respondents are involved in the drafting of arbitration clauses and in the selection of arbitration rules, arbitrators, and counsel.
- They revealed the strong preference towards experienced practitioners and tried and tested rules for more predictable outcomes. In light of these preferences, it is notable that in the 105 arbitration cases reported by respondents:
 - 72 of 135 reported tribunal members were Australian
 - 22 of 41 reported firms representing parties were from Perth
 - 19 of 43 reported counsel representing parties were from Perth

SELECTING ARBITRATORS

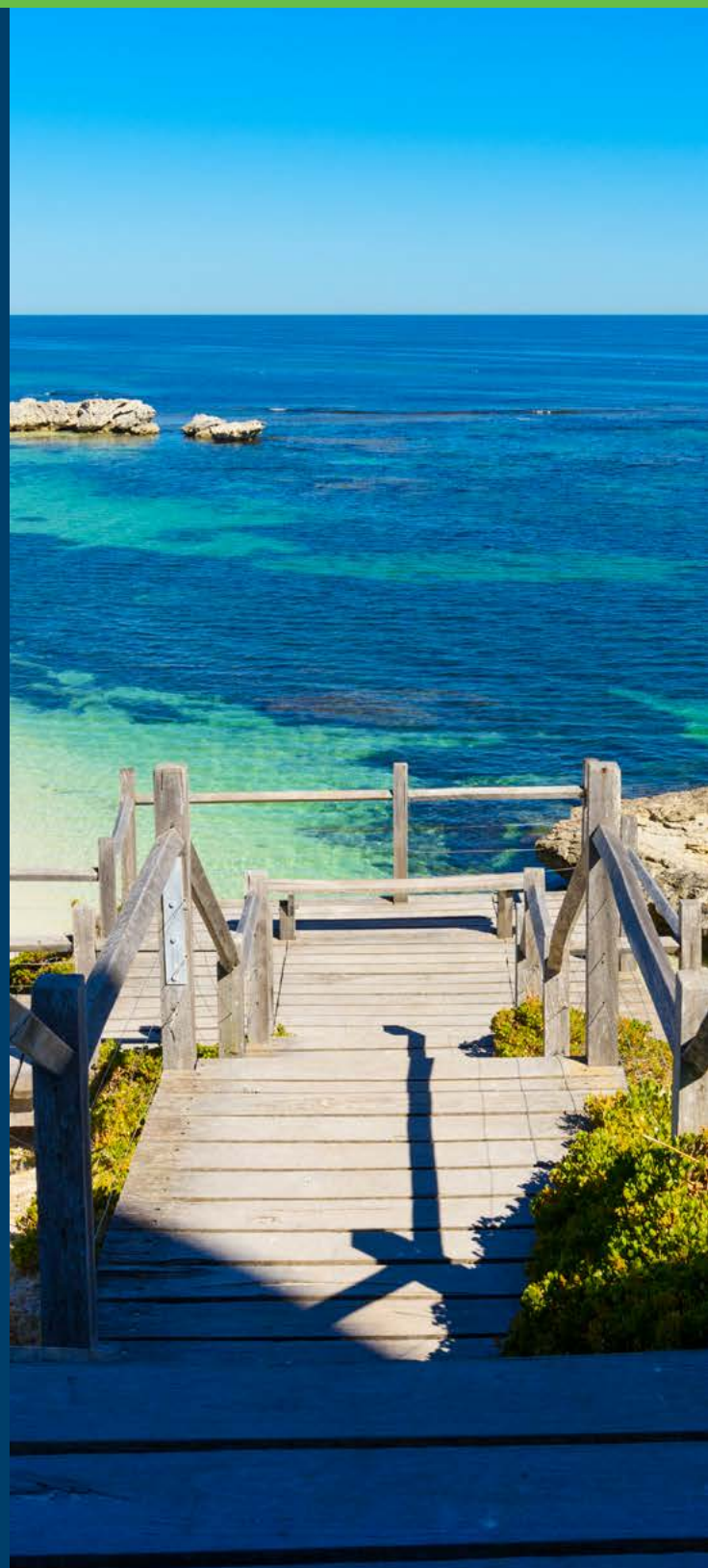
- Of factors that impact upon the selection of arbitrators, the overwhelming majority of respondents cited arbitration experience as the most important factor, followed closely by industry experience. Prior relationships were also important for the choice of arbitrator.

SELECTING COUNSEL

- Similarly, for the selection of counsel, experience was by far the most important factor, followed by perceived quality and reputation.

RULE SELECTION

- Mirroring the desire for experienced practitioners, the choice of arbitration rules was least influenced by the properties of the rules themselves (cost, speed, 'fairness', flexibility), and most influenced by the drafters' familiarity with the rules, a history of successful application of rules generally, and by client preference.



