

CURRICULUM VITAE

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Qualifications: Admitted to the Supreme Court of Queensland, 1997
Admitted to the High Court and Federal Court, 1999

Professional Associations: Member of the Bar Association of Queensland
Member of the Chartered Institute of Arbitrators
Member of the Society of Construction Law Australia
Member of the Building Dispute Practitioners Society
(Queensland Branch)

Professional Experience:

Commenced practice in February 1998.

In 2006 I appeared in only the second case in Queensland dealing with the *Building and Construction Industry Payments Act 2004* (*Roadtec, Department of Main Roads v Davenport & Anor* [2006] QSC 47) Since that time I have appeared in over 30 contested Payments Act matters and provided advice with respect to the prospects of challenging or defending adjudication decisions in the Supreme Court in dozens more, which have not proceeded to a hearing. This advice is often given under significant time pressure in matters where significant money is at stake and requires consideration of statutory interpretation, contract construction, procedural fairness and the concept of good faith in the context of decision making.

In addition to Payment Act matters, I have developed a practice specialising in building and construction disputes generally, with a focus on major projects and infrastructure. I have been appointed to act both as the expert for expert determination and as arbitrator in commercial arbitration with respect to a construction disputes.

I am regularly briefed by interstate solicitors for matters in Queensland and interstate, as well as by Queensland solicitors on interstate matters. I am briefed on behalf of national and international companies with respect to both national and international disputes. I have also represented local authorities, insurers and regulatory authorities (including the QBCC and the Queensland Board of Engineers).

In addition, I am regularly retained, to act as mediator in both construction and general commercial disputes.

My practice has for the last 8 years consisted predominantly of building and construction litigation, arbitration and expert determination. For the last 7 years I have been listed in the “pre-eminent” band of the peer reviewed “*Doyle’s Guide to Australian Legal Professions*” as a junior in the field of construction in Queensland. I have been briefed with respect to:

- (a) large infrastructure projects such as:
 - (i) the south east Queensland water grid;
 - (ii) Gold Coast light rail development;
 - (iii) Curtis Island (Gladstone LNG development) water and sewerage implementation;
 - (iv) Gladstone Harbour dredging and pipeline developments;
 - (v) transport infrastructure rectification after flooding events.
- (b) mining and resources infrastructure such as;
 - (i) the construction of LNG pipelines and pump stations;
 - (ii) coal processing and handling plants (in Queensland and New South Wales);
 - (iii) gold and copper processing plants (Solomon Islands and Botswana);
 - (iv) coal terminal loading facilities.
- (c) Large domestic and commercial construction including;
 - (i) high rise apartment complexes in Brisbane, the Gold Coast and New South Wales;
 - (ii) concrete slab defects in warehouses and regional distribution centres;
 - (iii) bulk earthworks for large scale subdivisions;
 - (iv) the construction of large mining accommodation camps.

I have appeared (either as lead counsel or junior) in the following significant matters:

- *RoadTek, Department of Main Roads v Philip Davenport & Ors* [2006] QSC 47. This was one of the first cases in which a respondent to an adjudication sought to set aside the decision. This was the first consideration of issues of error of law and the interim nature of the Payments Act determination in Queensland.
- *Gemini Nominees Pty Ltd v Queensland Property Partners Pty Ltd* [2007] QSC 20. This was the second case argued as to the impact of a failure of a builder to comply with mandatory legislative requirements under the *Domestic Building Contracts Act* when making a claim under the Payments Act.
- *Intero Hospitality Projects Pty Ltd v Empire Interior (Aust) Pty Ltd & Anor* [2007] QSC 220. This was one of the first cases which considered the applicability of exercising the discretion to intervene pursuant to the *Judicial Review Act* in the context of s.100 of the Payments Act. The decision was upheld on appeal [2008] QCA 83.
- *Minimax Fire Fighting Systems Pty Ltd v Bremore Engineering (WA) Pty Ltd & Anor* [2007] QSC 333. This was the first detailed consideration by a

Queensland court of the requirements for a valid payment schedule under s.18 of the Payments Act.

- *Altys Multi-Services Pty Ltd v Grandview Modular Building Systems Pty Ltd & Ors* [2008] QSC 26. One of the primary issues on this application to set aside an adjudication decision pursuant to the *Judicial Review Act 1991* was whether the court should exercise its discretion under the JRA to set aside.
- *J Hutchinson Pty Ltd v Galform Pty Ltd & Ors* [2008] QSC 205. This case considered the lack of jurisdiction of an adjudicator where the decision was for an amount which had already been paid into court. Abuse of process on the part of the respondent was also a consideration.
- *Queensland Bulk Water Supply Authority v McDonald Keen Group Pty Ltd & Anor* [2009] QSC 156. This was one of the first cases in Queensland to consider in detail the obligation for, or absence of, good faith on the part of an adjudicator carrying out the tasks required under the Payment Act. Upheld on appeal [2010] QCA 119.
- *Martinek Holdings Pty Ltd v Reed Construction (Qld) Pty Ltd* [2009] QSC 238. This case dealt with the question of utility the of the Payments Act in circumstances where a final certificate under a building contract had been issued, though disputed. Upheld on appeal [2009] QCA 329, special leave refused.
- *Reed Constructions (Qld) Pty Ltd v Martinek Holdings Pty Ltd* [2009] QSC 345. This case considered the proper construction of s.12 of the Payments Act and the meaning of “reference date”.
- *Neumann Contractors Pty Ltd v Traspunt No 5 Pty Ltd* [2009] QSC 357. This case considered summary judgment in a proceeding where the respondent had not issued a payment schedule within time. Overturned on appeal [2010] QCA 119.
- *A E & E Australia Pty Ltd v Stowe Australia Pty Ltd* [2010] QSC 135. This was the first case in Queensland considering the question of issue estoppel in re-agitating issues considered and decided by an earlier adjudication decision between the same parties.
- *Walton Construction (Qld) Pty Ltd v Corrosion Control Technology Pty Ltd & Ors* [2011] QSC 67. This was the first case in Queensland to consider the issue of whether a reference date under the Payments Act arose upon or survived termination of the contract. The case distinguished and was decided differently to the New South Wales authorities.
- *HM Hire Pty Ltd v National Plant & Equipment Pty Ltd & Anor* [2012] QSC 4. The critical issue, not previously considered in Queensland, was the meaning of the words “extraction of minerals” under the Payments Act and whether this related to works preparatory mining work. Upheld on appeal [2013] QCA 6.

