ICCA
INTERNATIONAL COUNCIL FOR COMMERCIAL ARBITRATION

AUSTRALIA

Co-Chairs:

Kate Brown de Vejar
Victoria Shannon Sahani
Damien Nyer

ICCA
INTERNATIONAL COUNCIL FOR COMMERCIAL ARBITRATION

SURVEY RESPONSES ON ARBITRATOR IMMUNITY – AUSTRALIA

April 2026

AUSTRALIA			
I. Definitions		**Yes/No/NA**	**Comments, if any.**
I.1.	"Arbitrator" For the purpose of this survey, an "arbitrator" is a person appointed by the parties, on behalf of the parties, or by an institution to adjudicate a dispute under an arbitration agreement, either alone or as one member of an arbitral tribunal. When answering the questions in this survey, please include all regulations, standards, or duties that apply to or include arbitrators but not those that apply solely to mediators.		
I.2.	"Legislation" For the purpose of this survey, "legislation" includes laws in force and any draft bills or legislative initiatives that are currently at an advanced stage, including for example if the proposal is before a legislative body for vote or approval. It is helpful to signal the content and status of any such legislative initiatives in this survey, so that readers can also be aware of changes that may be forthcoming.		

II. General		Yes/No/NA	Comments, if any.
II.1.	What standards or duties (including ethical standards or duties) apply to arbitrators in your jurisdiction? Please briefly describe these standards or duties and cite to their legislative, regulatory, jurisprudential, or other basis. [Examples of such standards or duties may include: – Duty to disclose potential conflicts of interest. – Duty of impartiality. – Duty of care/competence. – Duty to respect and maintain the confidentiality of the arbitration. – Duty to conduct the proceeding in an appropriate/fair/judicious manner.	**Yes, except duty of competence/care** (Substantive procedural fairness doctrines may allow set-aside or denial of enforcement in connection with manifestly incoherent reasoning/failure to address key submissions in an award. This would partially catch duty of care/competence issues.)	Statutory Authorities The UNCITRAL Model Law ("**ML**") is directly incorporated into Australian law by the *International Arbitration Act 1974* (Cth) ("**IAA**") s. 16. IAA s. 18A in combination with ML art. 12 set standards and requirements for impartiality and independence on the part of arbitrators. IAA s. 23C(2) obligates arbitrators to preserve confidentiality. That confidentiality regime is fleshed out in arts. 23D–G, providing exceptions and court-override powers. Under IAA s. 22, the parties to an arbitration agreement can opt out of confidentiality protections. IAA s. 19(b) recognizes a breach of natural justice (now more commonly described as procedural fairness) as something in conflict with the public policy of Australia for purposes of arts. 17I(1)(b)(ii), 34(2)(b)(ii) and 36(1)(b)(ii) – which allow for courts to refuse recognition or enforcement of an award on such a basis (in addition to a number of the other enumerated grounds in those articles, which are generally recognized as encoding specific facets of procedural-fairness jurisprudence). Institutional Rules ACICA Arbitration Rules 2021 ("**ACICA Rules**") and the ACICA Expedited Arbitration Rules 2021 ("**ACICA Expedited Rules**") require ACICA when exercising its arbitrator-appointment powers to select independent and impartial candidates. Specifically, such a requirement is detailed in: – ACICA Rules arts. 12.3 (re sole arbitrator appointments by ACICA); – ACICA Rules art. 13.2 (re ACICA nomination of an arbitrator when a party has failed to); – ACICA Rules art. 14.1 (re ACICA confirmation of party joint nomination of a sole arbitrator or arbitrator nomination of a chair); – ACICA Rules art. 16.8 (re ACICA nomination of arbitrators for consolidated arbitrations); – ACICA Rules art. 17.12 (re joinder of an additional party before constitution of a tribunal);

			– ACICA Rules Sch. 1 art. 2.1 (re ACICA appointment of emergency arbitrators); and – ACICA Expedited Rules art. 9.4 (re ACICA appointment of an expedited-arbitration arbitrator). ACICA Rules art. 20.3/ACICA Expedited Rules art. 9.3 require nominated arbitrators to sign a statement of availability, impartiality, and independence, and to disclose any circumstances that may raise justifiable doubts as to their impartiality or independence. ACICA Rules art. 21 and ACICA Expedited Rules art. 10 allow an arbitrator to be challenged by any party for circumstances that give rise to justifiable doubts as to impartiality or independence. ACICA Rules art. 26/ACICA Expedited Rules art. 15 set out a confidentiality regime. Caselaw Duty of Disclosure. In *Hancock v Hancock Prospecting Pty Ltd* [2022] NSWCA 152, the New South Wales Court of Appeal ("**NSWCA**") – applying a uniform domestic arbitration statute's incorporation of the ML – noted that under ML art. 12, an arbitrator is obligated to disclose "any circumstances likely to give rise to justifiable doubts" as to impartiality or independence, and this obligation is ongoing. Duty of Impartiality. The Federal Court of Australia ("**FCA**") held in *Sino Dragon Trading Ltd v Noble Resources International Pte Ltd* [2016] FCA 1131 that the IAA's higher "real danger [of bias]" test applies to questions of arbitrator impartiality and independence, rather than the Australian common law's real-and-not-remote-possibility-of-bias test applied to judicial impartiality and independence under High Court of Australia ("**HCA**") caselaw such as *Ebner v Official Trustee in Bankruptcy* (2000) 205 CLR 337. Duty of Care/Competence. In *Hui v Esposito Holdings Pty Ltd* [2017] FCA 648, the FCA partially set aside two international arbitral awards under ML art. 34 predominantly for the arbitrator's failure to provide some of the parties with an opportunity to be heard on certain issues. This case illustrates how due process principles can be used (indirectly) to regulate arbitrator care and competence. Duty of Confidentiality. In *Esso Australia Resources Ltd v* Plowman (1995) 183 CLR 10, the HCA held that no default duty of confidentiality existed with respect to arbitral proceedings under Australian common law. Legislative reforms in the IAA later overrode this, establishing the statutory confidentiality regime noted above.

