

# Richard Cheney SC

Barrister 1995

Silk 2011

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Richard Cheney SC is a Senior Counsel specialising in construction and infrastructure law and professional negligence. He regularly represents clients in appellate work, medical negligence and common law matters.

Richard also regularly acts as mediator.

Richard brings a depth of practical knowledge to construction litigation, having previously practised as a site engineer on Sydney high rise projects.

Richard was appointed Senior Counsel in 2011 and is a NSW Bar Association BarADR<sup>®</sup> approved arbitrator.

## QUALIFICATIONS

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- Bachelor of Laws (UNSW) 1990
- Bachelor of Building (UNSW) 1985



## PROFESSIONAL RECOGNITION

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- Doyles Guide Leading Professional Indemnity Senior Counsel (NSW) - Recommended 2021
- Doyle's Guide Leading Construction & Infrastructure Senior Counsel (NSW) - Leading 2019, 2020, 2021, 2024 Recommended 2018, 2022, 2023
- Doyle's Guide Leading Construction & Infrastructure Senior Counsel (Australia) - Leading 2023, 2024 Recommended 2022
- Doyle's Guide Leading Insurance Senior Counsel (Australia) - Recommended 2018
- Recognised in Best Lawyers in Australia since 2019 under the categories of Construction & Infrastructure Law and Insurance Law

## Specialisations

- Construction and infrastructure
- Professional negligence
- Medical negligence
- Insurance
- Common law
- Mediator
- Arbitrator

## Notable Cases

### **BUILDING AND CONSTRUCTION**

**CPB Contractors v Arup and Jacobs Group.** – Richard appears for the defendant designers in ongoing litigation in the Supreme Court of Western Australia relating to the Northlink 3 Freeway project.

**Strata Plan 92450 v JKN Para 1 Pty Ltd [2023] NSWCA 114.** Richard appeared for the respondents, the developer and builder of residential units, at first instance and on appeal. The issues included whether there was combustible cladding and the issues included the onus of proof regarding whether an as built building wrongly certified as meeting the Deemed to Satisfy provisions of the NCC would satisfy the performance requirements by way of an alternative solution.

**Woodhouse v Fitzgerald [2021] NSWCA 54.** Richard appeared for the respondent landowners sued in respect of a fire that escaped from their rural property and damaged the home of their neighbour, the appellant. The issues on appeal included the elements of negligence and nuisance, whether the duty of care owed was non-delegable, whether the proportionate liability provisions of the Civil Liability Act are engaged where the alleged concurrent wrongdoer had statutory immunity from suit and the reasoning in *Hunt & Hunt Lawyers v Mitchell Morgan Nominees Pty Ltd (2013) 247 CLR 613*.

**Vickery v The Owners - Strata Plan No 80412 [2020] NSWCA 284.** Richard appeared for the appellant lot owner, who challenged a NSW Civil and Administrative Tribunal Appeal Panel finding that NCAT lacked jurisdiction to award damages for an owners corporation's breach of its statutory duty to maintain and repair common property.

**Thiess Pty Ltd v Parsons Brinckerhoff Australia Pty Ltd [2016] NSWSC 173.** Richard appeared for a large multidisciplinary engineering firm sued over the partial collapse of the Lane Cove Tunnel.

**Lane Cove Council v Michael Davies and Associates and Others [2012] NSWSC 727.** Richard appeared for a mechanical engineering consultant in a reference hearing from the NSW Supreme Court, and subsequently in support of an application that the court adopt the referee's report regarding alleged defects in an indoor swimming pool complex.

**Lym International Pty Ltd v Marcolongo [2011] NSWCA 303.** Richard appeared for the insurer of a sheet piling company that was sued for damage a neighbour suffered. The issues on appeal included the proper construction of the duty of care imposed by s177 Conveyancing Act on adjoining land.

**Owners Strata Plan 62930 v Kell and Rigby Holdings Pty Ltd [2010] NSWSC 612.** Richard appeared for an owners corporation in proceedings relating to defective work in breach of the statutory warranties under the Home Building Act.

**CJD Equipment Pty Ltd v A and C Constructions Pty Ltd [2009] NSWSC 1362.** Richard appeared in multi-party litigation concerning the failure of a pavement constructed as part of a commercial heavy equipment dealership. The issues included whether contractors and engineering consultants owed duties to prevent an owner suffering pure economic loss after it contracted the builder on a design and construct basis.

**Opal Towers litigation - ongoing** - Richard is briefed for the Sydney Olympic Park Authority in both representative proceedings brought by lot owners, and in proceedings brought by the Owners Corporation, arising from damage to the Opal Towers building in Homebush Bay Sydney.

**Koolan Iron Ore Pty Ltd v GHD Pty Ltd - ongoing** - Richard is briefed for the defendant engineering firm in proceedings in the Supreme Court of Western Australia in connection with the flooding of a mine.

**Aluminium composite cladding - ongoing** - Richard is currently briefed in several pending cases involving aluminium composite cladding affixed to high rise commercial towers and residential buildings and the operation of the Building Products (Safety) Act 2017 (NSW).

## **MEDICAL NEGLIGENCE**

**Dean v Pope (2022) 110 NSWLR 398** Richard appeared for the respondent neurosurgeon at trial, on appeal to the NSWCA and in the subsequent application for special leave brought by the appellant to the High Court. The issues included the proper interpretation of section 50 of the Civil Liability Act.

**South Western Sydney Local Health District v Gould (2018) 97 NSWLR 513.** Richard appeared for the appellant hospital, challenging the primary judge's finding that the peer professional opinion which it relied on to supply antibiotics to the plaintiff was irrational within the meaning of section 50(2) of the Civil Liability Act.

**Biggs v George [2016] NSWCA 113.** Richard appeared for the appellant surgeon challenging the primary judge's finding of negligence in disclosing material risks of the surgery to the patient. The issues on appeal included the scope of the medico's duty of care in explaining surgical risks through an interpreter and whether the primary judge had wrongly rejected evidence as to the warnings given to the plaintiff / respondent about the risks.

**Daniel Smith by his tutor Debra Smith v South Western Sydney Local Health Network [2017] NSWCA 123.** Richard appeared for the respondent hospital sued by a patient who attempted suicide while on leave. The issues included whether the appellant should be permitted on appeal to reformulate the content of the duty of care he alleged the hospital owed or whether he was bound by the conduct of his case at trial. There was also an issue whether there was any causal connection between the hospital's breach of duty as found below and the appellant's suicide attempt.

**Sparks v Hobson; Gray v Hobson [2018] NSWCA 29.** Richard appeared for the appellant anaesthetist. The issues on appeal included the proper construction of sections 5I and 5O of the Civil Liability Act and whether the finding of breach of duty was properly made.

**Hunter and New England Local Health District v McKenna (2014) 253 CLR 270; [2014] HCA 44.** Richard appeared for the appellant hospital in a case involving the discharge of a psychiatric patient who killed his friend soon after discharge. The issue before the High Court was whether the appellant owed the victim and his family members a duty of care given the inconsistent duties imposed by the mental health legislation under which it operated.

## Publications

- SECTIONS 42 AND 43A CIVIL LIABILITY ACT
- The Competent Professional Practice 'Defence' and valuers
- The Duty of Care in relation to adjoining land - Section 177 Conveyancing Act 1919
- Section 50 CLA and Competent Professional Practice following Gould

## Presentations

- Defences available to public authorities
- Professional negligence claims against valuers
- Excavation and that sinking feeling - unlawful removal of support
- Section 50 - Gould
- Competent professional practice as a defence & single apportionable claims