




GREENWAY CHAMBERS

Frank Hicks SC

Barrister 2003 / Silk 2017

 02 9151 2923

 frank.hicks@greenway.com.au



Practice

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. He 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 accepts appointment as an arbitrator by agreement in private arbitral proceedings and as an expert for contractual expert determination of disputes and issues. He has also been appointed by the NSW Supreme Court as a referee and facilitator of expert conclaves in litigation proceedings.

Further, Frank enjoys a strong reputation as a mediator for commercial and construction disputes, with an ability to achieve sound and satisfactory settlements of complex matters.

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, he enjoys cricket, rugby (union and league), horse racing and fine music.

Qualifications

Bachelor of Arts/Bachelor of Laws (UNSW) 1992

Specialisations

- Construction and infrastructure
 - Commercial law and equity
 - Commercial arbitration
 - Mediation and alternative dispute resolution
 - Mining, energy and renewables
 - Large residential developments
-

Professional recognition

- Since 2014, Frank has been ranked by Doyles Guide as a leading and preeminent junior and senior counsel in construction law, in both NSW and Australia.
 - Since 2015, Frank has been identified in the Chambers and Partners Guide, Asia-Pacific, as a leading junior barrister and a silk in Australia for construction and infrastructure disputes.
 - Since 2018, Frank has been recognised in Best Lawyers in Australia as a silk for Construction/Infrastructure.
 - Since 2023, Frank has been recognised in Legal 500 in Australia as a silk for Construction, Infrastructure and Property.
-

Publications

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.

- 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

Tesseract International Pty Ltd v Pascale Construction Pty Ltd

South Australia Court of Appeal and High Court proceedings (leading Bill McManus), which concerned a question of law as to the application of State and Commonwealth statutory schemes for proportionate liability 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 on 7 August 2024: [\[2024\] HCA 24; 98 ALJR 880; 418 ALR 539](#).

The Owners Strata Plan 89074 v Ceerose Pty Ltd.

NSW Supreme Court and Court of Appeal proceedings concerning breach of statutory warranties under the *Home Building Act 1989* (NSW) in respect of a large scale residential project and the defence of failure to mitigate. In issue was whether conduct was unreasonable in the circumstances such that some or all of the claimed loss should be disregarded, and the legal and evidentiary onus on the party asserting a failure to mitigate. It further considered whether there was a “positive obligation” to provide builder an opportunity to rectify damage.

AJ Portelli Medical Pty Ltd v Black Sheep Building Pty Ltd

NSW Supreme Court and Court of Appeal proceedings involving the consideration of the provisions and operation of the *Building and Construction Industry Security of Payment Act* and the proper construction of the *Home Building Act 1989* (NSW).

Blacktown City Council v Statewide Civil Pty Ltd

NSW Supreme Court proceedings heard by Bell CJ at first instance, involving a consideration of the nature and essence of arbitration, the recognition and enforcement of award, and grounds for refusal of procedural fairness and public policy.

AM Darlinghurst Investment Pty Ltd v Growthbuilt Pty Ltd.

NSW Supreme Court proceedings concerning breach and termination of contract, misleading and deceptive conduct, estoppel and waiver, and quantification of damages arising from a heritage development project in central Sydney and involving expert and technical issues as to delay, structural engineering and design, programming and project administration.

One Central Park v Frasers & Watpac.

NSW Supreme Court proceedings concerning breach of statutory warranties under the *Home Building Act 1989* (NSW) and enforcement of Building Works Rectification Order issued under Part 5, Division 1 of the *Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020* (NSW).

Ceerose 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 Ceerose [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 so as to seek a stay of any judgment under the Security of Payment Act pending final hearing of the substantive disputes.

Demex Pty Ltd v McNab Building Services Pty Ltd.

NSW Court of Appeal proceedings concerned the issue of jurisdictional error in the context of an adjudication determination under the Security of Payment Act.

JK Williams v Sydney Water.

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.

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 adequate and proper consideration to the issues, and the use of information provided in the course of 'without prejudice' meetings for purposes other than settlement.

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.

Walker Group Constructions ats Tzaneros.

NSW Supreme Court and Court of Appeal proceedings concerning issues of structural design and construction in respect of concrete pavements at a trade and transport terminal facility at Molineaux Point, Port Botany.

Downer Constructions (PNG) v The State of Papua New Guinea.

International arbitration involving claims for additional monies for delay and variations in constructing PNG's Ramu Highway. The proceedings were heard before an international arbitral tribunal in Brisbane.

China Railway Construction Engineering (PNG) Ltd ats OPH Ltd.

Proceedings in the Papua New Guinea National Court of Justice for claims and cross claims arising from construction project in Port Moresby.

Dematic v Nedcon Magazijnrichting.

International arbitration concerning the design, fabrication, supply and construction of a regional Queensland storage and distribution facility. The proceedings were heard before an international arbitral tribunal in Sydney.

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 WA's Pilbara region. The proceedings were heard before an arbitral tribunal in Perth.

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 or sub-level cave mining operations at Mt Lyell, Tasmania.

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.

Brookfield Multiplex ats The Owners of Strata Plan 74602 & Anor.

NSW Supreme Court proceedings concerned 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.

In addition to the cases noted above, Hicks SC has also appeared in many proceedings 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, including *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*, *CPB Contractors Pty Ltd v Heyday5 Pty Ltd*, and *Lipman Pty Ltd v A-Civil Australia Pty Ltd*.