- *HM Hire Pty Ltd v National Plant & Equipment Pty Ltd & Anor* [2013] QSC 274. This case considered in detail questions of issue estoppel and abuse of process in the context of continued attempts by a party to set aside an adjudication decision (despite failing on grounds in early proceedings both at first instance and on appeal) and to avoid payment of an adjudicated amount.
- *BM Alliance Coal Operations Pty Ltd v BGC Contracting Pty Ltd & Ors* [2012] QSC 346. This case considered the problem commonly arising under the Payments Act where the invalidity in an adjudication decision related to only a small part of the adjudicated amount. The matter subsequently led to an amendment to the legislation providing the court with the power to sever the part of an adjudication decision.
- *J & D Rigging Pty Ltd v Agripower Australia Ltd & Ors* [2013] QCA 406. This case involved consideration of whether or not the definition of “*construction work*” under the Payments Act, which related to structures “*whether permanent or not, forming or to form part of the land*”, attracted the concepts of real property with respect to fixtures. It was successfully argued that the proper construction of the Payments Act did not incorporate real property concepts. Special leave to appeal was subsequently refused.
- *Amricama Pty Ltd v Red Carpet Real Estate* [2014] QSC 267. This was a case considering the application of s.27A of the *Retail Shop Leases Act*, whether it contained mandatory provisions for the assessment of market rental upon the exercise of an option and the provision could be the subject of contracting out or waiver. This was the first judicial consideration of the provision.
- *Ostwald Bros Pty Ltd v Jaylon Pacific Pty Ltd & Ors* (BS2474/16). This case is a Payments Act matter where the primary issues are denial of natural justice, sufficiency of reasons and whether and to what extent a party to an adjudication proceeding bears and is required to discharge an onus of proof. The question of onus of proof has not previously been considered in Queensland.

Throughout 2014 and into 2015 I acted in a significant expert determination on behalf of a local authority where the amount in issue was in excess of \$45 million. As the matter was to be dealt with on the papers, significant effort was put into settling a number of large witness statements and expert reports. The issues involved related to defect identification, delay, disruption, breach and quantum. [This was a confidential expert determination process].

More recently I was involved in an International Chamber of Commerce arbitration where the amount in issue was in excess of \$40 million. Significant preparation was required in obtaining detailed statements and marshalling large volumes of material.

My recent and current matters I have been in include:

- Acting for the insurers of an engineering firm in a multiparty proceeding in the Federal Court with respect to defects in a high rise apartment complex.

- Advising with respect to the merits and strategy of a claim in excess of \$3.5 million by a contractor against a local authority with respect to the horizontal directional drilling of two 1800m pipelines for the carriage of water and sewerage. Advice has been given with respect to whether a latent condition under the terms of the contract had been identified and, if so, the remoteness of claims for loss said to arise from that condition. This matter was resolved after the delivery of statements of evidence and expert reports.
- Acting for the insurers of a geotechnical firm in a multiparty proceeding in the Supreme Court with respect to alleged foundation defects in a suburban accommodation development.
- Acting on behalf on a principal against a contractor and firm of structural engineers with respect to defects in the roof design and construction of mining camp accommodation buildings. The quantum is approximately \$3.5 million.
- Acting on behalf of a drilling contractor in a claim for \$1.1 million for money owing under a contract.
- Acting on behalf of the insurer of a firm of civil and structural engineers in a multiparty proceeding in the Supreme Court with respect to alleged defects in the construction of a regional supermarket distribution centre.
- Advising an engineering company as the merits and quantum of a potential claim for works undertaken on a coal handling and processing plant where the amount claimed was approximately \$20 million.
- Advising a principal with respect to challenging an adjudication decision under the Building and Construction Industry Payments Act where the adjudication amount was approximately \$5.8 million.
- Advising as to the merits and evidence required to justify an application for judgment pursuant to the Building and Construction Industry Payments Act where the amount claimed was approximately \$1.3 million.
- Preparing a statement of claim and advising in regards to defects in an inner city high-rise apartment complex. The plaintiffs included the body corporate for the building and over one hundred and ninety individual unit owners. The issues included consideration of whether a duty of care is owed by a builder and developer to a body corporate, which has been the subject of recent appellate consideration in New South Wales (a matter that was subsequently the subject of a High Court decision).
- Acting for the insurer for a firm of engineers in an arbitration with respect to breach of contract and negligence relating to the design of a supermarket distribution centre.

- Acting in an arbitration for a subcontractor in a matter where liquidated damages in excess of \$1.5m are sought. Matters of delay, disruption and estoppel are in issue.
- Acting for a contractor in a *Subcontractors' Charges Act* proceeding where the amount in dispute is in excess of \$6m. Judgment on an Originating Application was obtained for the outstanding contract sum.
- Acting for the builder (as defendant) of an embassy in Canberra. Issues involved to date include the appropriateness of an originating application to recover such relief and advice with respect to security for costs against a foreign state and specifically application of the *Foreign States Immunities Act 1985* (Cth).