The Second Aotearoa New Zealand Arbitration Survey

Royden Hindle, Anna Kirk and Diana Qiu

IN COLLABORATION WITH NZDRC

NEW ZEALAND DISPUTE RESOLUTION CENTRE

Te Pokapū Whakatau Tautohe o Aotearoa

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Foreword

In their inaugural Aotearoa New Zealand Arbitration Survey, Royden Hindle, Anna Kirk and Diana Qiu shone a light into the inner workings of a process which makes a vital contribution to the resolution of disputes in New Zealand. By interrogating the arbitrators themselves, they were able to provide a unique insight into how and by whom the arbitral process is being used and, importantly, a profile of those who were being selected to arbitrate. It was a pioneering piece of work.

The second survey will be no less useful. The authors are disappointed that there were fewer responses on this occasion. Whatever the reasons for that, the value of the exercise is undiminished. On the contrary, with the second survey comes the beginning of a longitudinal study which makes it possible to discern trends and detect changes over time. The snapshot has become a moving picture which offers new insights into the way in which arbitration in New Zealand is working. The helpful graphics and tables and the thoughtful commentary complement and enhance the raw data.

The authors of this second survey are to be thanked for another significant contribution to the development of arbitration as a vital component of dispute resolution in New Zealand.

Hon Rodney Hansen, CNZM KC

Introductory Note from NZDRC

NEW ZEALAND DISPUTE RESOLUTION CENTRE
Te Pokapū Whakatau Tautohe o Aotearoa

Arbitration continues to serve as a vital component of New Zealand's dispute resolution landscape, offering parties an effective alternative to traditional court proceedings. This survey provides valuable insights into the current state and trends within our arbitration community, helping to inform practitioners, institutions and policy makers about the evolving nature of this important field.

The New Zealand Dispute Resolution Centre ("NZDRC") is pleased to support the second Aotearoa New Zealand Arbitration Survey, prepared by two of our arbitration panellists, Royden Hindle and Dr Anna Kirk, together with Wellington junior barrister Diana Qiu.

While this second survey experienced a lower response rate compared to the inaugural report, the data collected still demonstrates robust levels of arbitration activity. The strong numbers of appointments recorded reflect the continuing confidence in arbitration as a dispute resolution mechanism. It is important to note that these figures are necessarily limited by the number of arbitrators who were able to dedicate time to participate in the survey, and we would expect the actual number of appointments across the sector to be considerably higher.

One particularly encouraging finding is that the average length of arbitration proceedings remains under 11 months. This positions arbitration favourably against the lengthy delays currently being experienced in our court system, reinforcing arbitration's value proposition as an efficient dispute resolution process.

When we commented on the first report, we expressed hope that by the time of this second survey, we would see improvements in diversity within the arbitration community. Unfortunately, this has not materialised to the extent we had hoped, with both gender and ethnic diversity remaining areas of concern. However, there is an interesting development worth noting: in the 40 to 50 years age group, female arbitrators outnumbered their male counterparts. It will be fascinating to observe how this demographic shift develops over time and whether it signals broader change ahead for the profession.

The survey reveals an encouraging increase in the use of NZDRC's arbitration rules, which reflects growing confidence in our processes and procedures. We are also pleased to see the continuing utilisation of audio-visual link ("AVL") facilities, which not only assists in managing the costs associated with arbitration proceedings but also supports broader environmental and sustainability initiatives.

An intriguing observation from the data is that the predominant approach to arbitrator fees remains hourly or daily rates, with fixed rates only being reported in cases where arbitration was conducted through an institution like NZDRC. This will be worth monitoring closely, particularly in light of some law firms moving away from traditional six-minute time-cost billing structures. The evolution of fee structures in arbitration may well reflect broader changes in legal service delivery, and we would wholly support any initiatives that promote greater access to arbitration services by those who can benefit from them.

This research provides invaluable insights into the health and direction of arbitration in New Zealand. The work undertaken by Royden, Anna and Diana, in collaboration with our team at NZDRC, contributes meaningfully to our understanding of the sector and helps identify both opportunities and challenges ahead.

We remain committed to supporting this important initiative going forward. The continuation of this survey will enable us to track trends, measure progress and ensure that arbitration continues to evolve in ways that best serve the needs of all participants in the dispute resolution process.

Catherine Green **DIRECTOR, NZDRC**

Overview

We are proud to present this report setting out the results from our second survey of arbitration practice in Aotearoa New Zealand ("**Second Survey**").

The Second Survey covers the period from 1 January 2021 to 31 December 2022. Together with the Inaugural Aotearoa New Zealand Arbitration Survey (2022) ("**Inaugural Survey**"), we now have access to a significant amount of data on arbitration in New Zealand across four consecutive years. This data provides insights into arbitral practice and procedure in New Zealand, allowing us to evaluate arbitration's place in the dispute resolution landscape.

There was a noticeable drop in the number of arbitrators responding to the Second Survey and the number of arbitrations reported. It is not known if this represents a drop in the use of arbitration or simply survey fatigue. Nonetheless, despite the lower response rate, there were still 159 arbitral appointments reported over the two-year period by 35 arbitrators. Given we know that this is the minimum number of arbitrations taking place, we are confident that arbitration is contributing significantly to dispute resolution in New Zealand.

One of the most interesting findings in the Second Survey is that the **average** length of time from appointment of an arbitrator to issuing a substantive award was **10.65 months**, with a **median** time of **7 months**. The average length of an arbitration is very similar to that found in the Inaugural Survey (10.85 months). We obtained more information in the Second Survey about the length of time arbitrations were taking, as we asked about all awards issued during the two-year survey period and not just about awards issued for appointments that took place during the survey period.

It is gratifying to see that the much wider Second Survey produced results similar to the smaller data set in the Inaugural Survey. It is also gratifying to see that arbitration offers an efficient and quick form of dispute resolution, when compared with litigation. The delays in the High Court post-Covid are widely reported, with the average time from a case being "ready for hearing" to hearing date currently sitting at 573 days. From a commercial perspective, unless delay is the aim, arbitration is likely to offer a far more effective method of dispute resolution. Moreover, these results demonstrate that arbitration could be a key pillar in the solution to court delays, by taking pressure off the over-burdened court system so that time can be freed up for those cases that cannot or should not be arbitrated.

On a less upbeat note, it is disappointing to see little progress on increasing the diversity of arbitrators, particularly in relation to ethnic diversity. Unlike the Inaugural Survey, all respondents identified as NZ European/Pākehā in the Second Survey, suggesting a reduction in diversity. Gender diversity remained similar, with clear evidence that institutions were responsible for most (but not all) appointments of female arbitrators.

Finally, it was interesting to see that lease arbitrations dominated the subject matter of arbitrated disputes, accounting for 52% of the arbitrations. This was a change compared to the Inaugural Survey which showed a more even spread between different subject matters. It was also interesting to see a rise in the number of arbitrations conducted under institutional rules. While most arbitrations are ad hoc (governed only by the Arbitration Act 1996), there was a significant increase in the use of rules, particularly those offered by NZDRC.

Royden Hindle

Anna Kirk

Diana Qiu

Methodology

This report sets out the results of the Second Survey which focuses on the two years from 1 January 2021 to 31 December 2022.

Like the Inaugural Survey, we specifically targeted arbitrators to minimize the risk of duplicating reported arbitrations. While this narrow focus may lead to the omission of some cases, we are confident that the data collected represents a conservative estimate of the overall arbitration landscape in New Zealand. The actual number of arbitrations during the survey period is likely higher than what is reported, but we prefer to under-report than over-report the number of arbitrations.

Survey Scope: The Second Survey focused on tribunal appointments that occurred between 1 January 2021 and 31 December 2022. This means that arbitrations initiated before 2021 that were ongoing during the period were not included. Appointments in late 2022 were included, even though the majority of the proceedings may have occurred after the relevant time period.

Anonymity and Confidentiality: We ensured that the Second Survey was anonymous and confidential by framing questions to prevent the identification of individual arbitrators or specific cases. We did not attempt to verify respondents' identities or challenge the information provided, except in cases where responses were evidently incorrect (for example, a repeat or test response).

Data Collection Structure: Unlike the Inaugural Survey, we did not split the Second Survey into two separate parts. Instead, we asked for information about the arbitrator and then asked for information about the individual appointments, all within the same section of the survey. This was to allow us to analyse data more effectively about how appointments were made and whether there was any correlation between arbitrator traits and the type of appointment they received.

We asked many of the same questions as in the Inaugural Survey, but with some minor changes to reflect the findings of the Inaugural Survey. We gathered demographic information about the arbitrators, including age, gender, ethnicity, qualifications, and total appointments during the survey period.

We also asked for the number of months it took arbitrators to issue any awards that were finished during the survey period. We collected detailed information about individual arbitrations, but this time we linked this data to the arbitrator so we could analyse which arbitrators were receiving different types of appointments. Given the level of detail required, many arbitrators did not complete detailed information for all of their appointments.

Survey Timeline and Outreach: The Second Survey was launched on 22 May 2023, and was initially set to close on 19 June 2023, but was extended to the end of July 2023 to accommodate those who required more time. We sent multiple reminders to encourage participation.

It was distributed to members of NZDRC, AMINZ, and other legal and professional organisations. We also personally contacted active arbitrators, law firms, barristers' chambers, and reached out to non-lawyer arbitrators through various societies.

Limitations: For technical reasons, the Second Survey allowed an arbitrator to provide detailed information for up to 10 appointments. If an arbitrator wanted to provide information for more appointments, a second template had to be generated. This created some difficulties, and we identified some data that was temporarily omitted. We were able to recover this data and made an effort to ensure that all other data was checked and counted. While we have used our best efforts to ensure the data is correct, we cannot be completely sure that some data was not inadvertently lost. Challenges in sorting the data and retrieving lost data led to considerable delays in releasing the survey results.

Acknowledgments: We sincerely thank all arbitrators for their contributions, which provide critical insights into the state of arbitration in Aotearoa New Zealand. The Second Survey was hosted on a platform provided by NZDRC, which also managed data collection and preliminary analysis. A particular thank you to Natalia Villa from NZDRC who spent many hours pulling the data together for analysis.

All results are derived from data provided by survey respondents and are therefore subject to any errors and omissions in the original data.