			Duty to be Appropriate/Fair/Judicious. A leading senior-court decision on requirements for fairness is *Hui* noted above. Another case illustrative of the recognition of a duty to ensure fundamental fairness/due process is *TCL Air Conditioner (Zhongshan) Co Ltd v Judges of Federal Court of Australia* (2013) 251 CLR 533. In this case, the HCA notes that the ML allows an Australian court to refuse recognition or enforcement of an arbitral award on grounds of a lack of fairness of the arbitral process – which in turn implies observing fairness is a requirement (or obligation) of arbitrators.
II.2.	In cases of potential arbitrator misconduct of a civil (as opposed to criminal) nature, what remedies or disciplinary measures are available in your jurisdiction *vis-à-vis* the arbitrator? Please provide citations to any relevant legislation, regulations, jurisprudence, or other secondary sources of law.	**Yes**	The caselaw noted in II.4 below indicates that costs awards (covering legal fees and expenses) can be made against arbitrators during judicial arbitrator-removal or award set-aside proceedings. Theoretically, tort claims could also be brought against an arbitrator, but there appears to be no record in Australia of an arbitrator having been sued on such a claim.
II.3.	Is there anything in the legislation of your jurisdiction recognizing a general principle of arbitrator liability and/or a principle that could provide a basis for an arbitrator to be subject to suit or found liable personally for breaches of any of the duties/standards described above?	**Yes**	Under the wording of IAA s. 28(1), anything done or omitted by an arbitrator that is not in good faith is subject to liability.

II.4.	Is there anything in the jurisprudence/ other secondary sources of law of your jurisdiction recognizing a general principle of arbitrator liability and/or a principle that could provide a basis for an arbitrator to be subject to suit or found liable personally for breaches of any of the duties/standards described above?	**Yes**	Caselaw In *Sinclair v Bayly* (1995) 11 BCL 439, the Victorian Supreme Court ("**VSC**") – applying the old pre-ML uniform domestic arbitration legislation (which no longer applies), which adopted a liability-for-fraud-but-not-negligence standard (following English-law formulations) – held that an arbitrator's decision to take into account material not presented or relied upon by the parties qualified as negligence, but not fraud. In its reasoning, the VSC noted that a display of bad faith or a lack of good faith could lead to a court issuing an adverse costs order against an arbitrator. In another VSC case – *Road Rejuvenating & Repair Services v Mitchell Water Board* (unreported, VSC, Nathan J, 15 June 1990) (discussed in John Tyrril, "Arbitration – Removal of Arbitrator for Misconduct, Arbitrator Ordered to Pay Costs", (1990) *Australian Construction Law Newsletter* 52) – an arbitrator was ordered to pay the costs of a judicial application for his removal, on grounds he engaged in misconduct in the form of ex parte communications with one of the parties. This case was also under the old pre-ML uniform domestic arbitration legislation. In *Du Toit v Vale* (1993) 9 WAR 138, the Western Australian Supreme Court ("**WASC**") issued a partial costs order against an arbitrator, under the old pre-ML uniform domestic arbitration legislation following a set-aside of an award he had issued. WASC set aside the award on grounds that the arbitrator had previously been part of a professional body that had issued an adverse licensing decision against one of the parties (deregistering his builder's license), and the arbitrator was aware of that fact from the first preliminary conference of the arbitration. These decisions are unlikely to be treated as binding by a court considering arbitrator liability under the ML. The way in which the legislative test for liability is expressed differs across the ML and pre-ML regimes, and legislative policy may also be interpreted as having shifted, moving toward a more pro-arbitration stance. That said, the pre-ML decisions are likely to have some guiding value, especially where points of commonality are found by a court between the old and new liability tests. Institutional Rules ACICA Rules art. 53/Sch. 1 art. 7.2/ACICA Expedited Rules art. 40 exempt actions not in good faith from the liability waiver parties give arbitrators/emergency arbitrators by adopting the ACICA Rules.

