



What does the Inaugural Aotearoa New Zealand Arbitration Survey reveal about domestic arbitrations in New Zealand?

By Peter Davey

Royden Hindle, Dr Anna Kirk, the New Zealand Dispute Resolution Centre and Diana Qiu are to be highly commended for the significant work in undertaking and publishing the Inaugural Aotearoa New Zealand Arbitration Survey. The survey finally provides empirical data on current arbitration practice in New Zealand and establishes a sound foundation for analysing its future development.

In total, the survey obtained information from 56 arbitrators who had received 213 appointments between 1 January 2019 and 31 December 2020. It does not include arbitrations during that period where the arbitrators were appointed before 2019. There will also have undoubtedly been more appointments during the survey period that have not been captured by the survey. However, there was no evidence that the COVID-19 pandemic had any effect on the number of appointments based on the spread of appointments over both years.

The survey obtained detailed information relating to 113 appointments and the results showed that 96 of those were domestic arbitrations. The vast majority were conducted under the Arbitration Act 1996 by a single arbitrator, without resort to any institutional rules. It therefore seems that the schedules to the Arbitration Act 1996 are still providing a useful basis to conduct arbitrations.

Over 70% of the domestic arbitral tribunal appointments were made by the parties themselves. AMINZ (14) and the New Zealand Law Society (15) were responsible for most of the remaining institutional domestic appointments. Ten of the Law Society's appointments related to lease or property disputes. There was only one arbitral appointment made by court order. The basis for this court ordered appointment is unknown but it seems that the powers under the rules to refer disputes to arbitration are rarely used.

The survey also revealed that there were a wide

variety of disputes referred to arbitration. The main ones being company/commercial and contract matters (30%), lease and rent reviews (27%), building and construction (18%) and property (10%). There were two arbitrations each relating to joint ventures and cross-leases and one arbitration each for banking/finance, relationship property and share-milking.

There was also a large range of dollar values for arbitrations where ascertained amounts had been claimed. 48% of those domestic arbitrations were between \$30,000 and \$350,000, which would usually be within the civil jurisdiction of the District Court. 38% of them were between \$350,000 and \$3 million and 9% were for claims over \$3 million, both of which would fall within the High Court's civil jurisdiction. 30% of the arbitrations also included counterclaims.

The vast majority of arbitrations involved oral hearings with only 15% being heard on the papers. The length of time was provided for 29 completed arbitrations involving an oral hearing, which averaged approximately 11 months. This compares very favourably with the average times from the date of filing to disposal for general court proceedings. The Ministry of Justice advised the NZDRC that in 2021 the average disposal times were 877 days for the District Court and 836 days for the High Court. The length of hearing was provided for 46 arbitrations, which averaged under 3½ days. This again seems to show that oral hearings are generally conducted efficiently.

Overall, there is now empirical data to show that parties are currently using domestic arbitration in a wide range of commercial disputes and arbitrators are providing an efficient means to resolve them. It seems that one option to provide access to justice would be for parties involved in court proceedings to consider referring appropriate disputes to arbitration under the relevant court rules.

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