Highlights

Key statistics from the survey were:

35	Number of arbitrators that responded: **35 arbitrators.**
159	Number of appointments: **159 appointments.**
94	Number of arbitrations for which Part 2 (detailed) information was provided: **94 arbitrations.**
29%	Arbitrators: • **Diversity (gender):** Of the arbitrators who responded almost 29% were women. Women received approximately 20% of the reported arbitral appointments. Of the appointments received by women, 77% were from institutions. • **Diversity (ethnicity):** all the arbitrators who responded to the survey this year identified as NZ European/Pākehā.
10.65	Average time to substantive award: **10.65 months.**
7	Median time to substantive award: **7 months.**
90%	Domestic arbitration: **90%** of the reported arbitrations were domestic.
83%	Use of arbitral rules: **83%** of arbitrations were conducted under the Arbitration Act 1996, without using any additional arbitral rules or institutional supervision.
52%	Subject matter of arbitrations: **52% lease-related matters;** 21% company/ commercial/contract matters; 17% building/construction matters.
3.3	Average hearing length: **3.3 days.**
60%	Number of substantive hearings using some form of AVL technology: **60%.**
31%	Number of arbitrations that settled: **31%.**

Arbitral appointments in 2021–2022

We received responses from **35 arbitrators** who reported a total of **159 appointments** between 1 January 2021 and 31 December 2022.

Of these 159 appointments, respondents provided us with **detailed information about 94 arbitrations** (59%).

The number of arbitrators who recorded appointments during the 2021–2022 Second Survey period was lower than in the 2019–2020 Inaugural Survey period, in which we reported 56 arbitrators receiving appointments (a reduction of 37.5%). Whether this reduction is due to "survey fatigue" or reflects a narrowing of the pool of arbitrators being appointed is unknown. However, it does appear that preferred arbitrators are receiving more appointments. In the 2021–2022 period, 4 arbitrators (11%) received more than 10 appointments (including 2 arbitrators who received more than 20 appointments each), and an additional 5 arbitrators received more than 5 appointments. Overall, only 26% of those arbitrators who responded to the Second Survey received more than 5 appointments over the two-year period. The remaining 26 arbitrators (74%) were appointed between 1–5 times over the survey period.

In the Inaugural Survey period, in which 213 individual appointments were recorded, no individual arbitrator received more than 20 appointments and only 4 arbitrators (7%) received more than 10 appointments. Those receiving more than 5 appointments each comprised 21% of the total responding arbitrators.

Of the 159 appointments made over the Inaugural Survey period, 46 appointments (29%) were shared between just 2 arbitrators. The 4 arbitrators who received more than 10 appointments accounted for 45% of the total appointments (72 appointments in total), with the remaining 55% of appointments shared by the other 31 responding arbitrators. In the Inaugural Survey, the greatest number of appointments any one arbitrator received was 14. By contrast, in the Second Survey period, 3 arbitrators reported receiving more than 14 appointments.

This data suggests there is a tendency towards repeat appointments of a few prominent arbitrators, but that there remains a considerable spread of appointments amongst less prominent (and possibly more junior) arbitrators.

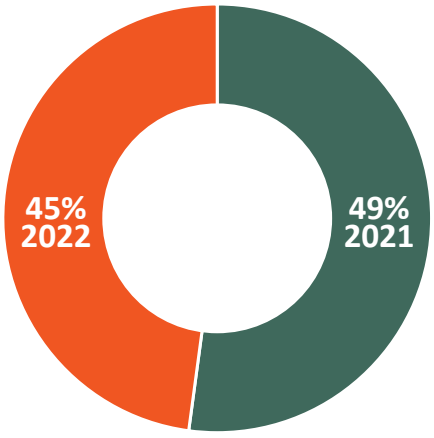
ARBITRATIONS PER YEAR

We asked respondents to provide the month and year in which they were appointed.

Of the 94 arbitrations for which detailed information was provided, there was a reasonably even split between appointments in 2021 and 2022, as shown in Figure 1.

The relatively even split between years is consistent with our findings in the Inaugural Survey. Notably, it appears that the COVID-19 pandemic (which included lockdowns in both survey periods) had little to no effect on the commencement of arbitrations across the four years that have been surveyed.

FIG 1: NUMBER OF APPOINTMENTS PER YEAR



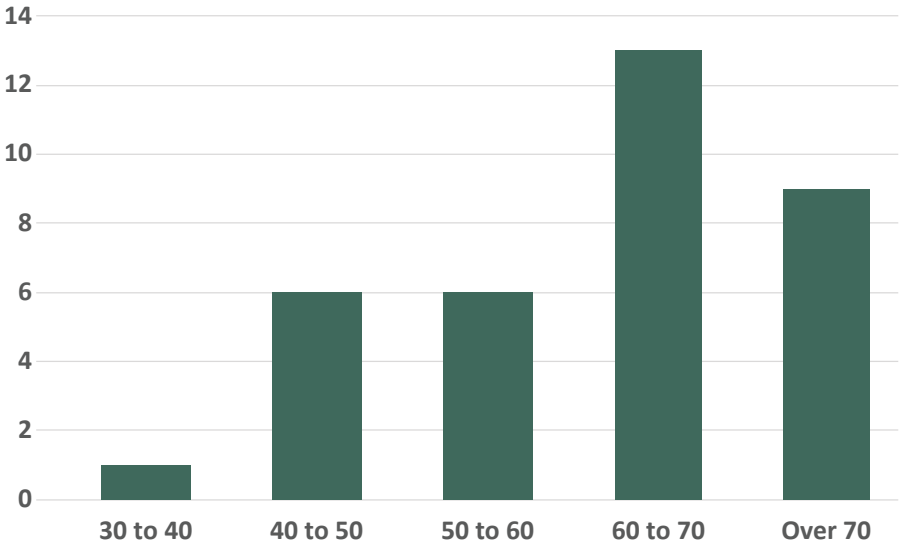
Part 1: The Arbitrators
A. Arbitrator Statistics

The data collected in Part 1 of the Second Survey allowed us to take a deeper look at who is being appointed as arbitrators in New Zealand. We asked arbitrators to indicate their age bracket, gender identity, ethnicity, any qualifications held and any relevant professional associations or bodies to which they belong.

Age of Arbitrators

Figure 2 shows the spread of ages amongst those who received appointments during the survey period:

FIG 2: NUMBER OF ARBITRATORS PER AGE GROUP



The single largest age bracket for respondents was the “60 to 70” category. Arbitrators aged over 60 years accounted for 22 (63%) of the respondents to the survey. There was also only 1 arbitrator in the 30 to 40 years age bracket and none under 30 years old.

The statistics suggest a modest change in arbitrator preference as compared to the Inaugural Survey. While it is clear that most appointments are of senior members of the profession, in the Inaugural Survey the largest number of arbitrators was over 70 years of age. Remarkably, only 9 responding arbitrators stated they were over 70 years old, down from 21 arbitrators in Inaugural Survey. This suggests that there has been a significant number of retirements and/or a shift in party appointment preferences (it is also possible that “survey fatigue” is more prominent in this age group).

In the Inaugural Survey, 19 responding arbitrators were under 60 years of age. This number reduced slightly to 13 responding arbitrators in the Second Survey period. The number of responding arbitrators in the 60 to 70 years age bracket was very similar (13 in the Second Survey period versus 16 in the Inaugural Survey period).

Interestingly, as shown in Figure 3 below, despite the significant reduction in the number of arbitrators aged over 70 years, arbitrators in this category received the most appointments, accounting for 36% of all appointments (total of 58 out of 159 appointments). This was very closely followed by arbitrators in the 60 to 70 years age bracket, who received a total of 54 appointments (or 34%). As was the case in the Inaugural Survey, arbitrators aged over 60 years received the vast majority of appointments (70% of all appointments).

FIG 3: NUMBER OF APPOINTMENTS PER AGE GROUP

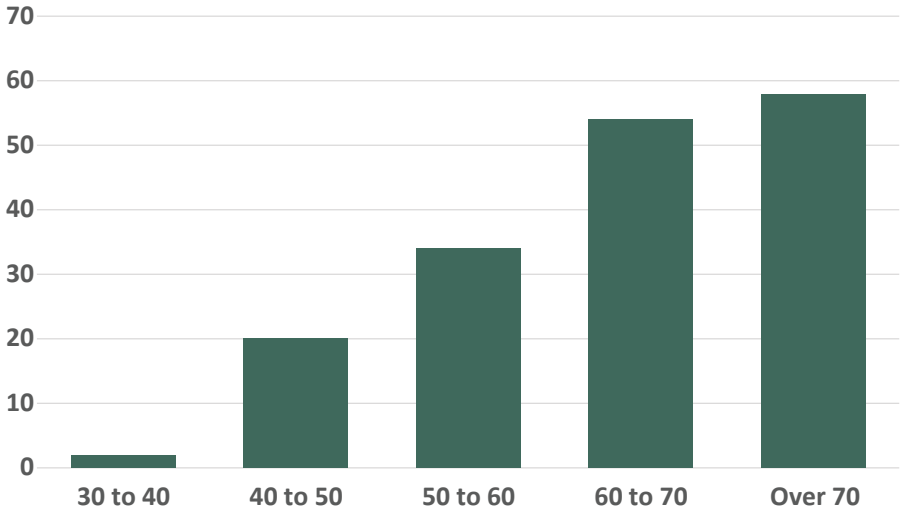
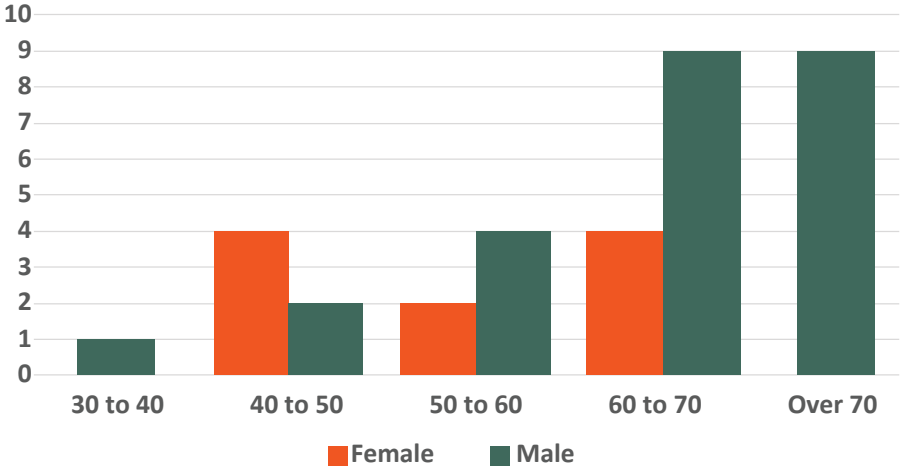


