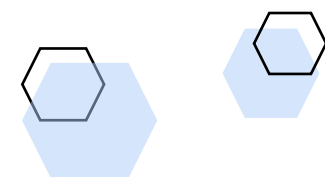




Asia Pacific
Institute of Experts



INSIDE THIS ISSUE

PG. 5-6

Geoff Green from Harbourside Advisory Pty Ltd discusses if independence of opinion is the most important aspect of an expert's independence.

PG. 7-9

We spoke to Assoc Prof Koh Tieh Yong who shared more on atmospheric physics and sustainability science.



FOREWORD

UPDATE BY THE PRESIDENT, PROFESSOR LESLIE CHEW, PBM, SC

“ It is another year for the Institute and I'm happy that we were able to have our 2nd Accreditation Course on 27 April. This was held at the Singapore University of Social Sciences (SUSS). It was a whole day affair. This year too we had more participants compared to our first run. We had 26 participants this year. More importantly, this time around after the general overview on the dispute resolution process and the law relating to expert evidence in Singapore, we had two specialist tracks for participants to choose. One specialist track was expert evidence in Civil Engineering and the other was Finance/Accounting. The Civil Engineering specialist track was conducted by Assoc Prof Tan Teng Hooi whilst the Finance/Accounting specialist track was conducted by Iain Potter and Jonathan Ellis.

[Continued on page 2]

I am pleased to report that the general feedback on the Accreditation Course has been good. Following on the course, we were also able to attract new members which is always a great thing for us!

I would also like to mention that earlier in the year, in February, we had a very exciting seminar which pitched lawyers against experts. It was certainly a most exhilarating event and the enthusiasm amongst presenters and attendees was evident. I would like to thank the presenters for their extremely interesting and entertaining contributions at this seminar. So, on behalf of the Institute, our thanks go to Ms Sapna Jhangiani KC, an advocate, arbitrator and mediator, Paul Aston, accredited arbitrator and mediator, and of course, our very own John Gibson of Brookes Bell.

In this issue of the Newsletter, we have two contributions from our members, namely Geoff Green and Koh Tieh Yong. The article from Geoff Green and the interview with Koh Tieh Yong make interesting reading. I would like to thank both members for their contributions to this edition of our newsletter.

As always, I would encourage all members to actively support and participate in our events as well as to help encourage others to join us.

In the meantime, all the best for 2023! ”

The Committee of the Asia Pacific Institute of Experts (APIEx) for the period from 2023 to 2025 comprise of the following individuals:

President
Prof Leslie Chew SC

Vice President
Gregory Vijayendran SC

Secretary
Ben Chester Cheong

Treasurer
Melvin Loh Guo Wei

Committee Member
John Gibson

Committee Member
Jonathan Matthew Ellis

Committee Member
Iain Potter

Committee Member
Assoc Prof Tan Teng Hooi

APIEX MEMBERSHIP ACCREDITATION COURSE (SECOND RUN)

APIEX HELD ITS SECOND MEMBERSHIP ACCREDITATION COURSE FOR PARTICIPANTS (27 APRIL 2023)

The Asia Pacific Institute of Experts (APIEx) held its second membership accreditation course for participants who come from a technical background with aspirations of acting as an expert witness. The course also provides a basic refresher for those who are already practicing as expert witnesses. The course introduced the world of experts and expert evidence and examined the role of evidence in dispute resolution, both in the courts and before other tribunals such as arbitral tribunals. Participants were acquainted with the law relating to opinion evidence (expert testimony), the role of experts in dispute resolution and the relevant Singapore law application to expert evidence. Candidates were required to take a 90-minute examination in class. Participants who successfully completed the course were issued a certificate of completion and entitled to apply for APIEx membership with the relevant exemptions for a specimen report.

