


CURRICULUM VITAE  
OF  
**STEPHEN (BENJAMIN) WHITTEN**  
BARRISTER-AT-LAW

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**Education** St Patrick's Christian Brothers College, Mackay, Queensland  
Queensland University of Technology

**Qualifications** Electrical Fitter Mechanic, 1987  
Bachelor of Laws, 1993  
Master of Laws (Commercial Law), 2009

**Admissions** Queensland  
Australian Capital Territory

**Affiliations/Memberships** Bar Association of Queensland  
Bar Association of Victoria  
Australian Bar Association  
Melbourne Technology Engineering and Construction Chambers (MTECC)  
Commercial Law Association of Australia – Fellow  
CIArb – Associate member  
Australian Insurance Law Association - member  
Society of Construction Law of Australia – member  
Building Dispute Practitioners Society – member  
Australian Insurance Law Association – member  
Australian Mining and Petroleum Law Association – member

Australian Restructuring Insolvency & Turnaround Association – professional member

<b>Qualifications Chronology</b>	<p>1983-1987 Electrical Fitter Mechanic, BHP, Queensland</p> <p>1989 – 1994 Articled Clerk, Macrossan &amp; Amiet and Bill Cooper &amp; Assoc</p> <p>1994 Admitted as Solicitor</p> <p>1994 – 1999 Associate Solicitor, SR Wallace &amp; Wallace, Mackay</p> <p>1999 Admitted as Barrister to Queensland Bar</p> <p>2015 Admitted as Barrister to Victorian Bar (interstate)</p>
<b>Primary Practice Areas</b>	<p>Commercial and insurance litigation and alternate dispute resolution (including mediation and arbitration), with special interests in legal issues involving the following sectors:</p> <ul style="list-style-type: none"> <li>• agribusiness;</li> <li>• body corporates;</li> <li>• construction &amp; engineering;</li> <li>• energy, mining and resources;</li> <li>• infrastructure and property developments</li> <li>• technology</li> </ul>
<b>Primary Areas of Law</b>	Commercial, Construction, Insolvency, Insurance, Property, Succession
<b>Professional Activities</b>	<ul style="list-style-type: none"> <li>• Presentations for the Queensland Bar Practice course, QUT students (mediations), Queensland Law Society seminar, LexisNexis and Legalwise seminars</li> <li>• Judged Griffith University moots on Evidence</li> <li>• Judged moots at the Bar Practice Course.</li> <li>• Mentoring young lawyers and law students.</li> </ul>
<b>Sample Cases</b>	<p><i>NB: Whilst many cases settle through mediation or other ADR, below is an extract of some which have resulted in court proceedings.</i></p> <p><b>Insolvency</b> - <a href="#"><i>Cooloola Dairies Pty Ltd v National Foods Milk Pty Ltd</i></a> [2005] 1 Qd R 12 – corporations – application to set aside multiple statutory demands - <i>Graywinter</i> principle</p> <p><b>Insolvency</b> - <a href="#"><i>Van Der Velde v Ng (No 3)</i></a> [2009] FCA 1563 – insolvency – voidable transactions – whether arrangements for the transfer of a property constitute transactions rendered voidable and by operation of s 588FE of the <i>Corporations Act 2001</i> (Cth) and whether the transfer of the property is rendered void by operation of s 468 of the Act</p> <p><b>Insolvency</b> - <a href="#"><i>Mayaman Developments Pty Ltd v TQ Constructions Pty Ltd</i></a> [2009] QSC 144 – corporations – application to set aside statutory demand and the application of the “<i>Graywinter</i>” principle</p> <p><b>Commercial</b> - <a href="#"><i>Brinsmead and Ors v Property Solutions (Australia) Pty Ltd</i></a> [2009] QSC 223 – practice and procedure - disclosure and particulars in breach of contract case</p>

**Property** - *Zen Ridgeway v Adams* [2009] 2 Qd R 298 – removal of caveat - where applicant is registered owner as trustee of land – where judgment awarded against applicant for liability incurred as trustee – nature of applicant’s right of indemnity out of trust assets – whether respondent creditor may be subrogated to the applicant trustee’s right of exoneration or lien

**Construction** - *57 Moss Rd Pty Ltd v T&M Buckley Pty Ltd t/a Shailer Constructions & Anor* [2010] QSC 278 – construction – practice and procedure – application for security for costs in BCIPA judicial review application