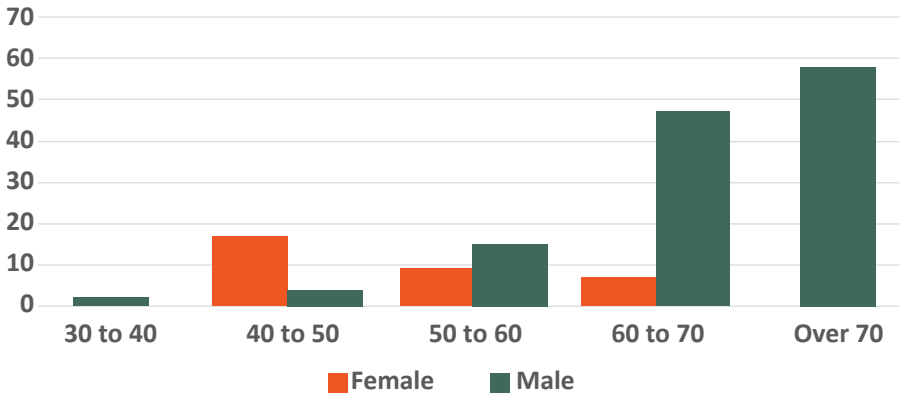
Figure 4 below shows the gender split of arbitrators within each age group. As the graph shows, none of the responding arbitrators aged over 70 years or under 40 years was female.

FIG 4: NUMBER OF ARBITRATORS PER AGE GROUP AND BY GENDER



In total, 4 of the 22 arbitrators aged over 60 years were women. This is significant as the over 60 years age group received 70% of appointments, as noted above. However, also of significance is that female arbitrators outnumbered male arbitrators in the 40 to 50 years age bracket by a ratio of 2:1 (the inverse of the 50 to 60 years age bracket).

FIG 5: NUMBER OF APPOINTMENTS PER AGE GROUP AND BY GENDER



As Figure 5 shows, female arbitrators in the 40 to 50 years age bracket received 17 appointments compared to only 4 appointments of male arbitrators. Moreover, the 2 female arbitrators in the 50 to 60 years age bracket received a total of 9 appointments, compared with 15 appointments shared between the 4 male arbitrators in this age group. These figures bode well for improving the gender parity of arbitral appointments in future years.

Figure 5 also demonstrates the gender inequity that currently exists in the older age brackets, with the 4 female arbitrators aged over 60 years receiving a total of 7 appointments, compared to 105 appointments for male arbitrators in this age group.

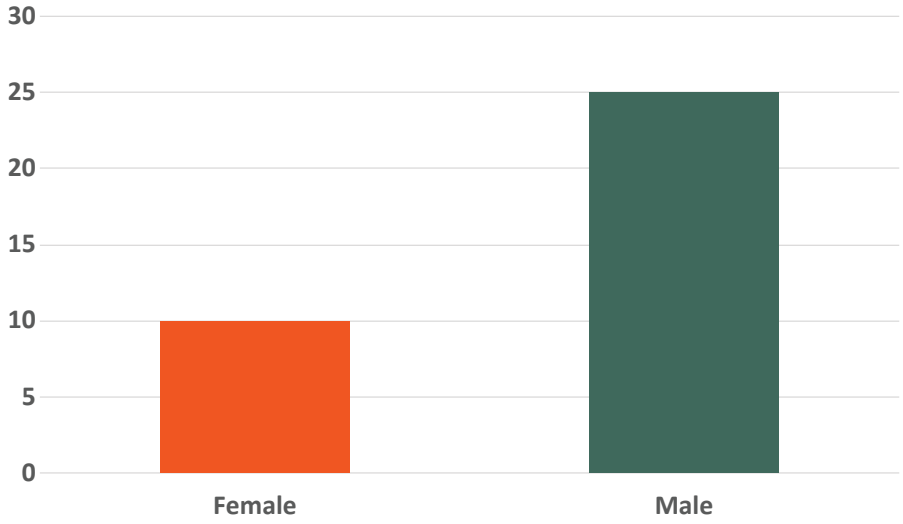
Future surveys should continue to track the improved gender split in younger arbitrators and whether this leads to improvement in the number of female arbitrators who are appointed in the 60 years or over age bracket, where most of the work lies. Based on the data collected, it appears that there has been a modest shift in the arbitrator demographic.

Arbitrator Gender

Of the arbitrators who responded to the Second Survey, 29% were female (10 out of 35), as demonstrated in Figure 6. This is an increase from the Inaugural Survey, where women represented 20% of responding arbitrators, although the total number of female arbitrators fell by 1 (11 female arbitrators responded to the Inaugural Survey).

All responding arbitrators recorded their gender as either male or female (the survey included the ability to specify non-binary / gender diverse).

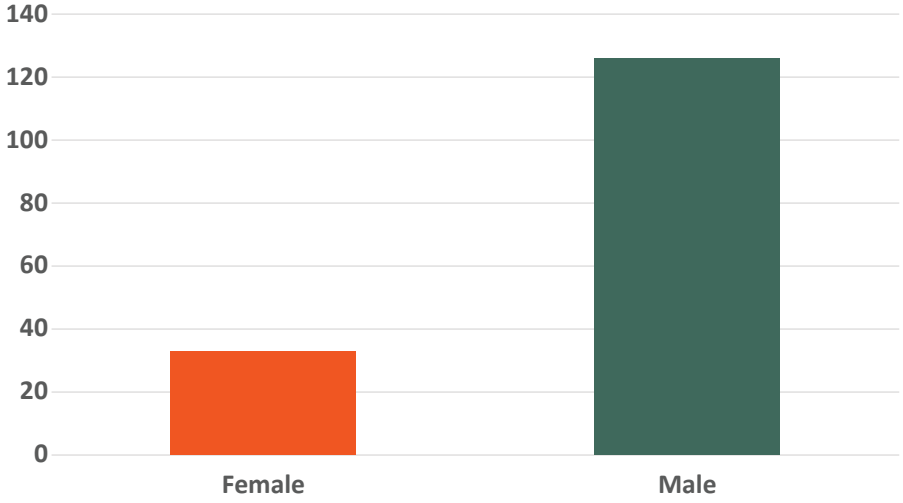
FIG 6: NUMBER OF ARBITRATORS BY GENDER



Female arbitrators tend to be comparatively younger than their male counterparts, with 60% of female arbitrators being under 60 years old compared to 28% of male arbitrators. This statistic is important because, as noted above, the majority of appointments (around 70%) are of arbitrators aged over 60 years.

Female arbitrators received a total of 33 out of 159 appointments during the survey period, making up just over 20% of the total appointments. This is shown in Figure 7.

FIG 7: NUMBER OF ARBITRATIONS BY GENDER



Three female arbitrators received more than 5 appointments over the two-year period. These 3 arbitrators received a total of 22 appointments between them (14% of all appointments). The remaining 7 female arbitrators (66%) reported less than 5 appointments each.

Interestingly, 76% of the male arbitrators who responded to the Second Survey also reported receiving less than 5 appointments. Six male arbitrators received more than 5 appointments each over the two-year period, but between them these arbitrators accounted for a total of 87 appointments (55% of all appointments).

Of the 33 arbitrations with a female arbitrator, we received detailed information about 28 of those appointments (85%). This detailed information was provided by 8 of the 10 female arbitrators.

Of those 28 arbitrations, 20 appointments (71%) were made by institutions (6 by NZDRC, 6 by the New Zealand Law Society ("**NZLS**"), 6 by AMINZ and 2 by other institutions). Seven appointments (25%) were made by the parties and 1 appointment was made by the co-arbitrators.

Of the 8 female arbitrators who provided detailed appointment information, 3 of them received all of their appointments from institutions and 4 of them received all but 1 of their appointments from institutions. The final female arbitrator received 4 out of 8 appointments from institutions. Disputes involving leases accounted for 18 of the appointments (65%), with 4 cases concerning company/commercial/contract issues (12%), and another 4 cases concerning construction issues (15%). Two cases involved other issues; namely, insurance and public international law issues.

We also analysed the data from male arbitrators regarding the source of appointment. The data here is less reliable as we received detailed appointment information for only 51% of appointments (64 out of 126 appointments[1]). Of these 64 appointments, 36 were made by the parties (56%), 27 were made by institutions (6 by NZDRC, 8 by NZLS, 8 by AMINZ and 5 by other institutions) and 1 appointment was made by the co-arbitrators. However, it is expected that these numbers could alter significantly if detail were provided for the remaining 62 appointments. This is because many of those appointments were those of the arbitrators reporting the highest number of cases. It is likely that these arbitrators are popular party choices. From the data provided by male arbitrators who received more than 5 appointments in the survey period, party appointments accounted for around 75% of appointments and only 1 of those arbitrators reported receiving more appointments from institutions than from parties.

Of the 43 appointments made by the parties in the survey period, 16% were of female arbitrators (7 appointments). Of the 47 appointments made by institutions in the survey period, 42.5% were of female arbitrators. As noted above, these statistics may be skewed by the fact that female arbitrators provided detailed appointment information for a much larger percentage of appointments than was the case for male arbitrators. It nonetheless appears evident that female arbitrators rely more heavily on institutions as an appointment source than male arbitrators.

This is consistent with conventional wisdom that institutions are at the forefront of diversification of the pool of experienced arbitrators. This is borne out in the appointment data of the New Zealand institutions. NZDRC made 12 arbitral appointments, with 50% of them being female arbitrators. AMINZ appointed female arbitrators in 34% of cases in 2021–2022 (12 out of 35 appointments) and NZLS appointed female arbitrators in 24% of cases (8 out of 34 appointments).

In general, overseas institutions report appointing a much larger proportion of female arbitrators than parties. For example, the Australian Centre for International Commercial Arbitration ("**ACICA**") has publicly stated that in 2022 and 2024, 50% of its appointments were of female arbitrators, compared with no female arbitrators appointed by parties. It is clear that party appointments of women both in New Zealand and overseas lag behind those of appointment authorities and arbitral institutions.

