

# Frank Hicks SC

Barrister 2003

Silk 2017

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Frank Hicks SC specialises in commercial law and is primarily engaged in technology and construction disputes concerning commercial, industrial, and infrastructure projects, as well as mining, energy, and renewable energy projects, and large-scale residential developments. He has appeared for a wide variety of parties, from individuals to large national and multinational companies, as well as State and Commonwealth government entities and statutory corporations.

Generally retained to appear in the Supreme Court of NSW, Frank is also regularly briefed for proceedings in the Federal Court and the superior courts of Queensland, Victoria, South Australia and the ACT. He has appeared in the High Court on special leave applications and final hearing.

Frank is also engaged for domestic and international arbitrations, and has advised on and appeared in all other forums of alternative dispute resolution, including mediation and expert determination.

Frank has also been appointed as an arbitrator by agreement in private arbitral proceedings and by the NSW Supreme Court as a referee and facilitator of expert conclaves in litigation proceedings. He enjoys a strong reputation as a mediator for commercial and construction disputes, with an ability to achieve sound and satisfactory settlements of complex matters.

Frank was called to the Bar in 2003 and took silk in 2017. Prior to the call, he was a Senior Associate in the Disputes division of Clayton Utz's Construction & Major Projects Group between 1996 and 2002. From 1993 to 1996, he was a solicitor with Marsdens Lawyers, where he worked in general litigation in Campbelltown and Sydney.

Frank has a deep interest in the law of expert evidence, particularly as it relates to delay, disruption, and programming for construction projects, engineering issues (structural, geotechnical and civil), and architectural/design services. He has given many presentations for Building and Construction Disputes Workshops, NSW Young Lawyers CLE seminars, UNSW Legal Seminars, and local Law Society CLE seminars, as well as CPD seminars for Greenway Chambers.

Outside of the law, Frank enjoys cricket, rugby (union and league), horse racing and fine music.

## QUALIFICATIONS

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Bachelor of Arts/Bachelor of Laws (UNSW)  
1992

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## Specialisations

Commercial law and equity

Commercial arbitration

Mediation and alternative dispute resolution

Industrial, infrastructure and commercial projects

Large residential developments

## Professional Recognition

Since 2014, ranked by Doyles Guide as a leading and preeminent junior and senior counsel in construction law, in both NSW and Australia.

Since 2015, identified in the Chambers and Partners Guide, Asia-Pacific as a Band 1 junior barrister and silk in Australia for construction and infrastructure disputes.

Since 2018, recognised in Best Lawyers in Australia for Construction/Infrastructure.

Since 2023, noted in the Legal 500 in Australia for Construction, Infrastructure and Property.

## Notable Cases

***Tesseract International Pty Ltd v Pascale Construction Pty Ltd.*** South Australia Court of Appeal and High Court proceedings concerning a question of law as to the application of statutory schemes for proportionate liability under Part 3 of the Law Reform (Contributory Negligence and Apportionment of Liability) Act 2001 (SA) and Part VIA of the Competition and Consumer Act 2010 (Cth) in commercial arbitration. The question was determined by the South Australian Court of Appeal in the negative ([2022] SASCA 107). Special leave was granted, and the matter heard by the High Court in November 2023. Judgment reserved.

***AE&E Australia Pty Ltd v Sino Iron Pty Ltd.*** Domestic arbitration proceedings concerning claims and counterclaims over the design, construction, and commissioning of a combined cycle power plant for mining activities in the Pilbara region of Western Australia. The proceedings were heard in Perth, WA. Amount in issue: approximately \$225M.

***Heyday5 Pty Ltd v CPB Dragados Samsung Joint Venture.*** Domestic arbitration proceedings concerning claims and cross claims for monies for contract works, variations, delay and disruption in respect of works for the M5 WestConnex Stage 2 infrastructure project. Amount in issue: approximately \$A50M.

***JK Williams Pty Ltd v Sydney Water Corporation.*** NSW Land & Environment Court proceedings concerning the performance of works to address erosion in Boundary Creek found to be due to flows from the Penrith Sewage Treatment Plant that was constructed as part of the Replacement Flows Project for the Greater Western Sydney Area.

***China Railway Construction Engineering (PNG) Ltd ats OPH Ltd.*** Litigation proceedings in the Papua New Guinea National Court of Justice for claims and cross claims arising from a construction in Port Moresby. Amount in issue: approximately \$A50M.

***Downer Constructions (PNG) Pty Ltd v The State of Papua New Guinea.*** International arbitration proceedings concerning claims for additional monies for delay and variations in constructing the Ramu Highway in Papua New Guinea. The proceedings were heard in Brisbane, Qld. Amount in issue: approximately \$A40M.



***Dematic Pty Ltd v Nedcon Magazijninrichting.*** International arbitration proceedings concerning the design and construction of a regional Queensland storage and distribution facility. The proceedings were heard in Sydney, NSW. Amount in issue: approximately \$20M.

***Redpath Australia Pty Ltd v Copper Mines of Tasmania Pty Ltd.*** NSW Supreme Court proceedings concerning claims and counterclaims for monies and damages arising out of underground mining operations at Mt Lyell, Tasmania. Amount in issue: approximately \$40M.