II.5.	Is there anything in the jurisprudence/ other secondary sources of law of your jurisdiction that could provide a basis for an arbitrator generally to be subject to suit or found liable personally for acts or omissions in relation to an arbitration?	**Yes**	Caselaw Baseline common law in Australia, in effect before arbitrator immunity was legislatively enacted, likely recognized arbitrator immunity. A relatively recent example likely of at least persuasive authority is *Arenson v Casson Beckman Rutley & Co* [1977] AC 405, decided by the UK House of Lords Appellate Committee. Under that case and the line of precedent it drew upon, arbitrator immunity was qualified (dependent on a good faith exercise of arbitral powers) and not absolute. Commentaries The Resolution Institute's *Arbitrator's Toolbox* (2024) notes in Part C8 that there is "surprising uncertainty" as to the ambit of the statutory immunity of arbitrators. Nevertheless, the Global Arbitration Review's *The Asia-Pacific Arbitration Review 2026* notes that "there are no known cases where an arbitrator has been sued in Australia."
II.6.	If your answer to question II.3, II.4 or II.5 is yes, is there a corresponding statute of limitations or similar time-limit in your jurisdiction for the initiation of a claim against an arbitrator?	**Yes**	This will depend on the claim brought and the Australian jurisdiction that the claim falls under. Statutes of limitation for tort claims differ across the states/territories in Australia. Generally, for economic loss, the limitations period is six years. For defamation, the limitations period is generally one year from publication. If the liability sought is costs associated with a judicial removal or set-aside application, then specific limitations periods under the IAA apply. These are set forth in the ML: – For removals, an initial challenge must be made to the tribunal within 15 days of a party becoming aware of grounds for a challenge. Then if the tribunal rejects the challenge, any court filing for review must be made within 30 days after receipt of the tribunal's rejection. – For judicial set-aside applications, these must be made within 3 months after receipt of the award.

II.7.	If your answer to question II.3, II.4 or II.5 is yes, is there anything in the legislation or jurisprudence/other secondary sources of law of your jurisdiction that addresses the possibility of joint liability among the members of the tribunal, either *vis-à-vis* the parties or among themselves?	**No**	No legislation or caselaw directly addresses this question. In relation to negligence that results in economic loss or property damage (rather than personal injury), if two or more arbitrators were to act in a way that does not indicate good faith and cause a loss to a party (or more than one party), default principles of apportionment between joint tortfeasors would likely apply. Every state and territory in Australia legislatively adopts a proportionate liability regime (pure several liability) for negligence claims in a joint tortfeasor context relating to economic loss or property damage, replacing traditional joint-and-several-liability principles. However, if the conduct at issue is an intentional wrong – which an act that does not indicate good faith would presumably often constitute – traditional joint and several liability still applies.
III. Limitations of Liability		**Yes/No/NA**	**Comments, if any.**
III.1.	Is there a general principle of arbitrator immunity (*i.e.*, whereby an arbitrator is immune from civil liability for his or her activities undertaken as arbitrator) in your jurisdiction? If yes, is this immunity less than, equivalent to, or greater than the immunity, if any, afforded to judges or members of the judiciary? Please provide citations to any relevant legislation, regulations, jurisprudence, or other secondary sources of law.	**Yes**	Arbitrator Immunity vs. Judicial Immunity IAA s. 28(1) grants immunity to arbitrators for anything done or omitted in good faith. In Australia, judicial immunity is a common law doctrine that protects judges from personal liability for acts done in the exercise, or purported exercise, of their judicial function. According to the HCA's latest formulation of the doctrine in *Queensland v Stradford* [2025] HCA 3, the doctrine extends to unjust or even malicious acts or omissions by a judicial officer. Exceptions, however, exist for serious misconduct that is incompatible with the judicial function, such as solicitation or receipt of bribes, or acts knowingly undertaken outside of the scope of judicial authority. In recent time, no Australian cases appear to exist where a judge has been successfully sued for civil liability. (Though in one of the three related lower-court cases consolidated into *Stradford*, the judge involved was ordered to pay AUD 50,000 in exemplary damages for an imprisonment order he had issued for contempt that was later found to have been unlawful. That damages award, however, was reversed by the High Court in *Stradford*.) Prior to the *Stradford* matter, the only record found for this research of a successful personal lawsuit against a judge in Australia was in 1965.

			Given the wording of IAA s. 28(1) in contrast to the judicial formula of the immunity for judges in *Stradford*, the statutory immunity conferred on arbitrators is likely narrower. So long as a judge is *purporting* to act in furtherance of his or her judicial capacity, even if maliciously, should no recognized exception apply, immunity will attach. But an arbitrator will not have immunity for any act that is not in good faith. The existence of caselaw such as *Mitchell Water Board* and *Du Toit* noted in II.4 above, contrasted to the absence of comparable decisions against judges, further suggests arbitrators are more vulnerable to liability. Arbitral Institution Immunity IAA s. 28(2) grants arbitral institutions the same immunity granted to arbitrators (for good faith actions or omissions) in relation to their appointment-of-arbitrator decisions.
III.2.	Is there anything in the legislation of your jurisdiction that otherwise limits an arbitrator's personal civil liability?	**No**	The *International Arbitration Regulations 2020* (Cth), which is secondary legislation for implementation of the IAA, does not address questions of arbitrator liability. Apart from the IAA itself in relation to international commercial arbitration, and a parallel and almost identically worded provision in the uniform state Commercial Arbitration Acts for domestic commercial arbitration, no other legislation (primary or secondary) appears to specifically address questions of arbitrator liability.
III.3.	Is there anything in the jurisprudence/ other secondary sources of law of your jurisdiction that otherwise limits an arbitrator's personal civil liability?	**Yes**	Institutional Rules ACICA Rules 2021 art. 53/ACICA Expedited Rules 2021 art. 40 immunize arbitrators for actions taken in good faith. ACICA Rules 2021 art. 52.4/ACICA Expedited Rules art. 39.4 immunize ACICA itself and its representatives for all actions taken under the ACICA rules. ACICA Rules Sch. 1 (Emergency Interim Measures), art. 7.2 immunizes emergency arbitrators for actions taken in good faith. ACICA Rules art. 2.1 does allow parties to modify the Rules, conceivably opting out of the provisions above. However, the arbitrator immunity under IAA s. 28(1) would likely be construed by courts as mandatory – unless an arbitrator him/herself waived immunity. An ACICA art. 2.1 modification to remove arbitrator liability would affect significant third-party interests without any input from that third party.