1 *We received detailed information about 66 arbitrations from male arbitrators, but no information was provided about who made the appointment in 2 of those cases.*

Arbitrator Ethnicity

All the arbitrators who responded to the Second Survey recorded their ethnicity as NZ European/Pākehā.[2] This suggests that the pool of arbitrators is becoming less ethnically diverse when compared to the results of the Inaugural Survey, in which 1 arbitrator was Māori and 2 were of Asian descent.

The lower response rate to the Second Survey may have impacted these results, but the inevitable conclusion is that no progress has been made in the area of ethnic diversification. This is a significant issue, as anecdotal evidence suggests that Asian parties make up a significant proportion of those involved in civil disputes in New Zealand, reflecting the growing population.[3] Moreover, according to NZLS's "Snapshot of the Profession 2024", almost 12% of New Zealand lawyers identify as Asian and 7.3% identify as Māori (rising to 11.1% if Pacific lawyers are included). There is clearly a need to address ethnic diversity in the pool of available arbitrators to ensure it reflects the communities it serves.

New Zealand is not alone in facing diversity challenges in arbitration. A recent study of the ethnic diversity of arbitration panels by the International Bar Association found that only 20% of respondents rated arbitral panels as "somewhat" or "very" diverse.[4] Interestingly, 96% of the respondents to that survey said that ethnic diversity had (at least) some impact on the perceived legitimacy of arbitration.[5]

Arbitrator Qualifications / Affiliations

The results of the Second Survey showed that the vast majority of arbitrators are legally qualified, with 31 of the 35 respondents having law degrees (86%). The remaining respondents had degrees in business-related dispute resolution, quantity surveying, or valuation and property management.

Of the arbitrators who are legally qualified, most (55%) had a post-graduate legal qualification. The majority of post-graduate qualifications were LLMs (65% or 11 out of 17), with the remaining post-graduate qualifications being Doctorates (24% or 4 out of 17) and Postgraduate certificates/diplomas (12% or 2 out of 17).

The vast majority of arbitrators (97%) were members of AMINZ, of which approximately two thirds were Fellows of AMINZ. Of the arbitrators who were members of AMINZ, approximately one third were also members and Fellows of the Chartered Institute of Arbitrators based in London.

Most arbitrators were members of NZDRC and/or AMINZ arbitration panels (as well as various other panels and lists operated by these organisations). Several arbitrators were also members of a variety of international arbitration panels.

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2 *There was one exception — one arbitrator who recorded their ethnicity as North American.*

3 *See, for example, "Disputes involving Asian parties clogging up courts" (25 March 2025) Radio New Zealand <www.rnz.co.nz>.*

4 *International Bar Association Arbitration Committee Study on Ethnic Diversity in International Arbitration (2025) at 10.*

5 *Only 3.77% of responding parties said that ethnic diversity had no impact at all on perceived legitimacy, with the majority of respondents considering that ethnic diversity impacted legitimacy "somewhat" (37%) or "to a large extent" (35%): International Bar Association Arbitration Committee, above n 5, at 11.*

B: Length of time to issue awards

Unlike the Inaugural Survey, in the Second Survey we asked arbitrators to indicate how many substantive awards they issued during the two-year survey period, regardless of when the arbitral appointment took place. We also asked arbitrators to indicate how long after their appointment the substantive awards had been issued.

In total, the responding arbitrators indicated they had issued 102 substantive awards between 1 January 2021 and 31 December 2022.

Of these awards, 77 (75.5%) were issued within 12 months of the arbitrator's appointment. Only 25 awards (24.5%) were issued more than 12 months after the appointment had been made. The **median** amount of time between the arbitrator's appointment and the arbitrator issuing the substantive award was **7 months**, with the **average** being **10.65 months**.[6]

The shortest length of time between appointment and substantive award was 2 weeks. The longest length of time was 5 years (60 months). We did not ask the arbitrators for any explanation regarding the length of time it took to issue the substantive award.

A breakdown of the data collected is shown in the table below.

FIG 8: MONTHS TO SUBSTANSIVE AWARD

Months	1[7]	2	3	4	5	6	7	8	9	10	11	12
Awards	2	5	3	6	8	16	6	1	1	14	2	12

Months	13	14	15	16	17	18	19	20	21	22	23	24
Awards	2	2	2	0	2	3	1	0	1	1	2	2

Months	25	26	27	28	29	30	...	37	...	43	...	60
Awards	2	0	0	1	0	1	...	1	...	1	...	1

As noted above, in the Inaugural Survey we did not request this data. However, for each appointment that was made during the Inaugural Survey period we did ask if an award had been issued and, if so, how long after the appointment it was issued. We were provided with data for only 29 awards, but the average length of the arbitration indicated by that data was almost identical. In the report of the Inaugural Survey, we calculated that the average length of an arbitration for disputes between $350,000 and $3 million was 10.7 months. The information we have collected in the Second Survey provides a much larger data set, confirming the average and median length of arbitrations in New Zealand. From this information, we can confidently conclude that the vast majority of arbitrations are completed within one year of the arbitrator's appointment.

6 *When calculating the average, we removed the shortest and longest awards (considering them to be outliers) and calculated the number of months it took for the remaining awards to be issued, divided by 100.*

7 *Includes awards issued in less than 1 month.*

Part 2: The Arbitrations

As described in the methodology, we gave responding arbitrators the opportunity to give us more detail about some or all of their arbitral appointments.

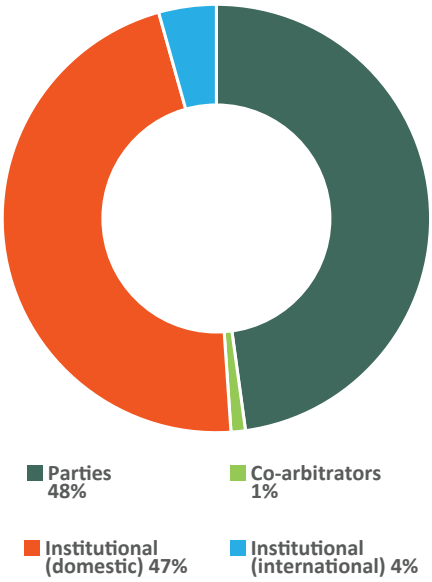
We received detailed information on 94 out of 159 appointments.

A. INFORMATION ABOUT DISPUTES

Appointments

We asked arbitrators for information about who appointed them — the parties or an institution? For two arbitrations, this question was left blank. Of the remaining 92 reported arbitrations, 44 arbitrations involved appointments made by the parties (48%), 1 appointment was made by the co-arbitrators, and the remaining 47 appointments were made by institutions (51%) (of which 43 were made by domestic institutions and 4 by international institutions). These results are shown in Figure 9.

FIG 9: NUMBER OF APPOINTMENTS MADE BY PARTIES AND INSTITUTIONS



Of the 44 appointments made by the parties, 7 appointments were of female arbitrators (16%). Of the 43 appointments made by domestic institutions, 18 were of female arbitrators (42%). Domestic-appointing institutions included NZLS (14 appointments); NZDRC (12 appointments); AMINZ (14 appointments); the Auckland District Law Society (2 appointments) and the Retirement Commission (1 appointment).

Of the 4 appointments made by international institutions, 2 appointments were of female arbitrators (50%). Three appointments were made by the Singapore International Arbitration Centre ("SIAC") and 1 appointment was made by the International Centre for Settlement of International Disputes ("**ICSID**").

As noted earlier, AMINZ reported that in 2021–2022, it made 35 appointments. Of those 35 appointments, 12 were women (34%). NZLS made 34 appointments over the survey period, 8 of which were women (24%). NZDRC made 12 appointments over the survey period of which 6 were women (50%). In total, New Zealand's three main appointing institutions reported making 81 appointments over the survey period, 55 of whom were men (68%).

In total, these three institutions appointed women in 26 arbitrations over the two-year period. When combined with the 2 appointments by overseas institutions, 28 women were appointed as arbitrator by institutions, compared with 8 appointments from other sources[8] (36 appointments in total). As only 33 appointments were reported by female arbitrators responding to our survey, we know that at least 3 arbitrations in which female arbitrators were appointed are missing from our survey data.

8 *Seven from parties and 1 from co-arbitrators.*

We cannot undertake the same analysis for appointments of male arbitrators as we only obtained detailed appointment information for 64 arbitrations out of the reported 126 appointments. Of these 64 appointments, 27 were made by institutions (23 being by NZLS, AMINZ and NZDRC). While we are aware that these three main appointing institutions made 55 appointments of male arbitrators over that time, we do not know if the remaining 32 appointments are included in the 62 arbitrations that were reported but for which no detailed appointment information was provided.

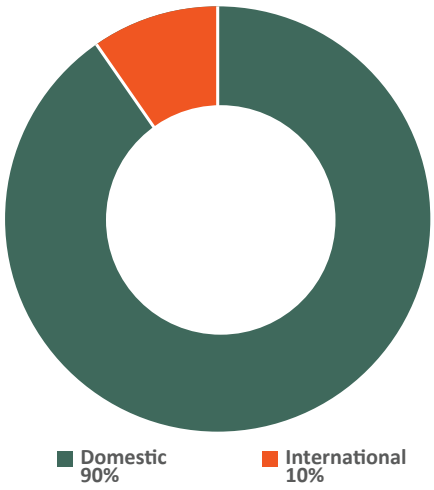
In addition to the 55 appointments from the three main institutions, 4 male arbitrators were appointed by other institutions, making a total of 59 institutional appointments of male arbitrators over the survey period. If 59 of the total 126 (male) appointments were made by institutions, it is reasonable to assume that the remaining 67 appointments (53%) were made by the parties (or co-arbitrators). Of course, it is likely that not every appointment has been captured in the survey data, but based on the information available to us, it seems reasonable to conclude that at least 53% of appointments received by male arbitrators came directly from parties (or co-arbitrators). In reality, the figure is likely to be higher.

The data indicates that institutional appointments are a significant source of work for all arbitrators in New Zealand, but more so for women. To this end, institutions are the main method of diversifying the pool or arbitrators, as party appointments overwhelmingly favour male arbitrators. It is expected that institutions will continue to play a key role in all forms of diversity (including promoting ethnic diversity) in the future.