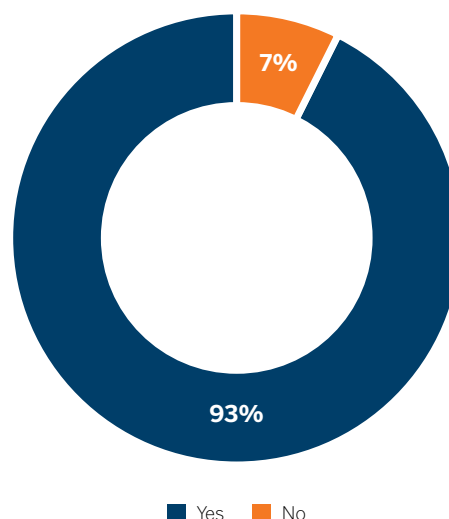
VENUE SELECTION

- Available facilities
- Cost of facilities
- Convenient location

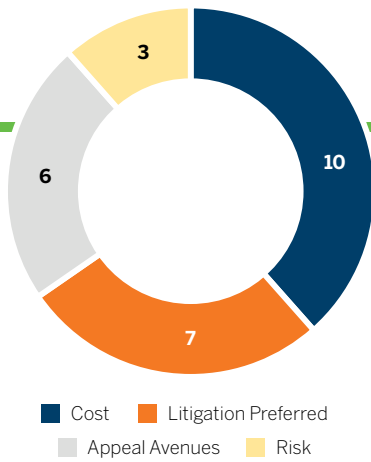
Venue Selection

- Survey responses revealed that the majority of respondents would consider Perth as a venue for hearings even when the seat is elsewhere. For those that answered they would not consider Perth, the main consideration in all cases was due to potential inconvenience and opposition from the other party.
- The primary elements for the selection of Perth as a venue was the cost and the convenience to witnesses and counterparties.
- In selecting a seat for arbitration, overwhelmingly the largest consideration was cost. The next most important factor was legislative and court support for arbitration in the selected jurisdiction.
- 24 of 27 respondents would consider Perth as a seat for arbitration. The most cited factors recommending Perth as a seat were convenience (13 responses), cost (7 responses), and the fact that Western Australia is an arbitration friendly jurisdiction (3 responses).
- 4 respondents mentioned counterparty opposition and the possible perception of Perth as non-neutral in disputes involving Australian parties as an obstacle to the selection of Perth as a seat.

WOULD YOU CONSIDER PERTH FOR HEARINGS WHEN IT IS NOT THE SEAT?

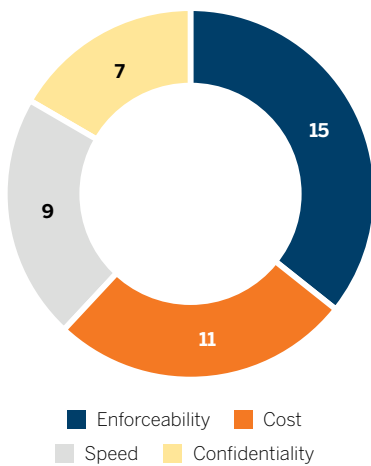


DISINCENTIVES FROM USING ARBITRATION - MOST MENTIONED FACTORS



- For the selection of a venue, respondents paid most regard to the cost (19 responses), the facilities (18 responses), convenience (7 responses) and the local arbitration expertise (6 responses).
- 24 of 27 respondents would consider nominating Perth as a location for hearings. Two of the 'no' responses cited likely opposition from the counterparty.
- Despite the willingness to nominate Perth as a location for hearings, according to respondents that willingness is contingent on the availability of appropriate facilities and the location of witnesses and experts.

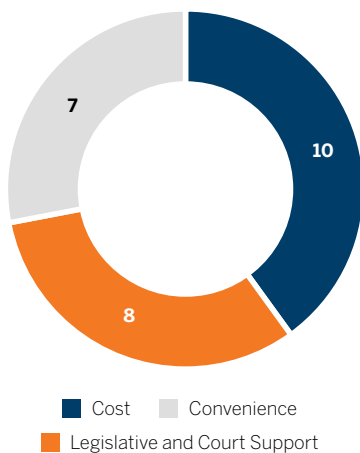
CHOICE OF DISPUTE RESOLUTION METHOD - MOST MENTIONED FACTORS



DRAFTING ARBITRATION CLAUSES

- Of 27 respondents that are involved in the drafting of arbitration clauses, the most important factors were enforceability, cost, speed, and confidentiality.
- Respondents were asked to identify factors that might discourage them from choosing arbitration as a dispute resolution method. The most cited reasons were cost, lack of avenues of appeal, a preference for litigation, and risks/unpredictability associated with nomination of arbitrators.
- Of respondents that gave litigation as an alternative to arbitration, the two key themes were:

MOST IMPORTANT CONSIDERATIONS IN SELECTING A SEAT FOR ARBITRATION



- (i) The cost of arbitration is prohibitive for low value disputes
- (ii) The benefits of arbitration are limited when arbitration processes closely mirror litigation.

