# Australian High Court on Functus Officio and De Novo Review of Arbitration Awards

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The High Court of Australia's ruling in **CBI Constructors Pty Ltd v Chevron Australia Pty Ltd [2024] HCA 28** marks a significant development in the jurisprudence surrounding the **finality of arbitral awards** and the extent to which courts can intervene in arbitral proceedings. This decision centers on whether an arbitral tribunal, after issuing an interim award, could revisit issues that were argued to be conclusively settled by that interim award. The Court's ruling provides important guidance on the application of the **functus officio** doctrine and the standard of judicial review for setting aside arbitral awards under the **Commercial Arbitration Act 2012 (WA)**.

## Background

The dispute between CBI Constructors Pty Ltd ("CKJV") and Chevron Australia Pty Ltd arose from a contract related to the Gorgon Project, a major offshore oil and gas development. CKJV, under the contract, supplied staff for the project, and a dispute emerged over the reimbursement of staff costs. CKJV argued that Chevron underpaid, while Chevron counterclaimed that it had overpaid.

The arbitration was conducted under the **UNCITRAL Arbitration Rules** and was bifurcated into separate hearings on liability and quantum. The arbitral tribunal issued an interim award in December 2018 (the "First Interim Award"), addressing all liability issues. The tribunal concluded that CKJV was entitled only to actual costs, rejecting CKJV's claim for

higher contractual rates.

Following this, CKJV sought to advance a new argument—the "Contract Criteria Case"—which pertained to how the "actual costs" should be calculated. Chevron objected, arguing that the tribunal was **functus officio** and thus lacked the authority to address any further liability issues. Despite these objections, the tribunal issued a second interim award (the "Second Interim Award"), allowing CKJV's new argument to proceed.

Chevron then applied to the Supreme Court of Western Australia to set aside the Second Interim Award, arguing it exceeded the tribunal's jurisdiction. The Supreme Court and the Court of Appeal agreed with Chevron, finding that the tribunal was functus officio and had overstepped its jurisdiction by revisiting liability issues settled by the First Interim Award. CKJV appealed to the High Court of Australia.

## The High Court's Decision

The High Court was tasked with determining two central issues:

1. **Whether the tribunal was functus officio** after issuing the First Interim Award, thus precluding it from addressing the Contract Criteria Case in the Second Interim Award.
2. **Whether the Supreme Court of Western Australia applied the correct standard of review** in setting aside the Second Interim Award.

**Functus Officio and the Scope of Tribunal Authority**

The High Court's analysis began with the principle of **functus officio**—the idea that once a tribunal has issued a final decision on a matter, it cannot revisit that decision. However, the Court found that this principle did not apply in the manner the lower courts had concluded. The Court stated, **"The end result is that the search for a justification for a**

**conclusion by a court that the First Interim Award rendered the arbitral tribunal functus officio with respect to the matters the subject of that award fails."** This meant that the tribunal retained jurisdiction to issue the Second Interim Award.

The Court emphasized that the First Interim Award, while final on the issues it addressed, did not cover all aspects of the dispute. Specifically, it did not conclusively resolve how the "actual costs" should be calculated, leaving room for further determination. As such, the tribunal was within its rights to address the Contract Criteria Case in the Second Interim Award.

The Court highlighted that **"an award can be 'final' in a number of ways or senses,"** and in this instance, the First Interim Award was final only concerning the issues it explicitly resolved. The tribunal's decision to entertain the Contract Criteria Case in the Second Interim Award did not overstep its jurisdiction.

**Judicial Review and the Standard of Intervention**

On the second issue, the High Court scrutinized the standard of review applied by the Supreme Court. CKJV had argued that the courts should defer to the tribunal's interpretation of its own jurisdiction. However, the High Court found that the courts were entitled to conduct a **de novo** review when jurisdictional questions arose. The Court affirmed that **"the correctness standard has been adopted"** in such cases, meaning the courts should independently assess whether the tribunal exceeded its jurisdiction.

However, the High Court ultimately determined that the tribunal had not exceeded its jurisdiction in issuing the Second Interim Award. As a result, the Court concluded that the Supreme Court had erred in setting aside the award, as there was no basis for concluding that the tribunal acted

beyond the scope of the arbitration agreement.

## Implications for Arbitration Practice

The High Court’s decision in **CBI Constructors Pty Ltd v Chevron Australia Pty Ltd** reinforces the **finality of arbitral awards** while also acknowledging the flexibility of tribunals to manage the arbitration process, including issuing multiple awards on different aspects of a dispute. The ruling clarifies that tribunals are not functus officio in relation to issues that remain unresolved, even after an interim award has been made.

This case also underscores the limited scope of judicial intervention in arbitration. Courts are empowered to review arbitral awards, but only within strict confines. The High Court’s emphasis on the **de novo** standard for reviewing jurisdictional issues reaffirms that while courts have a role in overseeing arbitration, their intervention is appropriately circumscribed to ensure that the arbitration process remains efficient and final, consistent with the parties’ agreement.

In summary, the decision serves as a reminder that while arbitration provides a final and binding resolution to disputes, the tribunal’s authority is not extinguished by interim decisions unless those decisions fully resolve the issues in question. This ruling will likely influence the conduct of future arbitrations, particularly in how parties and tribunals structure interim awards and approach unresolved issues.

**Author:** Mahmoud Abuwasel
**Title:** Partner – Disputes
**Email:** mabuwasel@waselandwasel.com
**Profile:**
https://waselandwasel.com/about/mahmoud-abuwasel/

**Lawyers and consultants.**
Tier-1 services since 1799.
www.waselandwasel.com
business@waselandwasel.com