III.4.	If your answer to question III.1, III.2, or III.3 is yes, are there any exceptions to that immunity or limitation of liability? For example, is there any exception to an arbitrator's immunity from suit or limitation of liability where the arbitrator's alleged misconduct involves fraud, bad faith, negligence, or intentional wrongdoing (to the extent these concepts are recognized in your jurisdiction's legal framework)? Please provide citations to the relevant legislation, regulations, jurisprudence, or other secondary sources of law.	**Yes**	As noted above, an arbitrator's acts or omissions that are not in good faith are susceptible to liability.
III.5.	Is there any jurisprudence/other secondary sources of law in your jurisdiction which considers the effectiveness of limitation of liability clauses found in arbitral institution rules? If yes, please provide a brief description of the case(s) or secondary source(s), limited to one paragraph per case/secondary source, including, if applicable: – The type of misconduct alleged. – The relevant limitation of liability language and its source (*i.e.*, UNCITRAL Arbitration Rules 2010, American Arbitration Association Commercial Arbitration Rules, etc.).	**None found in our research**	

	– A summary of the court's findings as to the effectiveness of the limitation of liability clause in limiting or excluding an arbitrator's liability.		
III.6.	Is there any jurisprudence/other secondary sources of law in your jurisdiction which considers the effectiveness of limitation of liability clauses or indemnity clauses (*i.e.*, clauses by which the parties to the arbitration agree to cover any losses or damages suffered by the arbitrators in a potential suit, or to otherwise hold the arbitrators harmless) found in an arbitration's procedural materials – *i.e.*, Terms of Reference, Terms of Appointment, Procedural Order No. 1, etc.? If yes, please provide a brief description of the case(s) or secondary source(s), limited to one paragraph per case/secondary source, including, if applicable: – The type of misconduct alleged. – The limitation of liability or indemnity language found in the relevant procedural material (if available). – A summary of the court's findings as to the effectiveness of the limitation of liability or indemnity clause in limiting or excluding an arbitrator's liability.	**None found in our research**	Caselaw No Australian caselaw appears to exist invalidating an arbitrator's indemnity clause in a contractual or similar non-legislative instrument on grounds of judicial policy. Commentaries A practitioner commentator, Peter Megens, in "Arbitration – Disclaimers" (1991) *Australian Construction Law Newsletter* 5, notes that he believes disclaimers of liability written into terms of reference or similar documents by arbitrators following the VSC *Mitchell Water Board* decision (discussed in II.4 above) might be unenforceable on public policy grounds. The author notes that the attempted inclusion of such a disclaimer could be gamed by a party as a tool for arbitrator shopping – a party could advise it is unwilling to agree to the terms unless the disclaimer is removed, and then strike a candidate for arbitrator who refuses to accept the terms without the disclaimer.

III.7.	Is there any jurisprudence/other secondary sources of law in your jurisdiction which considers the effectiveness of a clause limiting the arbitrators' liability found in the parties' arbitration agreement? If yes, please provide a brief description of the case(s) or secondary source(s), limited to one paragraph per case/secondary source, including, if applicable: – The type of misconduct alleged. – The relevant limitation of liability language in the parties' arbitration agreement. – A summary of the court's findings as to the effectiveness of the limitation of liability clause in limiting or excluding an arbitrator's liability.	**None found in our research**	
III.8.	If your answer to question III.5, III.6, or III.7 is yes, does any of this jurisprudence/secondary sources of law comment on whether the *source* of the limitation of liability or indemnity language (*i.e.*, institutional rules v. procedural order v. terms of reference v. arbitration agreement) was relevant to the court's finding? If yes, please provide a brief description of the court's or secondary source's reasoning on the issue, limited to one paragraph per case/secondary source.	**N/A**	

III.9.	If your answer to question III.5, III.6, or III.7 is yes, does any of this jurisprudence/secondary sources of law comment on whether the particular language used in the relevant limitation of liability or indemnity clause was relevant to the court's finding? If yes, please provide a brief description of the court's or secondary source's reasoning on the issue, limited to one paragraph per case/secondary source.	**N/A**	
III.10.	If your answer to question III.5, III.6, or III.7 is yes, does any of this jurisprudence/secondary sources of law comment on whether the moment in the arbitration when the relevant limitation of liability or indemnity clause was agreed to was relevant to the court's finding, *i.e.*, whether it was agreed to *ex ante* (in advance of the relevant arbitration proceeding having been initiated) or after the arbitration was commenced? If yes, please provide a brief description of the court's or secondary source's reasoning on the issue, limited to one paragraph per case/secondary source.	**N/A**	