Acknowledgments

The WA Arbitration Initiative, together with FTI Consulting and Francis Burt Chambers, wish to acknowledge the contribution of all of the respondents and those that assisted with the preparation of the survey and the surrounding events. The responses we received were detailed and thorough and we appreciate the effort involved for parties to fill out the questionnaire. Industry data cannot be compiled without the full support and cooperation of industry participants and the WA Arbitration Initiative is grateful for the level of support this survey has received and the interest it has generated. We also wish to acknowledge the support of Law in Order, who generously supported the project.



Francis Burt Chambers is proud to support the WA Arbitration Initiative

Members of Francis Burt Chambers have extensive experience acting as counsel and arbitrators in international and domestic arbitrations, particularly those arising from energy, resources and infrastructure projects. Francis Burt Chambers is also the home of FBCMAC which offers facilities for the conduct of arbitrations and mediations.

The logo for Francis Burt Chambers, featuring the name 'Francis Burt' in a white, elegant cursive script.

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Our arbitration specialists regularly testify in treaty and commercial arbitrations before major international bodies, including the ICC, LCIA, SCC, ICDR, ICSID (including NAFTA and ECT disputes), and the Iran-U.S. Claims Tribunal, as well as ad hoc arbitrations, domestic courts and tribunals.

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We can provide valuable insight and clarity through all stages of an arbitration. As a global, multidisciplinary advisory firm, our core business is helping legal teams surround the issues with our unique combination of experts in:



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FTI Consulting is a recognised industry leader in managing e-discovery projects of any scale or complexity. Our e-discovery professionals can work as an extension of your team to develop immediate solutions or establish ongoing best practices that help secure the best possible results for arbitration matters — without cutting corners or imposing limitations. We have been trusted by clients to work on some of the biggest cases making global headlines.

Being a truly global firm, our teams and data centres are located across the world, to ensure your solutions adhere to local data privacy laws and cultural customs.



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Issues of quantum and delay are common in construction disputes.

FTI Consulting's dedicated team of construction experts have in-depth experience in preparing and evaluating claims, analysing delays and costs, and giving evidence at arbitral panels on delay and quantum matters.

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We provide end-to-end accounting, economic and valuation support — from determining if a claim is worth pursuing through to expert evidence if required. In between we are called upon to identify appropriate approaches or methodologies for quantifying damages; evaluate claims for past and future economic loss; and pinpoint the exact type of expertise, evidence and documentation required.

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* including 20 experts from Compass Lexecon, a wholly owned subsidiary of FTI Consulting Inc.



54



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Consulting Firm 3

Consulting Firm 4

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Ranked second in the 2019 Global Arbitration Review (GAR) 100 Expert Witness firms' Power Index



27 professionals recognised as leading construction experts



Methodology

The WA Arbitration Survey was conducted by FTI Consulting on behalf of the WA Arbitration Initiative. Respondents were issued with a confidential identification code that allowed the data to be cleared of duplicate entries and information before results were analysed. Information has not been reported where it can be used in conjunction with other information to reveal the identity of respondents or details of an identifiable arbitration proceeding. The original data is held by FTI Consulting on behalf of the WA Arbitration Initiative.

- Data for many arbitration proceedings was provided more than once due to more than one of the respondents being involved in each arbitration. Duplicate entries have been cleared primarily using information on hearing dates, proceeding identification numbers, dispute values and dispute industries. Where it was not possible to differentiate multiple entries, they have been treated as a single entry. On this basis, errors (if any) in the reported dispute values are likely to have caused underestimation rather than overestimation.
- Several respondents were consulted in the early stages of drafting questions for the survey. Those responding on behalf of law firms, and in-house counsel, were approached prior to the distribution of the survey in order to outline the content, nature, and size of the likely final questionnaire.
- Due to confidentiality obligations of parties to arbitrations, the majority of survey questions were voluntary rather than compulsory. As a result, for example, while data was entered for 105 arbitration proceedings, not each entry contained information regarding tribunal composition, arbitration costs, etc. This has led to some of the reported data coming from a smaller sample size than the total number of respondents and arbitrations reported.



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