Domestic v International

The survey results showed that 85 of the 94 arbitral appointments in the survey period for which detailed information was provided were in relation to domestic arbitrations (90%) whereas the remaining 9 were international arbitrations (10%). Figure 10 shows these results.

FIG 10: PROPORTION OF DOMESTIC AND INTERNATIONAL ARBITRATIONS



The vast majority of the domestic arbitrations were conducted under the Arbitration Act. Eight domestic arbitrations were conducted under institutional rules, 1 was conducted via ad hoc rules and 1 was conducted by procedures stipulated by legislation other than the Arbitration Act.

Of the international arbitrations, 3 were conducted under the Arbitration Act and 6 were conducted under the auspices of international institutions.

Sole Arbitrator v Three Member Tribunal

Of the 94 arbitral appointments in the survey period for which detailed information was provided, 5 were of appointments made to a three-person tribunal, including three that involved an “umpire”. The remaining appointments were of a sole arbitrator.

Three of the 5 appointments made to a three-person tribunal concerned a domestic arbitration, with the remaining 2 appointments being international arbitrations. All 3 domestic arbitrations run by three-person tribunals concerned lease-related disputes (either cross-lease or rent review). Information on the sum of money claimed in these arbitrations was not provided, although the relief sought in one arbitration was the quantification of rent.

Rules

As noted earlier, few domestic arbitrations were conducted under arbitration rules, whether institutional or ad hoc. This accords with anecdotal evidence that parties prefer to use the Arbitration Act and most domestic practitioners are not used to (nor familiar with) arbitration rules.

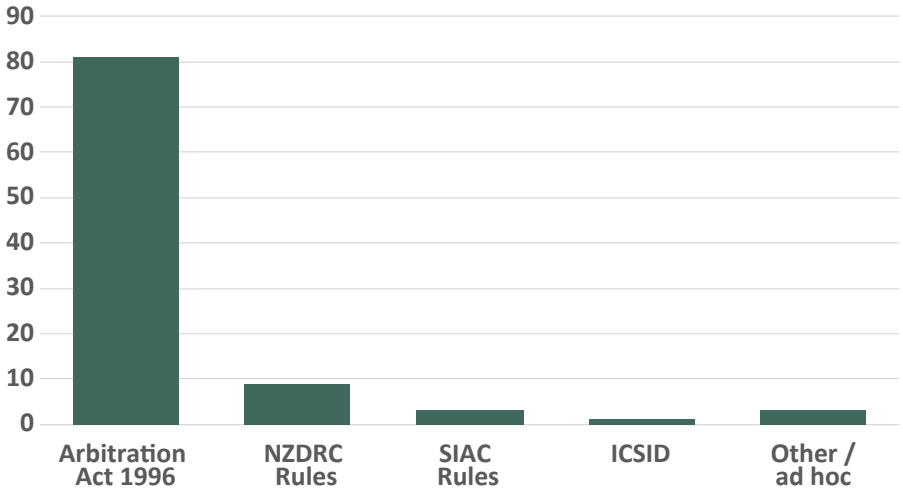
Of the 94 arbitrations for which we received detailed information, 78 (83%) were conducted under the Arbitration Act. This figure comprised 75 domestic arbitrations and 3 international arbitrations.

The remaining 10 domestic arbitrations were conducted under the NZDRC Rules (8 arbitrations), ad hoc rules (1 arbitration) or procedures stipulated by legislation (1 arbitration).

For those domestic arbitrations conducted under the NZDRC Rules, 5 involved lease-related issues and 3 involved construction/building issues. The arbitration for which ad hoc rules were applied involved lease-related issues and the legislation-related arbitration involved a property dispute.

Of the 9 international arbitrations, 3 were conducted under the Arbitration Act (as noted above), 3 were conducted under the SIAC Rules, 1 was conducted under the ICSID Rules, 1 was conducted under the rules of an unspecified international institution and 1 was conducted under the NZDRC Rules. These results are shown together in Figure 11.

FIG 11: NUMBER OF ARBITRATIONS CONDUCTED UNDER EACH SET OF RULES



While ad hoc arbitration under the Arbitration Act remains the preference in New Zealand, there has been a notable increase in the use of institutional rules for domestic arbitration since the Inaugural Survey. As reported then, in the period from January 2019 to December 2020, only 3 domestic arbitrations (4%) were conducted under institutional rules. This figure has increased more than three-fold to 10 domestic arbitrations in the Second Survey period (2021–2022), representing 12% of domestic arbitrations being conducted using institutional rules.

Interestingly, the use of institutional rules in domestic arbitration in New Zealand is far lower than in Australia. Data collected on arbitrations that occurred between 2016–2019 suggests that around 70% of domestic arbitrations in Australia were conducted using institutional rules, with the Resolution Institute Rules being the most popular.[9]

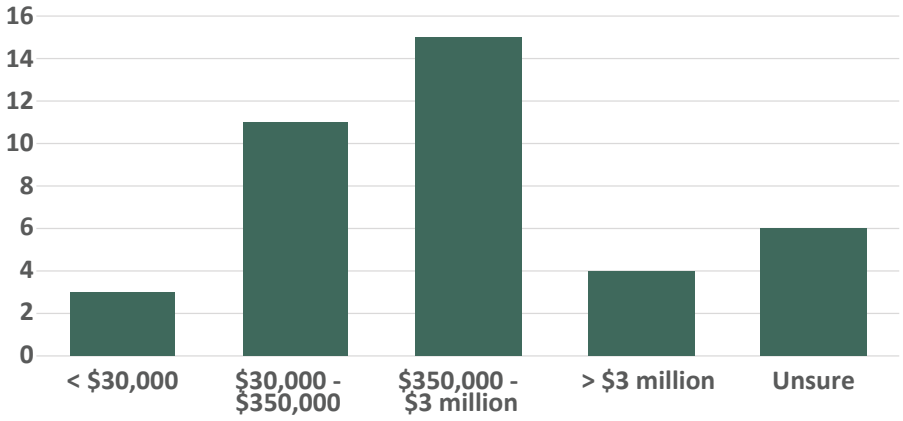
9 *Australian Arbitration Report 2020, at 11.*

Relief sought and Amounts in dispute

Information about the relief sought was provided for 84 arbitrations (75 domestic arbitrations and 9 international arbitrations). Of these 84 disputes, the parties sought declaratory relief in 36 arbitrations (43%), 2 of which were international arbitrations and 34 were domestic. Injunctive relief was the primary request in 2 arbitrations (both domestic).

In 46 arbitrations (58%) a sum of money was sought. Of these, 39 were domestic arbitrations and 7 were international arbitrations. For domestic arbitrations, the amount claimed was as follows: 3 had a sum of money claimed of less than $30,000, 11 had claims of between $30,000 and $350,000, 15 had claims of between $350,000 and $3 million, 4 had claims of over $3 million, and no value was provided for 6 arbitrations. The amounts in dispute across these domestic arbitrations are shown in Figure 12.

FIG 12: AMOUNTS IN DISPUTE IN DOMESTIC ARBITRATIONS



The quantum brackets chosen align roughly with the civil jurisdiction of the Disputes Tribunal (up to $30,000), District Court ($30,000–$350,000) and High Court (over $350,000).

Of the 7 international arbitrations in which a sum of money was sought, 1 involved a claim for a sum between $30,000 and $350,000, 4 involved claims of between $350,000 and $3 million and 2 arbitrations involved a claim of over $3 million.

In the domestic arbitrations, 20 of the 75 arbitrations (for which information on relief was provided) featured counterclaims (27%). Of these counterclaims, 7 requested declaratory relief. For those counterclaims where a sum of money was requested, the amounts involved were less than $30,000 (2 arbitrations), between $30,000 and $350,000 (8 arbitrations), between $350,000 and $3 million (2 arbitrations) and over $3 million (1 arbitration).

For international arbitrations, 5 featured a counterclaim. The relief counterclaimed was spread evenly between declaratory relief (1 arbitration), a sum between $30,000 and $350,000 (1 arbitration), a sum between $350,000 and $3 million (2 arbitrations), and a sum over $3 million (1 arbitration).

Subject Matter

We asked arbitrators to specify the subject matter of the arbitration. For some arbitrations more than one type of dispute was indicated.

The overall results are as follows:

I. 48 lease-related arbitrations (including cross leases and rent review) (52%);

II. 20 arbitrations concerning company/commercial/contract disputes (21%);

III. 16 arbitrations concerning building/construction disputes (17%);

IV. 6 arbitrations involving a property dispute (6%);

V. 3 valuation arbitrations (3%);

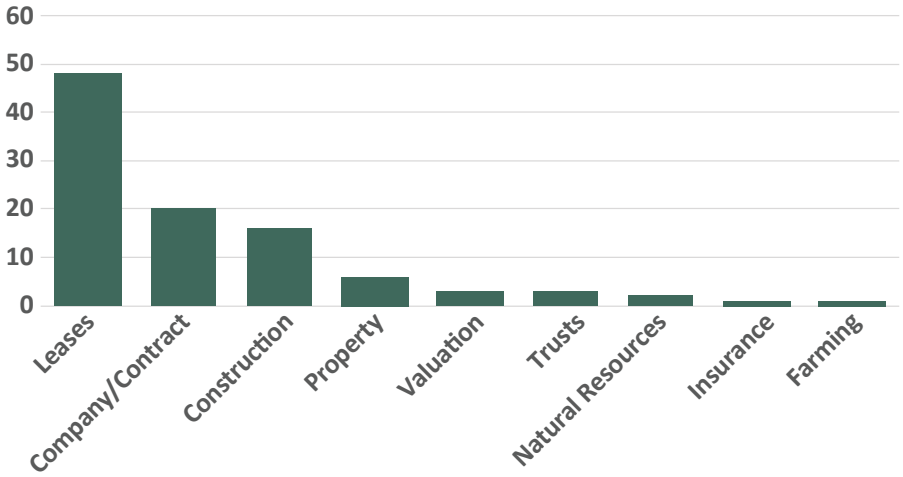
VI. 3 arbitration concerning trusts/estates (3%);

VII. 2 arbitrations concerning natural resources (2%);

VIII. 1 insurance arbitration (1%); and

IX. 1 arbitration concerning a dairy farming dispute (1%).

FIG 13: ARBITRATIONS BY SUBJECT MATTER



Of the 6 arbitrations involving property disputes, only 2 involved solely property issues. The others also involved lease or company/commercial/contract issues. The farming dispute also involved company/commercial/contract issues and one of the building/construction disputes also involved issues of company/commercial/contract law.