***Stockland Trust Management Ltd v Laing O'Rourke Australia Construction.*** NSW Supreme Court proceedings concerning disputes and claims arising out of a contract for the refurbishment and expansion of Townsville Shopping Centre, Queensland. Amount in issue: approximately \$50M.

***The Owners of Strata Plan 74602 v Brookfield Multiplex Pty Ltd & Anor.*** NSW Supreme Court proceedings concerning claims for defects and associated loss in a North Sydney high rise residential development known as the Beau Monde, comprising 241 strata apartments. Amount in issue: approximately \$45M.

***NRT Infrastructure Joint Venture ats Civmec Construction & Engineering Pty Ltd.*** Advice on claims and settlement of claims in respect of delay and disruption arising from contracts for the Sydney Metro Northwest, also known as the North West Rail Link, for the delivery of eight (8) new railway stations, commuter carparking stations, the metro trains, and the upgrade of the railway. Amount in issue: approximately \$50M.

***CSR Pty Ltd v Dematic Pty Ltd & NDC Automation Pty Ltd.*** Victorian Supreme Court proceedings concerning claims for the upgrade and automation of operations at the CSR industrial facilities at Yarraville and Springvale. The claims raised complex factual, technical, and legal issues as to causation, breach of contract, misleading and deceptive conduct, and the enforcement of rights and claims for damages following assignment of rights and the assumption of liabilities at law and in equity. Amount in issue: approximately \$25M.

***Tzaneros v Walker Group Constructions & Anor.*** NSW Supreme Court and Court of Appeal proceedings concerning claims for defects in concrete pavements at a trade and transport terminal facility at Molineaux Point, Port Botany, and issues as to the assignment of claims by deed and the proper measure of damages. Amount in issue: approximately \$15M.

***Duffy Kennedy Pty Ltd v Galileo Miranda Nominee Pty Ltd.*** NSW Supreme Court and Court of Appeal proceedings concerning breach of contract, the validity of a 'show cause notice', the obligation of good faith, and the adequate and proper consideration of issues when considering the exercise of contractual powers to suspend works or terminate a contract. Also considered the use of statements made and information provided in the course of 'without prejudice' meetings and the reliance on this information and statements when determining to exercise of contractual powers to suspend works or terminate a contract. Amount in issue: approximately \$15M.

***Skilled Group Ltd v CSR Viridian Pty Ltd & Anor.*** Victorian Supreme Court proceedings concerning claims for the upgrade of the CSR glass manufacturing plant known as the Dandenong Float Glass Plant in Victoria. The claims also raised complex factual, technical, and legal issues as to the rights and bases for a claim of restitution at law and in equity. Amount in issue: approximately \$5.5M.

***Ceeroose Pty Ltd v A-Civil Aust Pty Ltd.*** NSW Supreme Court and Court of Appeal proceedings concerning the interpretation and application of the Building and Construction Industry Security of Payment Act 1999 (NSW) and issues of jurisdictional error. Related proceedings (A Civil v Ceeroose [2023] NSWCA 144) concerned the risk of insolvency and the extent to which a respondent can seek production of documents in an endeavour to prove that a claimant is impecunious in circumstances where it is liable to pay an amount pursuant to a statutory liability under the Security of Payment Act.

***Demex Pty Ltd v McNab Building Services Pty Ltd.*** NSW Court of Appeal proceedings concerning the issue of jurisdictional error in the context of an adjudication determination under the Building and Construction Industry Security of Payment Act 1999 (NSW).

***The Owners Strata Plan 98074 v Ceerose Pty Ltd.*** NSW Supreme Court proceedings concerning breaches of statutory warranties under the Home Building Act 1989 (NSW) and the defence of a failure to mitigate by the plaintiff. Amount in issue: approximately \$5M.

Frank has also appeared in many cases concerning the operation and effect of the Building and Construction Industry Security of Payment Act 1999 (NSW) and the validity of adjudication determinations in the NSW Supreme Court and the NSW Court of Appeal. These include *Minister for Commerce v Contrax Plumbing (NSW) Pty Ltd & Ors*, *Dualcorp Pty Ltd v Remo Constructions Pty Ltd*, *MTR Corporation (Sydney) NRT Pty Ltd v Thales Australia Ltd*, and *CPB Contractors Pty Ltd v Heyday5 Pty Ltd*.

## Publications

Frank has been published in the Building and Construction Law Journal and many other publications. In 2006, he completed the updating and editing of Halsbury's Laws of Australia, Building and Construction title. Recent articles, available of the Greenway Chambers website, include:

- Design and Building Practitioners Act 2020 (NSW)
- The Building and Construction Industry Security of Payment Act: What to look for following the 2019 amendments
- The 2018 Amendments to the Security of Payment Act 1999
- Have Home Owners Warranty Insurers won a battle, but lost the war?
- *Southern Han Breakfast Point Pty Ltd (in liq) v Lewence Construction Pty Ltd* [2016] HCA 52
- Delay and Disruption - the Society of Construction Law Protocol.