Click on the link to see more photos of the course: <https://photos.app.goo.gl/iLF5mbGvr4F6ULFN8>







SEMINAR: HEAD TO HEAD: “WHAT LAWYERS AND EXPERTS SAY ABOUT EACH OTHER (AND HOW ARBITRATORS/JUDGES MANAGE)”

A FOCUS ON THE TENSIONS BETWEEN COUNSELS AND EXPERTS
(9 FEBRUARY 2023)

The Asia Pacific Institute of Experts (APIEx) organized a seminar covering the inherent tensions that can exist in the roles that Counsel and Experts play in the arbitral or judicial process. These tensions require careful navigation to ensure their respective duties are properly fulfilled. Balancing the competing demands of advocacy versus neutrality, expertise versus consultation, interests of the client versus the duty to the tribunal or Court, have real consequences that spill over into the reality of everyday decisions made by both Counsel and Expert.

The event was moderated by Ms Sapna Jhangiani KC, who also acted as a panellist and other panellists including Mr Paul Aston and Mr John Gibson.

Click on the link to see more photos of the event:

<https://photos.app.goo.gl/bzo1BnRi9ZZXEJD29>

APIEX ANNUAL GENERAL MEETING 2023

APIEX HELD ITS ANNUAL GENERAL MEETING 2023 (26 JANUARY 2023)

The Asia Pacific Institute of Experts (APIEx) held its annual general meeting on 26 January 2023.

Click on the link to see more photos of the annual general meeting: <https://photos.app.goo.gl/pdm38eKu5trDDUnM7>



FEATURES

Independence of opinion the most important aspect of an expert's independence?

By Geoff Green, Principal at Harbourside Advisory Pty Ltd



PHOTO: PIXABAY

Background

An international manufacturer of insulation products was suspicious about an Australian rival's claimed fire rating for a feature product. In particular, it was concerned that the fire rating from a *ceiling only* test was presented to potential purchasers as the result from a *walls and ceiling* test. In practical terms, this meant it overstated its fire-resistance qualities.

It commissioned its own scientific analysis, which seemed to confirm its suspicions.

From a business point of view the international manufacturer was impacted by what it saw as unfair competition, but in the aftermath of the 2017 Grenfell Tower fire in London – in which a fire spread rapidly via combustible aluminium composite cladding, resulting in 72 deaths – there was also a significant fire safety issue potentially in play.

The international manufacturer arranged for its lawyers to write to the Australian manufacturer outlining their concerns and providing copies of their own test results, and asked it to correct what were said to be misleading and deceptive representations. The Australian manufacturer declined, and told the international manufacturer that it should raise any concerns it had with the relevant authorities.

The international manufacturer then implemented a “counter-marketing” campaign – dramatically named “Project Shield and Sword” – including the distribution of a narrated video to key customers and decision makers. The video showed footage of the international manufacturer's own test of its rival's feature product, with an outcome that contradicted the claimed rating.

When the Australian manufacturer learned about the counter-marketing campaign, it commenced legal action seeking injunctions to stop any further distribution, and damages for the loss that it said had been caused by the campaign.

A central question for the trial was whether the original testing, and the dramatic re-test, were conducted in accordance with the fire safety testing standards, and so technical expert evidence was critical. There were also important legal questions around the interpretation of standards – drafted for engineering purposes, rather than to facilitate legal analysis – notably, whether transitional provisions allowed the Australian manufacturer to rely upon a *ceiling only* test that had been conducted *prior* to a change in the standard that appeared to now preclude their use.

The international manufacturer engaged the fire safety engineer who undertook the original Project Shield and Sword analysis as one of

its independent technical experts. At trial, his independence was challenged twice. First, the Australian manufacturer said that it was wrong for his *original* analysis to be described as “*independent*” as part of the counter-marketing campaign. Secondly, it argued that his role in the original analysis, and other earlier work for the international manufacturer demonstrated that he was a “*hired gun*,” and not truly independent. The Australian manufacturer said that his evidence should not be admitted in the proceedings because it was the product of a lack of independence.

The expert’s independence

The expert was subject to specific cross-examination about his understanding of the Practice Note and Expert Witness Code of Conduct, and it was clear that the court was satisfied that he had complied with those requirements, not just in relation to his evidence to the court, but critically, also in relation to the original analysis.

