

Declan Byrne

Solicitor 2010

Barrister 2016

(02) 9151 2925

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Declan Byrne is a barrister who specialises in building, construction and property law. He has particular expertise in disputes concerning residential building works, strata law and the Building and Construction Industry Security of Payment Act 1999 (NSW). He is also experienced in disputes concerning the property law components of infrastructure projects such as easements and obtaining access to neighbouring land.

Declan appears for a range of clients including homeowners, owners corporations, builders, consultants and developers. He also acts for liquidators of construction companies looking to recoup outstanding debts. This includes running public examinations under ss 596A and 596B of the Corporations Act 2001 (Cth).

Before being called to the bar, Declan spent six years working in the construction litigation teams at Herbert Geer and HWL Ebsworth, where he was seconded to John Holland for eight months. He also spent three years as a contracts advisor for Brisbane-based ASX-listed engineering practice, Cardno Ltd.

Declan has been a contributing editor to the Security of Payment component of Thomson Reuters' Commercial Arbitration Law & Practice. He is also a headnote editor for the Building and Construction Law Journal.

QUALIFICATIONS

- Bachelors of Arts and Laws from the University of Queensland (2009)
- Masters of Construction Law from the University of Melbourne (2016). Awarded the Corrs Chambers Westgarth Prize for Remedies in the Construction Context

SPECIALISATIONS

- Building and construction
- Property
- Strata
- Corporate and commercial
- Insolvency

PROFESSIONAL RECOGNITION

Declan has been listed in Doyle's Guide under the following categories:

- Construction & Infrastructure Junior Counsel (NSW) - Leading 2021, 2022; Recommended 2018, 2019 and 2020; Emerging 2017
- Construction & Infrastructure Junior Counsel (Australia) - Leading 2022, Recommended 2020 and 2021

FOCUS AREAS & SELECT CASES

Building & Construction

McNab Building Services Pty Ltd v Demex Pty Ltd. Declan acted for a plaintiff in proceedings seeking to set aside a determination under the Building and Construction Industry Security of Payment Act 1999 (unled): [2022] NSWSC 1442.

Equa Building Services Pty Ltd v A&H Floors 2 Doors Australia Pty Ltd. Declan acted for a plaintiff in proceedings seeking to set aside a determination under the *Building and Construction Industry Security of Payment Act 1999* (unled): [2022] NSWSC 152.

Chess Engineering Pty Ltd ats Acciona Infrastructure Australia Pty Ltd. Declan acted for a subcontractor in proceedings brought by the head contractor to set aside a determination under the *Building and Construction Industry Security of Payment Act 1999* (NSW) (led by IG Roberts SC): [2020] NSWSC 1423; [2020] NSWSC 1788.

Owners SP90018 v Parkview Constructions Pty Ltd. Declan acted for a plaintiff seeking to amend its Home Building Act 1989 claim following expiry of a limitation period (led by G Sirtes SC). This decision is an important restatement of the applicability of the 'Onerati Principle' to these claims: [2022] NSWSC 1123.

Onwers SP85338 v Maygood. Declan acted for an owners corporation in NCAT proceedings against a developer for breach of statutory warranties under the *Home Building Act 1989* (unled against senior and junior counsel). He also helped successfully resisted an appeal by the developer: [2020] NSWCATAP 237.

TFM Epping Land Pty Ltd v Decon Australia Pty Ltd. Declan successfully defended a builder when a developer appealed a summary judgment for a statutory debt under the security of payment legislation. The decision resolved conflicting authorities on whether a failure to provide a supporting statement invalidated a payment claim: [2020] NSWCA 93 (led by IG Roberts SC). He also successfully resisted the developer's application for a stay of execution of the judgment due to insolvency (also led by IG Roberts SC): [2020] NSWSC 659; [2020] NSWCA 118.

GC Group Company Pty Ltd v Bingo Holdings. Declan acted for a civil contractor in proceedings against a supplier of recycled aggregate. He was successful in striking out proportionate liability proceedings and resisting a subsequent application for leave to amend (led by F Corsaro SC): [2020] NSWSC 598; [2020] NSWSC 1360; [2021] NSWSC 252; [2021] NSWCA 184.

Insolvency

In the matter of Macarthur Projects Pty Ltd. Declan acted for a superintendent seeking to resist an application to set aside a creditor's statutory demand based upon a judgment obtained by registering an adjudication certificate (unled against senior counsel): [2021] NSWSC 1705.

Skyworks NSW Pty Ltd v QY & Lynn Pty Ltd. Declan acted for a developer in Supreme Court proceedings that included interlocutory applications for a separate question and a freezing order: [2017] NSWSC 343 (led by IG Roberts SC).

Property Law

352 Bourke Street Pty Ltd v Rhall. Declan acted for a developer in Supreme Court proceedings concerning an application for permission to rescind off the plan sales contracts under s66ZL of the *Conveyancing Act 1919* (led by IG Roberts SC).

Spoto ats Ma. Declan acted for vendors in Supreme Court proceedings who resisted a claim from subsequent purchasers seeking recovery of their forfeited deposit (led by S Goodman SC).

Denning Real Estate Pty Ltd ats XR Property Development Pty Ltd. Declan acted for a developer in the Supreme Court in an application for a stay of enforcement of judgment (unled).

PUBLICATIONS

- Design & Building Practitioners Act Paper
- Litigation Essentials: Subpoenas
- The 2018 Amendments to the Security of Payments Act 1999

PRESENTATIONS

- The Design & Building Practitioners Act 2020 (NSW) - the regulations and how to plead a claim
- Trespass on Neighbouring Land: Why it is always better to seek permission (and what to do when it's not given)
- Security of Payments - 2018 amendments
- Litigation essentials: subpoenas