III.11.	To the extent there is any principle of arbitrator immunity or limitation of liability recognized in your jurisdiction (*i.e.*, if your answer to question III.1, III.2, or III.3 is yes), does that immunity or limitation of liability apply in proceedings in which a party is requesting interim relief (interim injunction, conservatory or similar temporary measures), as distinct from final relief (including damages), from an arbitrator? Please provide citations to the relevant legislation, regulations, jurisprudence, or other secondary sources of law.	**Yes**	The wording of the IAA s. 28(1) immunity granted to arbitrators does not distinguish between stages of arbitral proceedings. Given the pro-arbitration stance adopted over recent time by Australian courts, including on questions of how to interpret governing arbitration statutes (*see, e.g.*, *Rinehart v Hancock Prospecting Pty Ltd* (2019) 267 CLR 514), it would seem unlikely that an Australian court would read down the provision, limiting it only to final awards.
III.12.	To the extent there is any principle of arbitrator immunity or limitation of liability recognized in your jurisdiction, (*i.e.*, if your answer to question III.1, III.2, or III.3 is yes), does that immunity or limitation of liability permit an arbitrator to refuse to serve as a witness or provide documents when subpoenaed, or otherwise compelled, by a judicial authority (for example, in enforcement proceedings)? Please provide citations to the relevant legislation, regulations, jurisprudence, or other secondary sources of law.	**Likely Yes (though qualified)**	The immunity under IAA s. 28(1) is broadly worded. Parallel judicial immunity in Australia has been found to extend to criminal liability. *See, e.g., Fingleton v The Queen* (2005) 227 CLR 166 (noting the existence at common law of qualified criminal immunity for the acts of judges performed within the scope of their judicial role). *See also Yeldham v Rajski* (1989) 18 NSWLR 48 (a decision of the New South Wales Court of Appeal dismissing a private prosecution of a judge for contempt). While no Australian caselaw appears to exist directly discussing subpoenas directed to arbitrators (or judges), the uniform Evidence Acts (including the *Evidence Act 1995* (Cth)) would materially constrain an arbitrator's answerability to a subpoena. In particular, s. 129(1)(b) of these acts generally prohibits an arbitrator (and any person acting under the arbitrator's direction or control) from giving evidence of the reasons for the arbitrator's decision or deliberations, subject to specified exceptions (including proceedings by way of review of an arbitral award and certain proceedings alleging conduct outside authority).

III.13.	Is there any jurisprudence/other secondary sources of law in your jurisdiction which considers whether a limitation of liability clause found in arbitral institution rules, procedural materials, or the parties' arbitration agreement operates to permit an arbitrator to refuse to serve as a witness or provide documents when subpoenaed, or otherwise compelled, by a judicial authority? If yes, please provide a brief description of the case(s) or secondary source(s), limited to one paragraph per case/secondary source.	**None found in our research**	
III.14.	To the extent an arbitrator is permitted to be called upon to act as a witness in your jurisdiction but is otherwise bound by confidentiality obligations related to the underlying arbitration, is there any guidance (found in jurisprudence or elsewhere) as to how the arbitrator should proceed?	**N/A**	
IV. Effectiveness of Professional Indemnity Insurance		**Yes/No/NA**	**Comments, if any.**
IV.1.	Does the legal framework in your jurisdiction mandate professional indemnity insurance coverage for arbitrators?	**No**	

IV.2.	Is there any legislation or jurisprudence/other secondary sources of law in your jurisdiction which considers whether acting as an arbitrator counts as an act constituting the practice of law?	**No**	It is common for non-lawyers to act as arbitrators in Australia: – The scholarly article Adrian J. Bradbrook "Legal Issues for Lay Commercial Arbitrators" (1998) 20 Adelaide Law Review 265 reflects and illustrates this. – Similarly, the ACICA's "Guidance Note on the Appointment of Arbitrators" (commenting on the ACICA 2021 Rules) states on p. 4: Depending on the nature of the arbitration, the appointment of an arbitrator who is not a lawyer may be appropriate, either as the sole arbitrator or as a member of a tribunal.
IV.3.	Is there any jurisprudence/other secondary sources of law in your jurisdiction which considers whether the professional indemnity insurance policy of a law firm or barrister's chambers covers activities undertaken by a member of that firm/chambers as arbitrator where the arbitrator has been appointed in an individual capacity (*i.e.*, rather than as a representative of the firm/chambers)? If yes, please provide a brief description of the case(s) or secondary source(s), limited to one paragraph per case/secondary source, including, if applicable: – The type of misconduct alleged. – The relevant language of the professional indemnity insurance policy of the arbitrator's law firm or barrister's chambers (if available).	**No**	None directly. However, PII policies taken out by a firm may cover such an appointment. In *Solicitors' Liability Committee v Gray* (1997) 77 FCR 1, the Full Court of the Federal Court of Australia ("**FCFCA**") construed a PII policy taken out by a firm of solicitors as not covering services they offered to clients in syndicating property purchases for tax-minimization purposes. The FCFCA reasoned that the policy did not extend to entrepreneurial activity that had no real link to the practice of law. Key wording in the policy at issue was: "The insurer will indemnify the insured against any civil liability in connection with the Practice […]", where "the Practice" was in turn defined to mean "the private practice of a solicitor carried on by the Firm solely on its own behalf". (1997) 77 FCR 1, 48. The FCFCA commented on this language: *[…] the provisions mentioned above should, we think, be construed so as to cover liability having some nexus with (ie "in connection with") the professional functions of a solicitor (that is 'the Practice'). In other words, the cover does not extend to liability for an entrepreneurial activity which has no real nexus with the Practice. Id.* Whether a firm's PII policy covers an arbitrator appointment in an individual capacity would likely turn in part on (1) the specific wording of the policy, (2) whether the firm endorses or condones the appointment, and (3) whether any benefit flows to the firm. In any event, the holding in *Gray* would likely not squarely apply to any action in such an individual capacity, as acting as an arbitrator is an activity commonly carried out in the normal course of a lawyer's business, i.e., practice of law.