Of the 9 international arbitrations, 7 arbitrations concerned company/commercial/contract matters and the remaining 2 arbitrations concerned natural resources.

Of the 5 most expensive arbitrations (being those involving claims of over $3 million), 4 involved company/commercial/contract issues and 1 arbitration concerned a building/construction dispute.

The 3 arbitrations involving amounts of less than $30,000 were all concerned with lease-related disputes, with 1 of these also featuring a property dispute.

In comparison with the Inaugural Survey results, the above results suggest that arbitrations are being concentrated across fewer subject matters. For example, there were no arbitrations reported in relation to Treaty/Māori issues, sports arbitrations or relationship property disputes in 2020–2021. In contrast, perhaps as a result of the Trusts Act 2019 coming into force in January 2021, there were 3 arbitrations concerning trusts/estates recorded in the Second Survey period compared to none in the Inaugural Survey period.

A far greater proportion of the disputes in the Second Survey were lease-related compared to the Inaugural Survey (52% compared to 29% in the Inaugural Survey). Construction dispute numbers remained steady over the four-year period at around 17–18% of total disputes. Commercial/contract disputes have fallen from 30% of the total in the Inaugural Survey to 21% in the Second Survey period.

Some of the significant variation might be explained by the decrease in data provided in the Second Survey, but overall the change in subject matter has been more dramatic than expected and is not readily explicable.

B. PROCEDURE

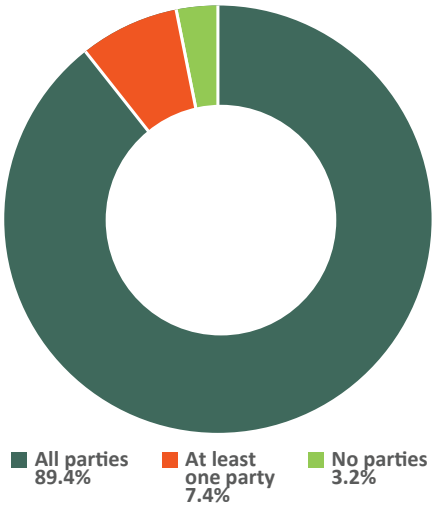
Legal Representation

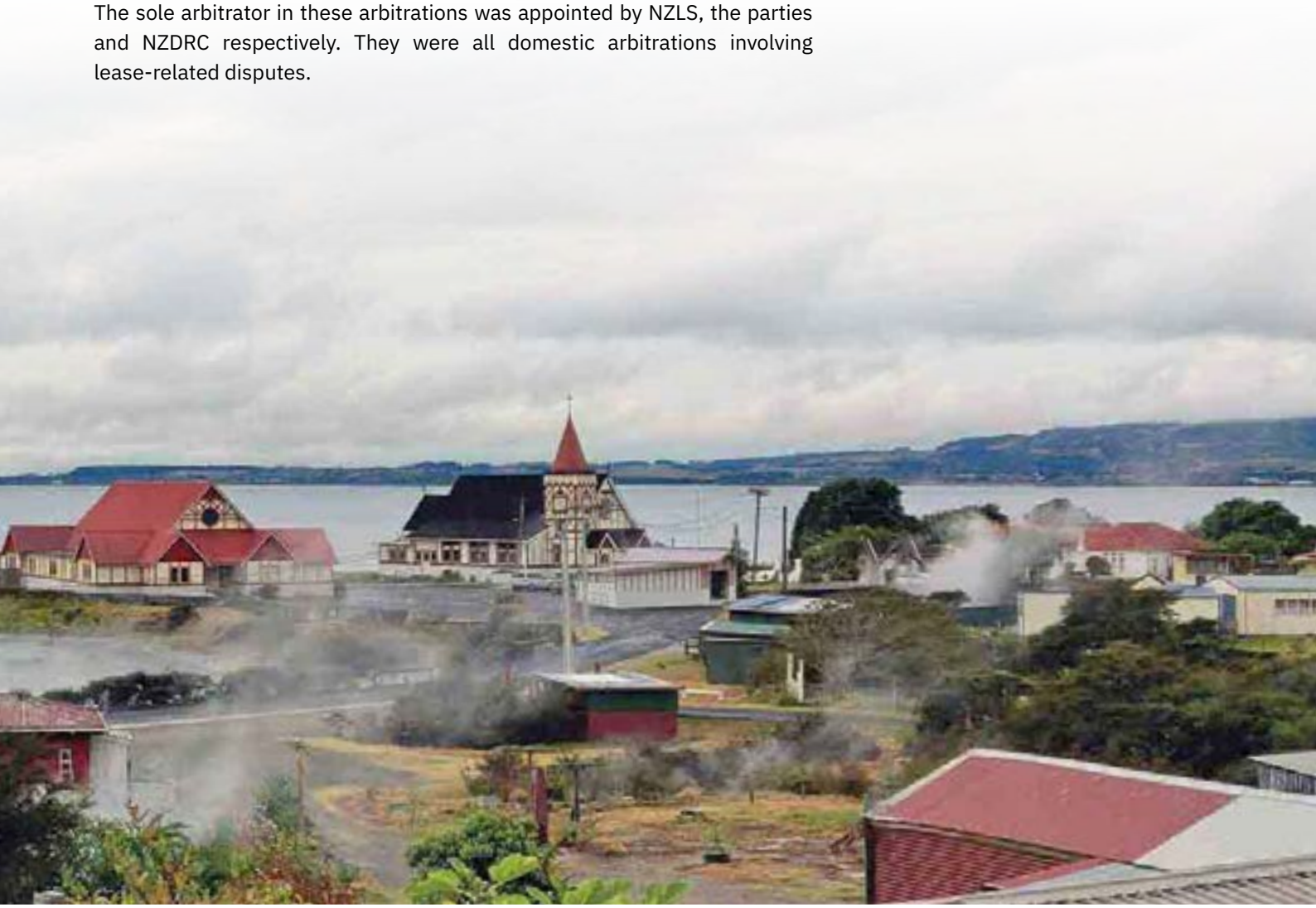
As in the Inaugural Survey, the vast majority of parties in the reported arbitrations in the Second Survey were legally represented. All parties were represented in 84 of the 94 arbitrations (89%). In 7 arbitrations, one or some of the parties were not represented (7%), and none of the parties was legally represented in only 3 arbitrations (3%).

Five of the 7 arbitrations in which not all the parties were represented concerned lease-related disputes, 1 of which involved a claim of less than $30,000, 2 of which involved a claim between $30,000 and $350,000 and 1 of which involved a claim between $350,000 and $3 million (no data was provided on the amount of the claim for the last lease-related arbitration). The remaining 2 arbitrations were company/commercial/contract matters, 1 of which involved declaratory relief but the other was a claim for money between $350,000 and $3 million. All 7 arbitrations were domestic. In 1 arbitration the sole arbitrator was appointed by the parties, with institutional appointments for the remaining 6 arbitrations (1 by NZDRC, 2 by AMINZ and 3 by NZLS).

One of the 3 arbitrations in which there was no legal representation involved a claim of less than $30,000 (but also involved a counterclaim of less than $30,000). One arbitration involved a claim of between $30,000 and $350,000. The remaining 1 arbitration did not specify the amount in dispute. The sole arbitrator in these arbitrations was appointed by NZLS, the parties and NZDRC respectively. They were all domestic arbitrations involving lease-related disputes.

FIG 14: LEGAL REPRESENTATION



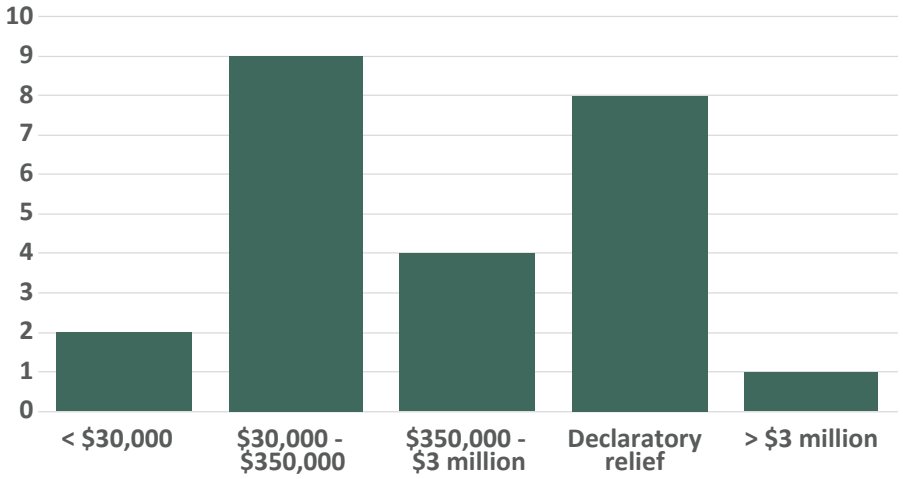


Number of Counterclaims

Of the 94 arbitrations for which details are available, 25 were reported to have had counterclaims (27%).[10] Five of the 25 arbitrations having counterclaims were international arbitrations. This means that more than half of the 9 international arbitrations included counterclaims.

In terms of the nature and amounts of the counterclaims, there were 24 responses. Of these, 8 were for declaratory relief and another 9 were for amounts of between $30,000 and $350,000. Four arbitrations had counterclaim amounts of between $350,000 and $3 million, 2 arbitrations had counterclaim amounts of less than $30,000 and just 1 arbitration had a counterclaim amount exceeding $3 million.

FIG 15: VALUE OF COUNTERCLAIMS



The disputes in the reported arbitrations with counterclaims concerned a range of subject matters, including lease-related (including cross leases and rent reviews) disputes (56%), company/commercial/contract matters (20%), building/construction disputes (12%), natural resources (4%), a valuation (4%) and a dairy-farming dispute (4%).

10 *Four of the reported arbitrations responded with "Unsure/Not applicable" and another two left this response blank.*

Bifurcation

Eighty-two the 94 arbitrations followed straightforward, non-bifurcated processes (87%).[11] The 12 arbitrations that involved bifurcation of issues were all domestic arbitrations.

