



## Robert Heath QC, FCI Arb

*Castan Chambers*

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Robert was admitted to practice as a barrister & solicitor in 1997 (Herbert Geer & Rundle); he signed the Victorian Bar roll in 1999; and he took silk in November 2017.

Robert is member of the Victorian Bar, the Western Australian Bar Association and the Tasmanian Bar; and he is a registered advocate at the Dubai International Financial Centre.

### Qualifications

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LLB (Hons); BA (Hons) – University of Melbourne (1995).

Professional Certificate in Arbitration – University of Adelaide & the Institute of Arbitrators and Mediators Australia (IAMA) (2004).

Diploma of International Arbitration – CIArb (2019).

Robert is a Fellow of the Chartered Institute of Arbitrators (**FCI Arb**).

He is an accredited mediator under the National Mediator Accreditation System.

### Practice Areas

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Appellate	Infrastructure Disputes
Arbitrations	Energy
Commercial Law	Professional Negligence and Torts
Mediation	Licensing & Disciplinary Tribunals
Corporations & Securities / Insolvency	Trade Practices
Equity / Trusts / Fraud	Class Actions

*From 1 July 2008 liability limited by a scheme approved under Professional Standards Legislation*





## Professional Experience

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Robert has acted in a wide range of commercial disputes including arbitrations. He has extensive experience working on heavy and complex cases as part of a team made up of solicitors and other counsel. He is an experienced trial advocate.

Robert is briefed regularly to give advice (in conference and in writing). He is also briefed to act as a mediator and as an arbitrator.

Recognition:

- **Chambers and Partners:** Robert is listed in the 'Dispute Resolution – The Bar' section of past Chambers Asia-Pacific guides and the most recent guide (for 2020).
- **Best Lawyers of Australia:** voted by peers as a leading Australian lawyer in in the practice areas of Litigation, Professional Malpractice Litigation and Class Action Litigation (2017, 2018 and 2019).

Recent matters on which he has worked include:

- Sole arbitrator in a substantial ACICA arbitration (a joint venture / construction dispute).
- Substantial domestic arbitrations arising from the failure of the Basslink electricity cable which failed in December 2015 (for Hydro Tasmania, led by John Rowland QC and with B. Petrie).
- The Fonterra farmgate milk price class action (with Paul Liondas and Lucy Dawson).
- The class action relating to the aviation courses provided by the Box Hill Institute and Soar Aviation (with M. Peckham).
- Three proceedings relating to the alleged presence of organochlorine pesticides on an educational property (acting for the State of Victoria with Roslyn Kaye and Rose Singleton).
- A proceeding relating to Chabad Properties Inc.
- Commonwealth AAT proceedings geared to reviewing decisions of ASQA (with M. Peckham).
- Appearing for a witness at the Royal Commission into Aged Care and Ageing.
- ***Braham Investments Pty Ltd v Wantrup*** [\[2018\] VSCA 291](#) – a successful appeal (with B. Petrie).
- ***CPB Contractors Pty Ltd Limited & Anor v Celsus Pty Ltd & Ors*** [\[2017\] FCA 1620](#) (application for a mandatory stay of curial proceedings) – a case in the Federal Court concerning the new Royal Adelaide Hospital Project, a Public Private Partnership (for the Project Company, led by D. Collins QC).
- ***Pink v Smith & Nephew Surgical Pty Ltd & Anor*** – a case in the Supreme Court of Victoria concerning an allegedly defective hip implant device (led by D. Curtain QC).
- ***Alphater Consulting v Rozman*** [\[2016\] VSCA 111](#) – an appeal concerning a dispute resolution agreement and the role of an independent expert (with K. Hickie); Robert also appeared at the trial (with K. Hickie) – [\[2015\] VSC 319](#).
- A substantial domestic arbitration concerning a coal supply agreement.

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- ***Murphy v State of Victoria & Anor***, Supreme Court of Victoria proceeding relating to the proposed East West Link tollway (led at different times by A. Myers QC, N. Young QC and Bret Walker SC). See for example the following hearings in the High Court – [\[2014\] HCATrans 214](#), [\[2014\] HCATrans 215](#) & [\[2014\] HCATrans 230](#) (led at different hearings by N. Young QC and Bret Walker SC).