There was also forensic analysis of the communication between the international manufacturer’s lawyers and the expert, which, the Australian manufacturer argued, “*improperly pre-empted the opinion or statements sought [from the expert].*”

On this point the court found that the communication “neither occasioned nor established any want of independence on [the expert’s part]” noting the guidance in [Boland v Yates Property Corporation Pty Ltd \[1999\] 74 ALJR 209](#):

“For...legal advisors to make suggestions is a quite different matter from seeking to have an expert witness give an opinion which is...not an honest opinion that he or she holds or is prepared to adopt...counsel and solicitors have a proper role to perform in advising or suggesting, not only which legal principles apply, but also that a different form of expression might appropriately or more accurately state the propositions that the expert would advance...so long as no attempt is made to invite the expert to distort or misstate facts or give other than honest opinions.”

Clearly the expert’s response in cross-examination impressed the court, which noted that “*the opinions that he expressed...were his own and were arrived at independently of any held within [the international manufacturer].*”

It appears that the independence of approach actually demonstrated by the expert outweighed any concerns about a theoretical risk to his independence.

Weaponisation!

The international manufacturer claimed that it was merely passing on the work of the experts, without making the alleged representations. The court did not accept that argument, finding instead that the international manufacturer had “*weaponised*” the analysis, distributing it “*effectively and with enthusiasm*,” – but, notably, ruled that:

“[The international manufacturer] cannot be criticised for wanting to make as much as it could of the views that [the expert] expressed; and the fact that it did so is not evidence of some want of independence on [the expert’s] part. The alignment of [the expert’s] opinion with [the international manufacturer’s] interests arose as a result of the correct construction of the Transitional Provision.”

Conclusions

In [Pirmax Pty Ltd v Kingspan Insulation Pty Ltd \[2022\] FCA 1340](#),¹ the Federal Court of Australia held that:

- The Evidence Act did not “*require untrammelled independence or impartiality (however preferable those qualities plainly are).*”
- The international manufacturer’s original engagement of the expert did not compromise his independence, and his views were arrived at independently – even if they were *later* weaponised as part of Project Shield and Sword.
- The international manufacturer’s concerns were genuinely held, and it sought to verify those concerns through a series of tests including those by independent testing bodies, and it repeatedly sought to engage with the Australian manufacturer about the results of that testing over an extended period, prior to commencing Project Shield and Sword.
- The international manufacturer *did* make the alleged representations that the product was non-compliant and could not safely be used, and it *did* represent that the original Project Shield and Sword analysis was independent.
- The transitional rules did *not* allow the Australian manufacturer to rely on the outdated *ceiling only* test, and so the representations made by the international manufacturer were factually correct. Not only was the Australian manufacturer unsuccessful in its attempts to prevent the further distribution of the Project Shield and Sword materials, the court also held that it should be prevented from making claims about fire rating based on the *ceiling only* test.

¹ The subject of an appeal, per [Pirmax Pty Ltd v Kingspan Insulation Pty Ltd \(No 2\) \[2022\] FCA 1526](#) at [3].

FEATURES

Interview with Assoc Prof Koh Tieh Yong

We sat down with Assoc Prof Koh Tieh Yong and asked him to share more about his background, expertise and hopes for the Asia Pacific Institute of Experts (APIEx).

