

# Australian Arbitration Week Recap: Gender Diversity in Arbitral Proceedings Amidst a Global Pandemic

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On 15 October 2020, Corrs Chambers Westgarth hosted a panel on '*Diversity in Arbitral Proceedings - Opportunities and Challenges in the Wake of Remote Work and Virtual Hearings*' as part of Australian Arbitration Week. The panel was moderated by Rachael King and Nastasja Suhadolnik of Corrs Chambers Westgarth, with Kate Hay (Corrs Chambers Westgarth), Lucy Martinez (Independent Arbitrator), Deborah Tomkinson (ACICA), Nicola Peart (Three Crowns), Hilary Heilbron QC (Brick Court), and Wendy Miles QC (Twenty Essex) forming the panel.

The panel considered the Report of the Cross-Institutional Task Force on Gender Diversity in Arbitral Appointments and Proceedings (which the blog recently reported on) from the perspective of various participant groups in arbitration. As well as considering the Australian experience, the panellists were asked whether the move to remote working and virtual hearings on account of Covid-19 presented an opportunity or challenge to improved diversity in international arbitration. Four

key themes can be taken away from the panel discussion.

## **Key themes**

First, whilst the Task Force Report revealed the proportion of female arbitrators has almost doubled in the past four years, the panel agreed that there remains room for improvement. This holds true in Australia which, as Deborah Tomkinson reported, is also moving towards the 'clear and stable' increase reported by the Task Force. ACICA's statistics on diversity in arbitral appointments were not reflected in the Task Force's Report, so its Secretary General's observations provided a valuable comparator of the Australian experience against the global trends. Similarly, whilst the extensive data in the Task Force Report paints a positive international trend in female arbitral appointments, the panel agreed that there remains significant work to be done globally to ensure the inclusion of women in international arbitration is carried through, more generally, into hearing rooms on a daily basis. For example, to what extent are women being placed on arbitral lists for consideration and, once placed on those lists, how can we ensure more women are actually selected from those lists for appointment? Similarly, as we see more women appearing as counsel in international arbitrations, how can we ensure women are given speaking or client facing roles? It was also agreed that no discussion on diversity, whether local or global, is complete without a consideration of diversity in all its varied forms - not just gender.

Second, the panel considered the fundamental considerations of equity which mandate that female participation at the highest levels of international arbitration reflects the participation of women in the legal profession and the arbitration community more generally, as well as the many benefits of increasing diversity including the Report's findings that 'the best talent may be female' and that diversity can improve both arbitral process and outcomes. The panel's personal experiences and anecdotes were an important reminder that a lack of diversity not only limits opportunities in the arbitration field, but risks an arbitral process and record which reflects only part of a population's evidence or experiences. The importance of diversity for long term change in the field was patent in anecdotal reports that it appeared more likely for a junior female counsel to be given time on her feet to address a tribunal where the panel included a female arbitrator. The

panel agreed that in addition to the many benefits of improved diversity which the Task Force Report outlined in detail, it was important to recognise there was also simply a moral imperative to do better.

Third, there was recognition that pressure to improve can and should emanate from a number of directions including, importantly, from clients. The panel was unanimous in its observations that as clients, particularly in the technology sector, continue to demand more diverse representation and decision making, the statistics will continue to improve. Relatedly, it was emphasised that third party funders are also increasingly placing pressure on parties, making diversity a condition of their funding arrangements.

Finally, the panel turned to consider whether Covid-19's impact on remote working and virtual hearings was harming or helping the push for greater diversity. The move online represented a double-edged sword for females in the field. From an Australian perspective, it removed the isolation of being 'down under' and therefore presented greater opportunities. It has also led to an increase in access to high quality and low cost training and professional development. As the panel itself evidenced, Covid-19 is providing opportunities for Australian women in the field to collaborate with their international colleagues absent the cost of an airfare (constrained only by a 12 plus hour time difference). However, the impact of working from home - particularly under some of the world's strictest lockdown rules in Melbourne, could not be overlooked, with women having to juggle their arbitral commitments with the lion's share of childcare and home-schooling.

The panel's review of the Task Force Report's statistics and findings, coupled with their personal perspectives, revealed that whilst there is much to celebrate, there also remains work to be done. The panel hoped that in addition to a continued and sustained surge in positive statistics, women working in international arbitration would no longer be seen as simply "dabbling" in arbitration. Ultimately, the panel tackled both big ticket diversity questions, such as how we can tackle unconscious bias, whilst at the same time providing some sage advice for a younger and more diverse field of arbitrators and practitioners, including a simple but effective comeback when met with any push-back from colleagues of 'that's not cool'.

## **Brief comments**

The topic of increased diversity, in all its forms, is a prominent feature of a growing number of [articles on the blog](#). This panel event, and Australian Arbitration Week more broadly, cemented the fact that the Australia arbitration community is, alongside its international colleagues, considering how to ensure we continue seeing a steady increase in positive indicators of diversity - with the statistics in the Task Force Report's being one key example. It will be interesting to see whether, by the time of 2021's Australian Arbitration Week, the opportunities presented by Covid-19 result in any marked change in these numbers or the experiences of Australian women in international arbitration.

***More coverage of Australian Arbitration Week is available [here](#).***