	– A summary of the court's finding as to the scope of that policy's coverage *vis-à-vis* the arbitrator's activities as an arbitrator.		The absence of caselaw directly on point in Australia potentially suggests that in most scenarios, a lawyer who assumes an appointment in a capacity that is not explicitly representative of his/her firm or chambers would still generally be considered to fall under the coverage of the PII policy of his/her firm or chambers. A further note: though acting as an arbitrator would not be within the definition of the practice of law for purposes of determining whether a person has engaged in the authorized practice of law in an Australian jurisdiction (*see* IV.2 above about the commonality of lay arbitrators in Australia), the definition of legal services or related key coverage terms in a PII policy would likely be construed in a broader way.
IV.4.	If your answer to question IV.3 is no, is there any jurisprudence/other secondary sources of law in your jurisdiction which considers whether the professional indemnity insurance policy of a law firm or barrister's chambers covers activities undertaken by an employee or partner of that firm/chambers as a board member of an external organization (*i.e.*, a corporation, charity, etc.)? If yes, please provide a brief description of the case(s) or secondary source(s), limited to one paragraph per case/secondary source, including, if applicable: – The type of misconduct alleged. – The relevant language of the professional indemnity insurance policy of the member's law firm or barrister's chambers (if available). – A summary of the court's finding as to the scope of that policy's coverage *vis-à-vis* the member's activities as a board member.	**Yes**	*See* FCFCA caselaw noted in IV.3 above, excluding entrepreneurial activity from the coverage of a PII policy, and in so doing adopting a real-nexus-to-the-practice-of-law test.

IV.5.	Assuming that there is coverage of the types envisioned in questions IV.3 and IV.4, is there any jurisprudence/other secondary sources of law in your jurisdiction which considers whether that coverage extends to breaches of cybersecurity and data privacy laws? If yes, please provide a brief description of the case(s) or secondary source(s), limited to one paragraph per case/secondary source, including, if applicable: – The nature of the alleged cybersecurity/privacy breach. – The relevant language of the professional indemnity insurance policy (if available). – A summary of the court's finding as to the scope of that policy's coverage *vis-à-vis* the alleged cybersecurity/privacy breach.	**Yes (qualified)**	No direct caselaw appears to exist on point. Privacy Claims Given the wording of a standard PII policy in Australia currently in application (*see* the Lawcover example in IV.6 below), it should cover privacy-related claims. This is reinforced by insurance broker Marsh, which in an article on its website "Legal Practitioners Professional Indemnity policy for cyber losses" (available at: https://www.marsh.com/en-gb/industries/law-firms/expertise/professional-indemnity-cyber.html, last accessed Sept. 19, 2025) notes that both the PII and cyber policies it arranges in Australia will cover third-party losses arising in connection with privacy liability. Cyber-Related Claims A 2020 article of the Victorian Legal Practitioners' Liability Committee (LPLC), "Cyber Insurance Cover" (last updated May 4, 2020, available at: https://lplc.com.au/resources/practitioner/cyber-insurance-cover) states that the LPLC's then-required PII coverage "does not cover the firm's own business losses (first party losses), for instance, the costs of interruption to the firm's business, retrieval of electronic data, the IT costs and other costs of remediating a cyber-security breach and regulatory fines and penalties", but notes it can cover claims brought by clients or third parties against an insured lawyer. Practitioner discussions highlight the likely need to obtain separate cyber insurance in addition to PII. *See, e.g.,* Ben Di Marco, "Cyber Insurance: What Is It and Do Law Firms Need It?" *QLS Proctor*, 27 July 2022, available at: https://www.qlsproctor.com.au/2022/07/cyber-insurance-what-is-it-and-do-law-firms-need-it. This potentially reflects the gap identified by the LPLC article above. Dedicated cyber coverage can be offered separately by PII insurers. In addition to PII coverage (an example of which is given in IV.6 below), leading Australian PII insurer Lawcover (as of Sept. 2025, the sole authorized provider for minimum-level PII that must be taken out by lawyers registered in New South Wales) offers a separate cyber risk policy for lawyers.