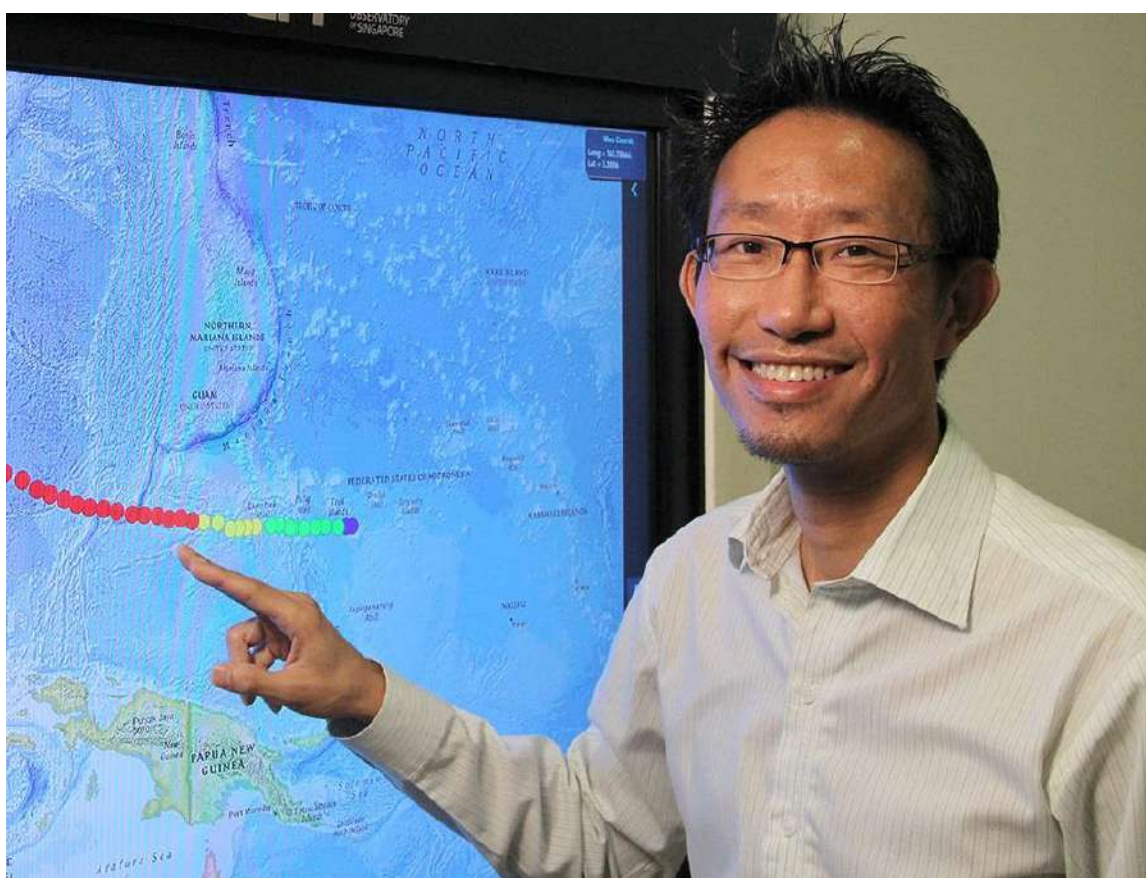


PHOTO: Courtesy of Koh Tieh Yong

(1) Please introduce yourself, your educational background, and your professional experiences (and anything interesting in your career to add)?

I hold a PhD (Atmospheric Science) from Massachusetts Institute of Technology and a B.Sc. (Physics) with First Class Honours from Imperial College London. My passion lies in mathematical physics, and my specialisation is in the weather and climate of Southeast Asia. I am the co-chair of the Asian Australian Monsoon Working Group under World Meteorological Organisation and contributed to the ASEAN State of Climate Change Report (2021).

For the past 11 years, I have served as a consultant on various weather-related projects. My funded projects at National University of Singapore (2001 – 2004), Nanyang Technological University (2004 – 2016) and Singapore University of Social Sciences (2016 – 2023) total S\$7.7 million in budget. I have engaged in curriculum review in 'A'-level Mathematics and Geography and, as a tenured faculty member, taught courses in Mathematics, Physics, Climate and Sustainability Science. I was an examiner for International Physics Olympiad 2006 and Asian Physics Olympiad 2014.

(2) Please tell us more about your area of atmospheric physics and sustainability science (for the layperson to understand).

Atmospheric physics applies the principles of fluid motion and thermodynamics to explain and predict weather and climate. We use mathematical models to describe atmospheric conditions in specific and measurable ways. The predictions are tested against observations

to verify theories. The objective is to mitigate natural disasters like typhoons and to advise adaptation measures in sub-optimal environments to enhance economic productivity like in agriculture.