**Construction** - *Neumann Contractors Pty Ltd v Traspunt (No 5) Pty Ltd* [2011] 2 Qd R 119 – construction – administrative – judicial review application on appeal re BCIPA claim affected by misleading or deceptive conduct

**Construction** - *James Trowse Constructions Pty Ltd v ASAP Plasterers Pty Ltd and Ors* [2011] QSC 145 – construction – administrative – judicial review of BCIPA adjudication and whether principle of severance applies

**Construction** - *Sweeney v Magnay* [2011] QCAT 648 – construction – 3 week trial in QCAT involving building dispute

**Construction** - *VK Property Group Pty Ltd and Ors v Conias Properties Pty Ltd and Anor* [2011] QSC 54 – construction – administrative – judicial review application to set aside adjudication under BCIPA

**Construction** - *Australian Timber & Trusses Pty Ltd v T & M Buckley Pty Ltd* [2012] QSC 110 – contracts – construction – trial of whether s.42 QBSA Act (unlicensed work) applied to a particular manufacture and supply contract

**Property** - *Thornton Avenue Pty Ltd v Body Corporate for the Avenue* [2013] QCAT 39 – body corporate – contracts – trial of application for remuneration review of caretaker and manager involving statutory interpretation

**Insurance** - *Nucifora v AAI Ltd* [2013] QSC 338 – damages – measure and remoteness of damages – where plaintiff injured in motor vehicle accident – where plaintiff employed as general manager of coal mine – whether plaintiff suffered loss of earning capacity in the future – where claim for paid services in the future.

**Construction** - *Wright v QBSA (now QBCC)* [2015] QCAT 16 – construction – licensing – review of QBSA decision relating to “excluded person” status, and “permitted individual” status and applying “Dinsey” test

**Construction** - *John Urquhart t/as Hart Renovations v Partington & Anor* [2016] QCA 87 – contracts – building, engineering and related contracts – regulation for payment for “enclosed stage” – whether enclosed stage reached – where the applicant performed domestic building work on the

residence of the respondents – where a dispute arose in connection with the respondents’ failure to pay the applicant’s progress claim – where the respondents assert the works had not reached the enclosed stage and there were defects – where in first instance the Queensland Civil and Administrative Tribunal Member concluded the enclosed stage had been reached and the respondents’ failure to pay the progress claim put them in substantial breach of the contract – where the Appeal Tribunal of the Queensland Civil and Administrative Tribunal concluded the Member had erred in finding the enclosed stage had been reached – whether the Appeal Tribunal erred in its interpretation of “structural flooring” and its conclusion on the topic of whether the enclosed stage of the building works had been reached – Held: appeal successful.

**Commercial** - [\*Wiggins Island Coal Export Terminal Pty Ltd v Monadelphous Engineering Pty Ltd & Anor trading as Monadelphous Muhibbah Marine\*](#) (2016) QSC 096 estoppel – issue estoppel – Anshun estoppel – BCIPA – commercial list hearing involving multiple issues in a BCIPA payment claim and adjudication application with over AUD \$35M in dispute, including novel claims of issue estoppel, abuse of process and Anshun estoppel in the BCIPA adjudication process

**Commercial** - [\*Global Scrap Trading Pty Ltd v Graveson\*](#) [2017] QCA 080 Gotterson JA 2 May 2017 – refusal of stay of consent orders pending appeal

**Insurance** - [\*McGrory v Medina Property Services Pty Limited\*](#) [2017] QCA 234 – workplace health and safety – damages – loss of earning capacity – appeal from District Court

**Commercial** - [\*Expert Determination dispute\*](#) - Supreme Court dispute over expert determination of financial accounts and alleged breach of contract – sale of coal mine – whether expert determination involved manifest error – [2018], awaiting judgment on preliminary question.

**Construction** - [\*S.H.A. Premier Constructions Pty Ltd v Lanskey Constructions & Ors\*](#) [2019] QSC 81 – construction contracts – variations – where two different projects involve identical parties, whether claim for payment under multiple contracts – whether terms of contract incorporated, varied or waived

**Commercial - Construction** - [\*Lanskey v SHA Premier Constructions Pty Ltd \[2019\] QSC\*](#) (unreported, Dalton J, 28 June 2019) – successfully defended interlocutory injunction and stay application seeking to restrain enforcement of adjudication decision judgment for \$1.4 million on basis of alleged jurisdictional error.