IV.6.	Assuming that there is coverage of the type envisioned in question IV.3, please provide sample language from commonly used insurance policies that were found by those courts or secondary sources to cover work undertaken independently as an arbitrator.		Key language of the underlying policy at issue in *Solicitors' Liability Committee v Gray* (1997) 77 FCR 1 is quoted in IV.3 above. A sample PII policy for the 2025–26 Australian financial year from Lawcover for solicitors in the State of New South Wales contains the following coverage language: **Who Is Insured** 1. We insure the **law practice**, being: (a) a sole practitioner providing **legal services** on his or her own account; (b) a partnership of **lawyers**; (c) an incorporated legal practice; (d) a **multi-disciplinary partnership**; or (e) an **unincorporated legal practice**. […] **What We Insure** 4. We agree to indemnify the **insured** against civil liability for a **claim** that is: (a) made in connection with the provision of **legal services** by the **law practice** in Australia or elsewhere; […] 7. We do not agree to indemnify an **insured** for any loss suffered directly by an **insured**, including arising directly or indirectly from a **cyber incident**. […] **What We Exclude From The Insurance** 10. We will not indemnify the **insured** under this policy when: (a) the **claim** arises from: (i) a dispute between current or former **principals** or proposed **principals** or between current or former shareholders or directors of an incorporated legal practice;

			(ii) the **insured's** activities that constitute auditing of financial reports under the *Corporations Act 2001* (Cth) Chapter 2M (Financial Reports & Audit); (iii) any activity that constitutes the provision of a financial service under the *Corporations Act 2001* (Cth) Chapter 7 (other than an activity that constitutes a referral under the *Corporations Regulations 2001* Regulation 7.6.01(e)) or that constitutes the provision of a credit facility, as defined in the *Corporations Regulations 2001*; (iv) the **insured**, or a **principal**, **employee** or contractor of the **law practice**, being a director or officer of a body corporate (other than a **claim** arising from the **law practice's** provision of **legal services** through any of its directors or officers who are **lawyers**); (v) failure to pay trust money or deliver trust property, or a fraudulent dealing with trust property, where the **law practice** received the money or property on trust in the course of providing **legal services** and where the failure or fraudulent dealing arises from a dishonest act of an associate of the law practice (as defined in the *Legal Profession Uniform Law* (NSW) section 6(1)); (vi) a contract other than a contract to provide **legal services,** unless liability would have attached in the absence of such contract; (vii) a contract to the extent that it: (A) extends the **insured's** duty beyond exercising the standard of care and skill to be reasonably expected of a **lawyer** in the circumstances; or (B) increases the compensation or damages for which the **insured** are liable for breach of duty beyond the amount payable in tort or under any applicable statute; (viii) a contract or transaction in which the **insured** has or had a direct or indirect financial interest other than an entitlement to receive fees for the provision of **legal services**; (ix) physical loss of, or damage to, property, unless the **claim** relates to property (other than cash, negotiable securities, jewellery, precious metals and stones, art works or antiques) in the **insured's** care, custody and control for which the **law practice** is responsible to a third party in connection with the provision of **legal services**; (x) death or personal injury unless the **claim** is for psychological or psychiatric injury caused by act, error or omission of the **insured** in providing **legal services**;

			(xi) the consequences outside the control of the **insured** of a terrorist act (as defined in the *Criminal Code Act 1995* (Cth) section 100.1(1)); (xii) war except to the extent that the **insured's** liability arises, whether directly or indirectly, from an order of any government or public or local authority; […] **Definitions** 45. In this policy, unless the context otherwise requires […] (i) **law practice** means the person or entity named in Item 2 of the Schedule and includes: (i) any person or entity referred to in clause 1; […] (k) **lawyer** means a person who is admitted to the legal profession in Australia and includes an Australian registered foreign **lawyer**; (l) **legal services** means work done, or business transacted, in the ordinary course of private **legal practice** in Australia and includes: (i) services provided to clients in Australia or outside Australia; and (ii) retaining a legal practitioner entitled to practice law in a foreign jurisdiction to advise on the law in that jurisdiction and services related to that advice; […] Language in two personal indemnity policies suggested by the New South Wales Bar Association for barristers in the state have more explicit wording – expressly including arbitrator appointments under their coverage. *See, e.g.*, the 2025–26 "Insurance Policy for Barristers" offered by insurer Suncorp: 1. Civil Liability and Statutory Proceedings Insuring Clause **Suncorp** agrees to indemnify the **Insured** up to the **Limit of Indemnity** against:

			i. civil liability for compensation; ii. **Claimant's Costs**; iii. **Costs Orders**; and iv. **Compensation Orders**, resulting from **Claims** first made against the **Insured** during the **Period of Insurance** and reported to **Suncorp** during the **Period of Insurance** incurred in the conduct of the **Business**. […] 8. Definitions The following words shall have the same special meaning throughout this **Policy**, whether expressed in the singular or plural. If a word has a special meaning, it will appear in the **Policy** in bold type and with a capital letter. […] 8.3 **Business** means the provision of professional services of a barrister, which are provided in the normal course of carrying on the practice of a barrister in private practice, including acting as a mediator or arbitrator.
IV.7.	Are there any other issues that, in your view, a prospective arbitrator should be aware of in ensuring that their work as an arbitrator in your jurisdiction is covered by their law firm's or chamber's professional indemnity insurance policy?	**No**	
V. Involvement of Arbitral Institutions		**Yes/No/NA**	**Comments, if any.**
V.1.	Is there any jurisprudence in your jurisdiction where an arbitral institution has been sued alongside an arbitrator?	**No**	No such caselaw appears to exist.