Robert has extensive experience in corporations law matters. For example, see the following cases:

- He was junior counsel for Mr. J.D. Elliot in a long-running civil penalty case brought by ASIC against the directors of Water Wheel Ltd – see ***ASIC v Plymin no. 1*** (2003) 46 ACSR 126 and ***ASIC v Plymin no. 2*** (2003) 21 ACLC 1237; [\[2003\] VSC 230](#) (led by A. Myers QC).
- He was junior counsel for Citofresh International Ltd in Federal Court proceedings brought by ASIC against that company and one of its directors (led by P. Bick QC).
- He was junior counsel for a respondent in a civil penalty case brought by ASIC against Civoken Pty Ltd and other parties concerning aged-care managed investment schemes.
- ***Maxsted & Dwyer as liquidators of Harris Scarfe Ltd v Nintendo & Ors*** – junior counsel for Nintendo in an unfair preference claim brought in the Supreme Court of South Australia against that company and other creditors of Harris Scarfe Ltd (led by G. Bigmore QC).
- Oppression proceedings – for example, he acted for Grill'd in Federal Court proceedings in 2016 and 2017.
- Winding up proceedings and liquidator's examinations.
- He has provided advice in respect of a variety of Corporations Act issues, including the transfer of shares, managed investment schemes, re-registration of companies, and alleged misleading and deceptive conduct in relation to financial services.

Robert has experience in class action proceedings. See the following cases in which he acted as junior counsel):

- ***Peterson v Merck Sharp & Dohme*** – the Vioxx class action, a case involving complex medical evidence; Robert was a member of a team comprising Australian solicitors, American attorneys, in-house counsel and counsel (led by Stewart Anderson QC).
- ***Woodcroft-Brown v Timbercorp Securities Limited (in liq)*** [\[2011\] VSC 427](#) – Timbercorp class action in the Supreme Court of Victoria (led by C. Caleo QC).
- ***Lynette Rowe v Grünenthal GmbH & Ors*** – Thalidomide class action in the Supreme Court of Victoria; Robert was a member of the team acting for the first defendant, a German company (led by D. Collins QC).
- ***Matthews v SPI Electricity Pty Ltd & Ors (No 9)*** [\[2013\] VSC 671](#) – an application for security for costs in which Robert acted various insurance companies in the Suncorp Group.

Other substantial cases on which Robert has worked include:

- ***Kakavas v Crown Melbourne Ltd*** (2013) 250 CLR 392; [\[2013\] HCA 25](#) (led by A. Myers QC).

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- ***Swansson v Harrison & Ors*** [\[2014\] VSC 118](#) – a professional negligence claim against an insurance broker concerning the cancellation of a life insurance policy (led by D. Masel SC).
- ***Biota Ltd v GSK Inc*** – long-running litigation in the Supreme Court of Victoria relating to the worldwide marketing obligations of GSK's 'blockbuster' influenza drug known as Relenza (led by Jeff Sher QC, John Sackar QC and Stewart Anderson QC).
- ***Kuek v Devflan Pty Ltd & Anor*** [\[2012\] VSC 571](#) – a case in which the Court found that the plaintiff had contravened provisions of the *Civil Procedure Act 2010* (Vic).
- ***QPSX Limited v Ericsson Australia Ltd (No 5)*** [\[2007\] FCA 244](#) – Robert was a member of the Ericsson Group's legal team in a long-running matter in the WA registry of the Federal Court (led by Dr. J. Emmerson QC).
- ***Allan v Transurban City Link Ltd*** (2001) 208 CLR 167; [\[2001\] HCA 58](#) (led by M. Dreyfus QC).

Robert has considerable experience in fraud, *Barnes v Addy* and breach of director's duty cases. For example:

- ***Amcor v Australian Corrugated Box Co*** [\[2013\] VSCA 223](#) – a substantial fraud claim brought by Amcor against former directors and officers (led by Dr. Sue McNicol QC).
- ***Australian Super Developments Pty Ltd & Ors v Marriner & Ors*** [\[2010\] VSC 41](#) – C+BUS action against a former director (led by P. Bick QC).
- ***Marriner & Ors v Australian Super Developments Pty Ltd & Ors*** [\[2012\] VSCA 171](#) – successful appeal against first instance decision (led by P. Bick QC).
- ***Australian Super Developments Pty Ltd & Ors v Marriner & Ors*** [\[2014\] VSC 464](#) – trial of questions remitted by the Court of Appeal (led by P. Bick QC).