The 12 arbitrations involving bifurcation ranged in subject matter, with 5 arbitrations involving lease-related disputes, 4 arbitrations involving building/construction disputes, 1 arbitration involving a company/commercial/contract dispute, 1 arbitration involving a property dispute and 1 involving a valuation dispute.

Six of the bifurcated arbitrations involved a disputed claim of between $350,000 and $3 million, with 1 arbitration involving a claim of between $30,000 and $350,000, and 1 arbitration involving amounts of over $3 million. The remaining 4 bifurcated arbitrations sought declaratory or injunctive relief. As would be expected, bifurcation appears more likely to occur where the amount in dispute is higher. Of the 4 cases where declaratory relief was sought, 3 required a ruling on jurisdiction, which likely explains why bifurcation occurred. In the 9 arbitrations where a jurisdictional ruling was required, 4 of them where bifurcated and 5 of them were not.

Interim Measures / Preliminary Orders

Interim measures were sought in 6 of the 94 arbitrations with detailed information (including in 1 international arbitration) (6%). All 6 applications for interim measures were granted. This contrasts with the findings in the Inaugural Survey, where interim measures applications were higher (11%) but only one third of the applications was granted.

In addition, preliminary orders were sought in 7 of the 94 reported arbitrations (7%). These included 2 international arbitrations. All 7 applications for preliminary orders were granted. Again, the statistics reveal significant differences between the two survey periods, with only 3 applications for preliminary orders reported in the Inaugural Survey (2 of which were granted).

In the two arbitrations where injunctive relief was the primary relief requested, no interim measures or preliminary orders were sought.

Interestingly, most arbitrations involved applications for preliminary orders or interim measures, but not both. Only in 2 arbitrations (1 domestic and 1 international arbitration) were applications made for both preliminary orders and interim measures. In these 2 arbitrations, both the interim measures and preliminary orders were granted.

We did not ask respondents whether interim measures had been sought from the court in support of the arbitration. This may be a question to include in future surveys as it would be interesting to compare the rate of requests for interim measures of tribunals with those of the court.

11 *Two of the reported arbitrations responded with "Unsure/Not applicable".*

Hearing vs Documents-only

In the majority of arbitrations, oral hearings were held in addition to written submissions. Arbitrations took place "on the papers" in only 17 of the 94 arbitrations for which detailed information was provided for the survey period (18%), as shown in Figure 16.[12] These were all domestic arbitrations.

Hearings were held (or due to be held) in 43 arbitrations (46%). For the remaining 34 arbitrations (36%) this question was indicated to be "not applicable/unsure". Most of these latter arbitrations (23 out of 32) were matters that had been settled, while 9 were matters that were still in progress (suggesting that no decision on whether a hearing would occur had yet been made).[13]

Of the 17 on-the-papers arbitrations, further detail was provided for 14 of them. In 5 of those arbitrations, declaratory relief only was requested. Where the relief claimed was a monetary sum, the most common value ranges were less than $30,000 (3 arbitrations) and between $30,000 and $350,000 (3 arbitrations). Two arbitrations done on the papers involved an amount of between $350,000 and $3 million (one was a construction dispute under the NZDRC Rules, the other was a company/commercial/contract matter under the Arbitration Act), and another arbitration claimed injunctive relief only. These results are represented in Figure 17.

Of the 17 on-the-papers arbitrations, 13 involved lease-related disputes, 3 involved building/construction matters and 1 was a company/commercial/contract matter.

Interestingly, almost half (8) of the on-the-papers arbitrations were conducted under the NZDRC Rules. A hearing was held in only 1 arbitration conducted under the NZDRC Rules, which was an international arbitration. This may indicate the popularity of the expedited NZDRC Rules (45, 60 or 90 days), under which oral hearings are not the default position.[14]

For those 43 arbitrations where a hearing was held: 21 sought declaratory relief (53%) and 12 involved amounts of between $350,000 and $3 million (28%). Of the remaining 10 arbitrations where a hearing was held, 4 involved amounts of between $30,000 and $350,000 (8%), and 4 involved amounts of over $3 million (6%). No information was provided for the remaining 2 arbitrations.

Within those 43 viva voce arbitrations, there were also 6 counterclaims for declaratory relief, 3 counterclaims for a sum of money between $30,000 and $350,000, 3 counterclaims for between $350,000 and $3 million, and 1 counterclaim for more than $3 million.

Unsurprisingly, these results indicate that parties are more likely to opt for an oral hearing where the disputed amount is higher.

FIG 16: PROPORTION OF ARBITRATIONS CONDUCTED VIVA VOCE AND ON THE PAPERS

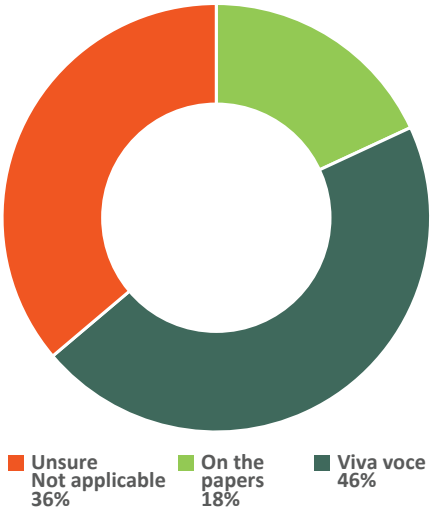
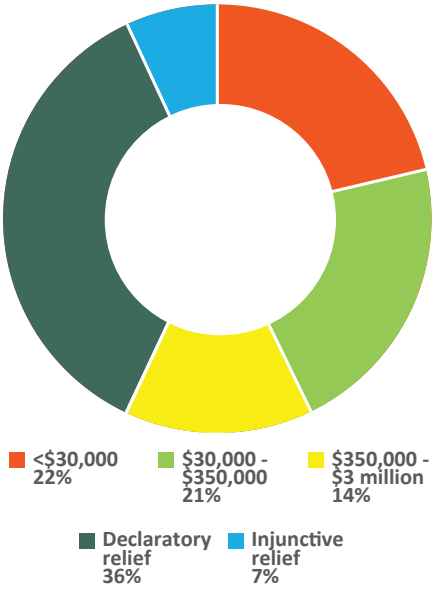


FIG 17: PROPORTION OF ON-THE-PAPERS ARBITRATIONS AND THE RELIEF SOUGHT



12 *Twenty-nine survey respondents indicated they were either unsure of whether their arbitration was dealt with on the papers, or that it was not applicable.*

13 *Two of the reported arbitrations provided a response of "unsure" to the question asking whether the matter had been completed, settled or was still in progress.*

14 *Hearings are prohibited under the ECA 45 Rules and are discretionary (unless the parties otherwise agree) under the ECA 60 and ECA 90 Rules.*

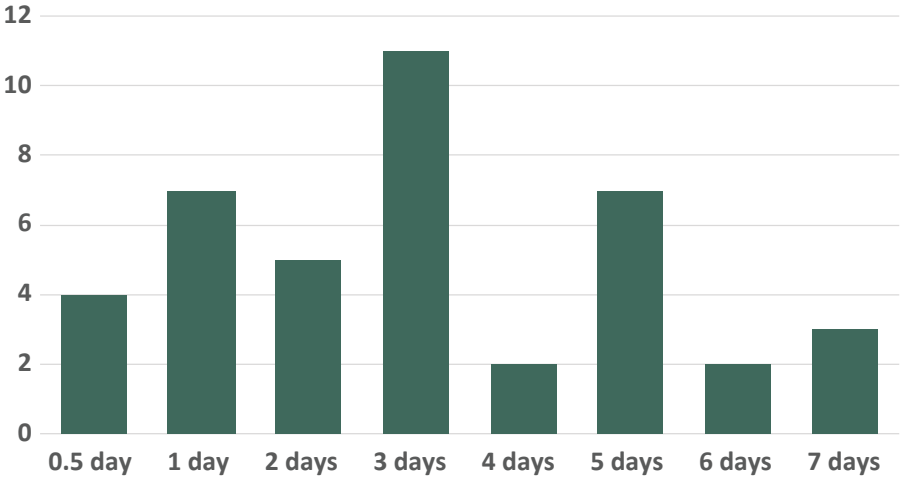
Hearing Length

The length of the hearing was provided for 35 arbitrations. The average hearing length for those arbitrations was 3.3 days and the median hearing length was 3 days.

There were 5 arbitrations where the hearing was more than 5 days long. The hearing lengths in these arbitrations were 6 days (2 arbitrations) and 7 days (3 arbitrations). All 3 of these arbitrations were domestic and were for claims of between $350,000 and $3 million.

Of the arbitration hearings that were 5 days or less, 3 days was by far the most common (11 arbitrations). The graph below shows the hearing length for these reported arbitrations.

FIG 18: HEARING LENGTH - DAYS



Hearing Mode

We asked arbitrators about the use of AVL for hearings and conduct of the arbitration. Some form of AVL was used in 50 arbitrations (53%).

In 37 arbitrations, AVL was used to conduct case management conferences. AVL was also used to conduct 7 hearings for procedural or interlocutory issues and for taking evidence in 6 cases.

In relation to the main hearing, AVL was used to conduct the entire substantive hearing in 9 cases and some of the substantive hearing in 10 additional cases. As a result, 19 of the 43 reported substantive hearings (44%) were conducted fully or partially by AVL. If the 7 arbitrations where evidence was taken by AVL are included, the percentage of hearings using AVL rises to 60%.

When compared to the Inaugural Survey results, there has been a slight decrease in the use technology for hearings. This is not surprising, given the Inaugural Survey covered the height of the COVID-19 pandemic in 2020. However, the Second Survey period covered 2021 when lockdowns continued, particularly in Auckland. Therefore, it would be expected that a higher proportion of hearings (particularly substantive hearings) may have been conducted remotely than in the post-Covid era. Anecdotally (here and overseas), it appears that substantive arbitration hearings in the post-Covid era have largely reverted to being in-person unless there are particular cost or efficacy reasons to conducting all or part of it by AVL. Procedural matters or shorter hearings continue to be routinely conducted by AVL.[15] It appears that the New Zealand experience is broadly similar.