V.2.	Is there any jurisprudence in your jurisdiction where an arbitrator has been sued and then an arbitral institution subsequently intervened in the proceeding?	**No**	No such caselaw appears to exist.
V.3.	If your answer to question V.1 or V.2 is yes, in your experience, or to the extent this information is publicly available, did the arbitrator and arbitral institution defend the suit jointly, or did the arbitrator defend the suit on his/her own behalf, separate from any defense mounted by the institution? If the suit(s) was/were defended jointly, in your experience or, to the extent this information is publicly available, did the institution pay for the arbitrator's counsel fees?	**N/A**	
V.4.	If your answer to question V.1 or V.2 is yes, in your experience, or to the extent this information is publicly available, did the suit result in a settlement?	**N/A**	
VI. Procedural Issues		**Yes/No/NA**	**Comments, if any.**
VI.1.	Is there any jurisprudence in your jurisdiction where an arbitrator and/or arbitral institution was sued by a party, and the arbitrator or arbitral institution objected on the grounds of improper forum or venue?	**No**	

	If yes, please provide a brief description of case(s), limited to one paragraph per case, including: – The parties. – The type of misconduct alleged. – The nature and basis of the arbitrator's or arbitral institution's objection to venue. – The outcome of the objection (*i.e.*, whether the case proceeded to be heard or was dismissed for improper forum or venue) and the court's reasoning for the same.		
VI.2.	Is there any legislation or jurisprudence/other secondary sources of law in your jurisdiction which considers the potential consequences if a suit against an arbitrator is unsuccessful? For example, if a suit against an arbitrator is unsuccessful, what remedies would be available to the arbitrator? Moreover, would any sanctions be applicable to the unsuccessful party who brought the suit if it is found that the suit was frivolous?	**No (qualified)**	None appears to exist. However, Australia follows the English rule of making costs awards as a standard part of litigation – and where the general rule is that costs follow the event. If a party brings suit against an arbitrator and loses (partially or fully), it will likely have to compensate the arbitrator for his/her costs of defending the suit. Normally, costs orders will not be for full indemnification, rather for capped compensation according to fixed rates for different steps of litigation. But if a claim is found to have been completely baseless or to have been maliciously brought, full indemnification can be ordered as an exceptional remedy.
VI.3.	While this survey generally focuses on the civil liability of arbitrators, if there is any relevant information from your jurisdiction related to claims for criminal liability brought against arbitrators, please include such information.	**Yes**	*See* the discussion of *Fingleton* noted in III.12 as background (the position for judicial immunity).

VI.4.	Is there any other information about your jurisdiction not already provided in your responses to the questions in this survey that is relevant to understanding and explaining arbitrator liability in your jurisdiction?	**Yes**	In *Mitchell Water Board* discussed in II.4 above, the VSC made what has been described in practitioner/scholarly commentary as non-binding dicta regarding the prospective liability of an arbitral institution – after finding the arbitrator in question liable for a partial costs order. The court stated: *It is appropriate in these circumstances to order that the arbitrator indemnify the first-named defendant in respect of its costs, but I add this observation: the arbitrator was appointed by the President of the Institute of Arbitrators. That body is not before me, but it should stand behind its appointed officers, and I would expect the Institute itself to bear the costs of all the parties to this dispute. Quoted in (1990) Australian Construction Law Newsletter 52, 53.* In an article on the case (full citation in II.4 above), John Tyrril offered that these judicial comments were "in passing" and "of no effect in this case" (i.e., dicta). *Id.* at 53. Nevertheless, this VSC decision does suggest Australian courts are (or were at the time) willing to turn their minds to institutional liability.

ICCA RESEARCH GROUP ON ARBITRATOR IMMUNITY

Goals

The primary goal of the Arbitrator Immunity Research Group is to study questions of arbitrator liability and immunity, and to raise practitioners' and arbitrators' awareness of the current legal landscape. The project's goals include investigating the limits of arbitrator immunity, evaluating the effectiveness of language limiting arbitrator liability in procedural orders and institutional rules, and examining the impact and limitations of professional indemnity insurance.

Methodology

To understand the current global landscape of arbitrator immunity, the Research Group designed a detailed survey and selected sample jurisdictions for inclusion. The Research Group compiled a list of survey respondents for each jurisdiction by seeking recommendations for responsive, high-quality contributors who had previously participated in ICCA research projects, as well as recommendations from arbitral institutions and colleagues in the international arbitration community. After receiving the completed surveys, the research team collaborated with the respondents in two rounds of edits to improve clarity, understanding, and formatting.

Citations to this Research

Researchers and authors using this data should use the following citations to refer to this research:

- General citation to the project website: 'ICCA Research Group on Arbitrator Immunity' (Kate Brown de Vejar, Victoria Shannon Sahani, and Damien Nyer, eds., 2026), https://www.arbitration-icca.org/research-group-arbitrator-immunity

- Citation to the individual survey response: 'Survey Responses on Arbitrator Immunity for Australia', in ICCA Research Group on Arbitrator Immunity (Kate Brown de Vejar, Victoria Shannon Sahani, and Damien Nyer, eds., 2026), https://www.arbitration-icca.org/research-group-arbitrator-immunity

Copyright

Disclaimers

- **Viewpoints Disclaimer:** The survey responses do not represent the viewpoints, opinions, or research of ICCA, its Governing Board or members, or the Research Group in general, or its individual members. The Research Group's editing process focused solely on enhancing clarity, comprehension, and formatting.

- **General Legal Disclaimer:** The information on this website and within the survey responses is for informational purposes only, and this information does not constitute legal advice. Because legal landscapes in these jurisdictions constantly evolve, the website might contain incorrect or out-of-date information. Readers must not act or refrain from acting based on this raw data. Readers should always seek independent, local legal advice regarding these topics.