Robert appeared as sole counsel in a range of courts and tribunals. For example:

- ***Twenty Ninth Macorp Nominees Pty Ltd v George & Anor*** [\[2017\] VSC 136](#), a Supreme Court trial in which Robert acted for the plaintiff.
- ***Mimotopes Pty Ltd v Monash University*** [\[2017\] FCA 278](#), a dispute in which Robert acted for Monash University.
- ***Geemaz Management Pty Ltd v Geelong Motors Pty Ltd*** [\[2013\] VSC 571](#) – a *Masters v Cameron* dispute in respect of the sale of a car dealership franchise.
- ***Pippa Savage v Rowing Australia*** – 2012 Australian Olympic Rowing Team selection dispute heard by the Rowing Australia Appeals Tribunal (in which Robert appeared on behalf of Rowing Australia).
- ***Sainuddin v Brady Flinders Pty Ltd*** [\[2012\] VCC 644](#) – professional negligence claim against a firm of solicitors.
- ***Kermani v Gaylard & Ors*** [\[2011\] VSC 46](#) – long-running trial of negligence & *Fair Trading Act* claims against solicitors.
- ***Computer & Parts Land Pty Ltd v Aust-China Yan Tai Pty Ltd & Ors (Retail Tenancies)*** [\[2010\] VCAT 2054](#) – long-running trial of a retail tenancies dispute.
- ***Wong v Body Corporate 1 Plan no. 433814P*** [\[2009\] VCC 0100](#) – breach of contract and professional negligence.

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- ***Slaveski v State of Victoria & Ors*** [\[2009\] VSC 540](#) – an injunction application in which Robert acted for Victoria Police.
- ***LivingSpring Pty Ltd & Ors v Ng & Ors*** [\[2007\] VSC 9](#) – the trial of a contempt proceeding in which Robert acted for one alleged contemnor.
- ***Mond & Mond v Berger*** (2004) 10 VR 534; [\[2004\] VSC 45](#) – although Robert did not appear in the trial of the Victorian Supreme Court proceeding, he appeared in the lengthy rabbinical arbitration the subject of that proceeding.
- Coronial inquests – appearances for health authorities & hospitals.
- Product liability cases – including cases for a Japanese car manufacturer.
- An application in the Magistrates' Court on behalf of the Archbishop of the Archdiocese of Melbourne.
- Advising foreign companies in respect of forum challenges.

Robert has extensive experience in civil penalty prosecutions and disciplinary prosecutions. For example:

- He acted for the Southern Stars Football Club Inc. in respect of serious fraud and match-fixing allegations in the Victorian Premier League.
- He was junior counsel in a petrol price fixing / cartel case prosecuted by the ACCC – see ***ACCC v Leahy*** (2007) 160 FCR 321; [\[2007\] FCA 794](#) (led by Leslie Glick QC).
- He has appeared in the Supreme Court of Western Australia in asset confiscation proceedings against alleged criminals – ***The Director of Public Prosecutions for Western Australia v Mansfield*** (2004) 150 A Crim R 348; [\[2004\] WASC 255](#) (a case which went to the High Court of Australia). See also ***The Director of Public Prosecutions for Western Australia v Mansfield*** [\[2004\] WASC 116](#) (a hearing in which he was led by Stephen Shireffs SC).
- He has also been briefed to advise in respect of like proceedings in the Supreme Court of Western Australia.
- He has prosecuted Chinese medical practitioners on behalf of the Chinese Medicine Board of Australia – see for example ***Chinese Medicine Board of Australia v Lim*** [\[2012\] VCAT 1614](#).
- He has appeared for the TEQSA in the Commonwealth AAT.
- He has appeared before the Nurses Board of Victoria.
- He has appeared before the Agents' Accreditation Board of the AFL Players' Association.
- He has been briefed to conduct investigations for a national sporting body.

Robert also has some experience in 'white collar' criminal matters.

## Other matters

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In 1999, Robert, Adrian Anderson, Peter Cullen and Jim Main compiled & edited a book titled "*COACH! Inspiration & Perspiration*" (Information Australia, Melbourne, 2000).

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In 2016, Robert was one of the producers and directors of a feature length documentary called “The Galahs” (the team of VFL footballers led by Harry Beitzel on a world tour in late 1967). The same team is producing a feature length documentary film concerning Ferenc Puskás and his time managing the South Melbourne Hellas Football Club.

Robert is:

- A Code of Conduct Commissioner at Cricket Australia;
- the Chairman of Football Federation Victoria’s Appeals Board; and
- the honorary legal adviser to the Royal Historical Society of Victoria Inc.