Today, climate change is a world-wide challenge bearing on environmental, economic, social, and legal domains. Humanity must seek sustainable development in verifiable ways. This means applying the scientific approach to model and monitor sustainable technologies and policies including interactions among the above-mentioned domains. Thus, in essence, sustainability science is the contemporary marriage of natural and social sciences yielding benefits to the environment and humanity.

(3) Please explain why sometimes even experts get the weather forecasts wrong.

Tropical weather is essentially the turbulent up-and-down movement of air, known as convection. In the process, water vapour condenses to form cumulus clouds and rain. Like bubbles rising in a boiling pan, cumulus convection occurs randomly. So, tropical weather forecasting is difficult and inherently probabilistic.

The challenge of forecasting is further compounded by the lack of quality observations in the tropics and that tropical weather prediction models are lagging in development. So human forecasters rely much on their experience which unavoidably entails natural human fallibility.

(4) Can you tell us what are some of the challenges of being an expert witness in your field? It would be good if you can illustrate with real-life examples.

The first challenge concerns the different use of words in atmospheric science and everyday speech as would be understood in the courtroom without further precision. For example, in news articles, infrared light is often described as “heat radiation” or even simply as “heat”. But light is a form of electromagnetic energy that can exist in vacuum, whereas heat is the energy of random molecular motion and thus requires a carrier medium. In the greenhouse effect which causes climate change, carbon dioxide interacts with and intensifies infrared light in the atmosphere. But popular literature paraphrases this phenomenon as “heat is trapped” by the gas. This lay description conveys the wrong impression that the atmosphere warms up first and then transfers the heat to Earth’s surface. But the fact is quite opposite! Only when the enhanced infrared light is absorbed by the surface, electromagnetic energy is converted to heat; the surface warms up and then air temperature rises. Therefore, an expert witness on the greenhouse effect must choose words carefully to avoid the trap of echoing popular expositions that subtly convey false understanding.

The second challenge is perhaps more philosophical. Because atmospheric science is a physical science, it is often classed together with classical physics like Newtonian mechanics. The latter is epitomised by the regular precise behaviour of a pendulum. Therefore, many educated persons tend to expect similar levels of accuracy and predictability to be tenable for weather and climate. However, atmospheric science is much closer to medical science. The atmosphere like the human body is a complex system with many variables. Moreover, there is only one atmosphere to observe from, not unlike each patient having a unique composition with potential allergies. Now, a doctor anticipates allergies statistically based on observations of many patients. Likewise, the atmospheric scientist can at best make a probabilistic forecast based on multiple simulations of the atmosphere. Consequently, there is also a greater possibility of diverse expert opinions on a weather/climate occurrence despite the physical science basis.

(5) Are there any career highlights to share? Anything interesting?

I have helped the Singapore Science Centre as a member of their advisory committee on Climate Change Exhibitions in 2007-08 and 2013-14. We had to think through carefully about communicating in a lively interesting manner to the public without sacrificing scientific accuracy. After being used to doing “serious science”, it was an opportunity to bring out the inner child in me to enjoy science again. There is a YouTube clip of my interview on the opening day of the exhibition here:

<https://www.youtube.com/watch?v=SIXKrAXhCQM#t=3m15s>

(6) In light of the recent UN Climate Change Conferences (COP26 and COP27), do you foresee there being an increasing demand for atmospheric physics and sustainability science experts? If so, what type of expert witness work do you foresee that these experts would be required to perform and why?

COP27 made the unprecedented decision to establish a fund to compensate vulnerable countries for their losses and damages linked to climate change. The details of how such a fund work is not yet known and will be the subject of this and the next few COPs. But one might surmise that even if governments are the claimants, the process may be facilitated by private entities like reinsurance companies and their legal representatives for their ready pool of actuarial and financial expertise.

