

# ARBITRATION IN AUSTRALIA – CONTINUED SUCCESS OVER THE LAST TEN YEARS

**It has now been 10 years since the transformative legal reforms to the Australian Uniform Arbitration Acts. These laws brought the arbitration laws in each Australian state and territory in line with the UNCITRAL Model Law.**

The Australian Centre for International Commercial Arbitration (**ACICA**) recently issued its "Reflections" Report, which reflect upon the substantive developments in international arbitration in Australia over this 10 year period.

This decade has seen not only an increase in the number of Australian arbitrations but also an expansion of Australia's role in the international arbitration community. ACICA has played a key role in promoting, supporting and facilitating that success.

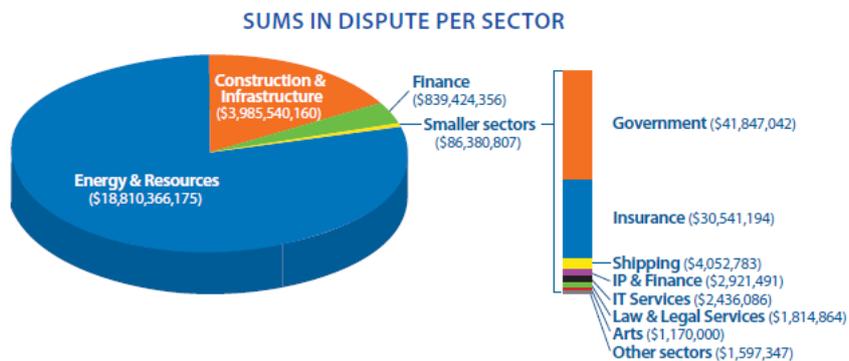
### The ACICA Reflections Report

The ACICA Reflections Report, which can be accessed in full [here](#), was issued to coincide with the 10<sup>th</sup> anniversary of Australian Arbitration Week. It demonstrates a growth in both arbitration in Australia and in the active participation of Australians in international arbitration. According to the [2020 Australian Arbitration Report](#), there have been 223 active arbitrations with an Australian connection for a combined value of more than A\$ 35 billion.

### Seat of Choice for Large and Complex Disputes

Any reflective review of this sort would not be complete without comments on the hard numbers. ACICA has reported that 100 cases have been submitted to ACICA over the last 10 years. These raw numbers are modest; however, they only tell half the story. The cumulative value of the claims in these arbitrations is almost \$24 billion, which compares favourably with Australia's regional neighbours.

The size of the matters demonstrates that Australia remains the venue of choice for large complex disputes. The graphic below shows a breakdown of disputes per industry sector. Unsurprisingly, with Australia's reputation as a resource rich country and a depth of lawyers with industry expertise, ACICA Arbitrations most commonly concerned disputes in the Energy & Resources and Construction sectors.



Most of the disputes involved Australian parties, although 39% of cases had one party not based in Australia and 11% had no parties based in Australia. Foreign claimant parties were most commonly American or Singaporean. It should be noted however that these statistics do not take into account arbitrations where the parent companies are based overseas and the subsidiary party to the arbitration is registered in Australia.

83% of cases were under sole arbitrators. The arbitrators were most commonly appointed by the parties, which reflects the open nature of the ACICA Panel of Arbitrators. There is no obligation on the parties to use arbitrators solely from ACICA's list.

Another welcome trend from the report is the speed of completion of the arbitration, with 54% of arbitrations which proceeded to awards concluded in 1 year and another 29% within 2 years.

This trend is driven by the fact that ACICA plays an active role in management of time to award. The importance of the timely issue of awards is reflected by the fact that the new [ACICA Rules 2021](#) require awards to be issued within nine months after the date that the file was transmitted to the tribunal or three months from the date that the proceedings were declared closed, whichever is the earlier.

## Infrastructure

One of the primary reasons why there has been continued growth of arbitration in Australia is because of the world class arbitration infrastructure in Australia. Australia offers:

- (a) A stable transparent and harmonised legal framework, based on the UNCITRAL Model Law.
- (b) Legal expertise.
- (c) Leading internationalist approach of judiciary and a court system which strongly supports arbitration.

ACICA plays a key role in supporting arbitration by

- (a) Acting as an impartial appointing and administering body for all forms of ADR including acting as the delegated appointing authority for the Federal Court.
- (b) Maintaining panels of international arbitrators and mediators.
- (c) Providing rules and model clauses. The most recent rules were released in April 2021 after a thorough review. These rules reflect modern best practice.
- (d) Improving education and training by hosting seminars, conferences and training sessions.
- (e) Maintaining a Tribunal Secretary Panel.

The ACICA website also includes invaluable arbitration "toolkits" with guides to best practice, pro-forma notices of arbitration and checklists, which are made available for free to the international arbitration community and users of arbitration services, wherever their location.

More recently ACICA has partnered with Dexus to provide high quality arbitration facilities at discounted rates.

## Future

There can be no question that there have been significant developments of arbitration in Australia over the past ten years. The ACICA Reflections Report rightly reflects those developments. However, there is still a significant amount to do, particularly in fields of diversity and reducing the environmental impact of arbitration. ACICA has committed to concentrate on these areas.

It can be anticipated that the next ten years sees ACICA use this strong base to promote Australia as a major centre for international arbitration.

For more information, please contact



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