15 *In the 2021 Queen Mary International Arbitration Survey, only 8% of respondents indicated a preference for fully virtual substantive hearings if given the option, whereas there was a far greater willingness to adopt remote technology for procedural hearings: Queen Mary University of London School of International Arbitration 2021 International Arbitration Survey: Adapting Arbitration to a Changing World at 14, 20 and 25.*

C. SETTLEMENT

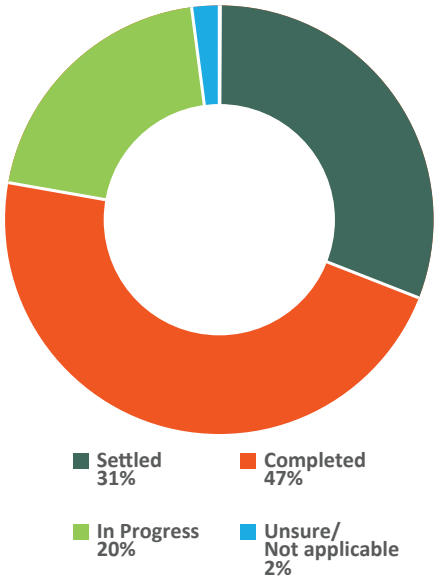
Settlement v Award

Twenty-nine arbitrations (31%) were reported as having settled in the survey period. Of the remaining arbitrations, 44 arbitrations (47%) were already completed, and 19 arbitrations (20%) contemporaneously in progress (the remaining 2 were "unsure").

Of the 29 arbitrations that settled, 3 were international arbitrations. Twenty-five of the settled arbitrations reported the nature of the relief claimed and/or the amounts in dispute. Of these, 4 involved amounts in dispute of between $30,000 and $350,000, 10 involved amounts of between $350,000 and $3 million, and 3 involved amounts of more than $3 million. Another 6 arbitrations that settled had claimed declaratory relief, 1 involved a claim for injunctive relief and 1 was for an unspecified amount of money.

Of the 44 completed arbitrations, 5 were international arbitrations. Forty-two of the completed arbitrations reported the nature of the relief claimed and/or the amounts in dispute. Of these, 3 involved amounts in dispute of less than $30,000, 6 involved an amount of between $30,000 and $350,000, 8 involved an amount of between $350,000 and $3 million, and 2 involved an amount in dispute of over $3 million. Another 21 arbitrations that were completed during the survey period claimed declaratory relief and 1 completed arbitration claimed injunctive relief.

FIG 19: SETTLEMENT AND COMPLETION RATES



D. COSTS & FEES

Fee Structure

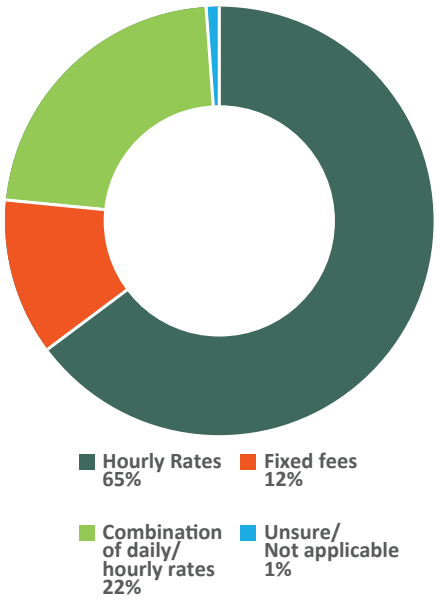
We asked arbitrators how they charged fees in each arbitration. Figure 20 shows that, of the 94 arbitrations reported, 61 arbitrations used hourly rates (65%), 11 used fixed fees (12%) and 21 used some combination of hourly and daily rates (22%).[16]

The arbitrators who used a combination of hourly and daily rates were almost all male over the age of 60 years (17 arbitrations). Only one female arbitrator used a combination of hourly and daily rates for 1 appointment, and that was for an arbitration with a three-member panel. Two male arbitrators aged between 50 to 60 years also used a combination of hourly and daily rates. They accounted for 3 appointments in total.

It is clear that adopting hourly rates (sometimes together with daily hearing rates) is the usual practice in domestic arbitration. This contrasts with the fixed-fee system used by many overseas arbitral institutions (including the International Chamber of Commerce ("**ICC**") and SIAC).

Of the 11 fixed-fee arbitrations, 8 were domestic arbitrations and 3 were international arbitrations. All 11 fixed-fee arbitrations were institutional arbitrations, suggesting that parties and arbitrators do not tend to agree fixed fees outside of the institutional context.

FIG 20: PROPORTION OF FEE STRUCTURES USED



16 *Only one respondent indicated "Unsure/Not Applicable" for this question.*

Those domestic arbitrations involving a fixed fee were for disputes quantified at under $350,000 (including 2 quantified at under $30,000) or for declaratory relief. Fixing a fee in such situations may assist in making the arbitration more cost-effective (and predictable). Of the 8 domestic arbitrations where fixed fees were recorded, 7 concerned lease-related (including cross leases and rent reviews) disputes (including 2 which also concerned property disputes) and 1 concerned a building/construction dispute.

We also asked arbitrators whether they included a provision for cancellation fees in their terms of appointment. Of the 94 arbitrations reported, 30 allowed for cancellation fees (32%). Two of these were for international arbitrations, with the remainder being domestic arbitrations. No cancellation fees were charged, even though 3 of the arbitrations settled.[17] One arbitrator reported that the cancellation fee was charged, even though the matter was said to be still "in progress". It is therefore not clear if this answer was an error. When compared to the Inaugural Survey where 26% of arbitrations permitted cancellation fees, there appears to be a slight uplift in the inclusion of a cancellation fee. However, it is clear that cancellation fees are rarely charged even when arbitrations settles.

Costs Awarded

Forty-four of the reported arbitrations were completed in the survey period. Party costs were awarded in 25 of these cases. Three of these cases were international arbitrations and the remaining 22 were domestic arbitrations. In 2 arbitrations indemnity costs were awarded, with a reasonable contribution being awarded in the remaining 23 arbitrations. In 3 arbitrations, party costs were awarded but not the cost of the tribunal fees.

Costs were awarded in respect of tribunal fees in 22 arbitrations. In 1 arbitration, costs were awarded in respect of tribunal fees, but party costs were not awarded.

In 14 of the completed arbitrations, no costs (party or tribunal fees) were awarded. Just as in the Inaugural Survey, we did not request information as to why costs were not awarded in some completed cases, but we infer that the parties most likely settled costs in those cases following receipt of the substantive award.

Information was not provided for 3 arbitrations and in 1 arbitration costs were still to be determined.

In addition, costs were awarded in two settled arbitrations.

Average amount awarded as costs

Unlike in the Inaugural Survey, we did not request information on the amount of costs awarded. This decision was made as we received very little costs data in response to the Inaugural Survey and we inferred that this specific data may have been cumbersome to collect. We were keen to make the Second Survey as short and simple as possible. However, as noted above, the responses do confirm that in almost all arbitrations in which costs were awarded, the test applied by the tribunal was that of a "reasonable contribution" to costs incurred by the parties. Two arbitrations awarded indemnity costs and in 1 arbitration (one of the settled matters) the response to the measure of costs awarded was "Other".

17 *Eight respondents were unsure whether the cancellation fee was charged or left this question blank.*

About the Researchers

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LLB (Hons) (Canterbury), LLM (Cambridge), FAMINZ (Arb)

Royden Hindle is an experienced commercial arbitrator and construction adjudicator, practising at Bankside Chambers in Auckland.

He is a Past President of AMINZ, and acted as its Director of Professional Studies (with responsibility for the delivery of AMINZ's Fellowship Assessment programme) from 2014 to 2024.

He is a member of the Arbitration and Adjudication Panels of AMINZ. In August 2021, Royden became an Honorary Life Member of AMINZ.

Royden is also a Principal Arbitrator, Evaluator & Mediator with the NZDRC.

From 2002 to 2011 Royden was Chair of the Human Rights Review Tribunal. He has also served a term as a Deputy Chair of the Health Practitioners' Disciplinary Tribunal.

ANNA KIRK

PhD (Cambridge), LLB (Hons) / BA (Waikato), FAMINZ (Arb), FCIArb

Dr Anna Kirk is a barrister, commercial arbitrator and construction adjudicator practising at Bankside Chambers (Auckland and Singapore). She has particular expertise in international arbitration and public international law.

Anna is Vice-President of AMINZ. She is also New Zealand's Member of the ICC Court of International Arbitration and Co-Chair of the Asia-Pacific Committee of the Campaign for Greener Arbitration. She is a Fellow of the Chartered Institute of Arbitrators (London) and the Australian Centre for International Commercial Arbitration (ACICA).

Anna regularly acts as arbitrator and counsel in international and domestic arbitrations. She is ranked as a leading barrister and arbitration specialist in Who's Who Legal (now Lexology Index) and the Legal 500 for Asia-Pacific.

Anna has experience under the NZDRC Rules, as well as in arbitrations under the ICC, SIAC, LCIA, ICSID and UNCITRAL Rules. She previously practised international arbitration in London and worked with Sir David Williams KC. Anna most recently appeared as counsel for the claimant in a major investment treaty case in the Permanent Court of Arbitration (The Hague).

Anna regularly writes and presents on arbitration-related matters. She is a contributing author to *Williams & Kawharu on Arbitration,* teaches international arbitration at the University of Auckland and holds a PhD in international law from the University of Cambridge.

DIANA QIU

LLB (Hons) / BA (Auckland)

Diana is a junior barrister at Thorndon Chambers and a former judge's clerk to the Court of Appeal of New Zealand | Te Kōti Pīra o Aotearoa.

She is a former New Zealand representative on the Asia-Pacific Forum for International Arbitration, and immediate past Co-Chair of Young AMINZ. In 2022, Diana was the recipient of the AMINZ Determinative Scholarship.

While her practice is predominantly in domestic civil litigation, Diana has also worked for both claimants and states in investor-state arbitrations. She recently completed an internship with the international arbitration team at De Gaulle Fleurance, Paris.

Additionally, Diana has written a number of papers on arbitration-related topics. Her first article was published in the academic journal of the Chartered Institute of Arbitrators and included in a General Assembly bibliography of recent writings related to the work of the United Nations Commission on International Trade Law.

Diana is passionate about demystifying arbitration and making it more accessible to younger and more diverse practitioners.

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