Establishing a “climate-change related” loss is not as straightforward as it sounds. It requires reliable benchmarking in a stable climate and then an estimation of the increased loss attributable to climate change, as opposed to, say, a government’s unsound disaster mitigation policy or some mismanagement of disaster relief. For example, if a typhoon strikes the Philippines, which has always suffered from typhoons in the last thousand years, how does one ascertain the chance of that one typhoon occurring in that path at that intensity with

that duration is enhanced by climate change? Extensive mathematical modelling of climate and weather is necessary to answer such questions.

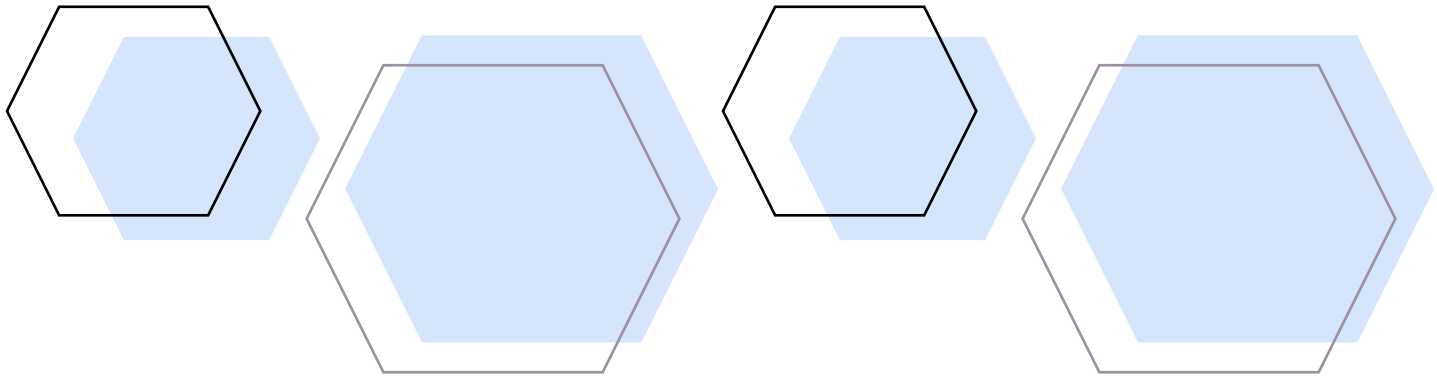
In the next few years as the rules governing the “loss-and-damage fund” are clarified, there will be simultaneous anticipation of increased need for experts in atmospheric and sustainability science. These needs must be met before the decade is over.

(7) Could you tell us what are some of your upcoming plans in the next 1-2 years? How would these plans help to improve or enhance your expert witness credentials?

I am leaving Singapore University of Social Science in May 2023 to give myself a sabbatical over the next 15 – 18 months. During this time, my intention is to pursue a master’s degree in mathematical physics at University of Cambridge, UK. The advanced training in applied mathematics, particularly in topics like Linear Algebra, Multivariate Calculus and Graph Theory, will improve transferable skills that are needed to solve real-world problems across applied physics, atmospheric predictability, and sustainability science.

(8) What are your hopes and ambitions for the Asia Pacific of Experts (APIEx)? How do you think APIEx can achieve its aims?

From my limited perspective, I imagine that APIEx will grow to be the regional hub of trusted expert resource in support of international legal services that Singapore aims to provide. To achieve this, I anticipate that a survey of potentially growing niches of legal cases would be conducted in Asia Pacific regions under the jurisdiction of the Common Law. Then, through participation in the relevant international academic conferences and business conventions, the appropriate network of talents could be pooled in APIEx. Of course, I am of the view that close association with the region’s legal communities have already been established.



CALL FOR CONTRIBUTIONS

APIEX INVITES MEMBERS TO WRITE FOR THE APIEX E-NEWSLETTER



PHOTO: PIXABAY

The Asia Pacific Institute of Experts (APIEx) invites all APIEx members or their contacts to consider contributing a feature article to the APIEx e-Newsletter. The APIEx e-Newsletter is a bi-annual publication of the APIEx. We are looking for contributors to contribute articles on a topical expert witness and/or expert evidence issue, preferably between 1,200-1,500 words, with an upper limit of 2,000 words.

The APIEx Committee’s decision to accept the article for publication is final, although we will be sure to clear any changes with you before publication. Please note that there is an editorial process that can take some time, as it involves the Committee.

The APIEx e-Newsletter working group is made up of the following members:

- Prof Leslie Chew SC
- Assoc Prof Tan Teng Hooi
- Ben Chester Cheong

CONGRATULATIONS TO CANDIDATES

APIEX CONGRATULATES CANDIDATES WHO PASSED THE MEMBERSHIP ACCREDITATION COURSE 2023

The Asia Pacific Institute of Experts (APIEx) congratulates the following candidates (in no particular order) who passed the Membership Accreditation Course (second run) held on 27 April 2023:

Johnny Lim Bok Choon
Law Kong Hoi
Albert Tan Tiong Heng
Cillius Adrianto
Erick Schirmer
Lee C G John
Kelvin Goh
Lee Kher Sheng
Loo King Keong
Koo Ming Li
Shaun Kumar
Sheila Maria Arcuino Conejos
Shyam Dayanandan
Sik Wee Teng
Dang Yang



PHOTO: PIXABAY

WELCOME TO NEW MEMBERS

APIEX WELCOMES NEW MEMBERS WHO JOINED SINCE JANUARY 2023

The Asia Pacific Institute of Experts (APIEx) warmly welcome the following members (in no particular order) who joined since the start of this year:

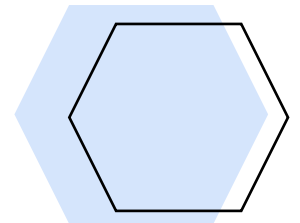
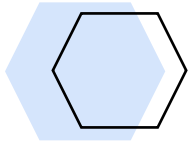
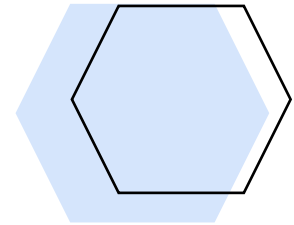
Albert Tan Tiong Heng
Shyam Dayanandan
Koh Tieh Yong
Kevin Enoch-Elihu Bartholomew Lea
Geoffrey James Green
Goh Ken Jin Kelvin
Nicolas James Allan White
Naresh Mahtani
Sheila Maria Arcuino Conejos
Koo Ming Li
Ng Heng Hoong
Indranil Majumdar



PHOTO: PIXABAY

SPONSORS

APIEX IS GRATEFUL TO ALL ITS SPONSORS



CALLING FOR MEMBERS

APIEX INVITES INTERESTED INDIVIDUALS IN EXPERT EVIDENCE TO JOIN OUR GROWING NETWORK

The Asia Pacific Institute of Experts (APIEx) is a Singapore-based registered society which aims to spearhead the development of professional expertise in the field of Expert evidence both locally and in the Asia Pacific region. A core mission of the society is to develop and provide a framework for the accreditation of Experts to meet international standards. This mission will be achieved through education, training and collaboration in local and regional conferences and workshops in the Asia Pacific region. APIEx will provide an avenue for practicing Experts and those who aspire to become accredited practicing Experts, to develop their expertise and to connect with other Experts and consumers of expert evidence.

APIEx members enjoy benefits such as discounted rates at APIEx webinars, seminars, training courses, conferences and networking events, discounted rates at partner events to which APIEx members have been extended preferential rates, listing on the APIEx Membership Directory, opportunity to participate in the work of APIEx through working on or with the Committee, Sub-Committees, working groups and task forces, and opportunity to be consulted on any APIEx consultation papers, research and surveys, and to have your views represented to key stakeholders. APIEx members can also use the member logos based on their current membership category. For more details on the membership logos, please visit: <https://apiex.org/membership/apiex-member-logo>.

For more information on our membership categories and signing-up procedures, please visit: <https://apiex.org/membership>. If you have any queries, please reach out to our APIEx Secretariat at: secretariat@apiex.org.