



# NICHOLAS FLOREANI KC

**Barrister, Arbitrator, Mediator and Adjudicator**

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## PRACTICE AT THE BAR

I practice in commercial litigation, with expertise in building and construction litigation and alternative dispute resolution.

I regularly act for major construction, development and mining related companies in a wide range of matters in all State and Territory superior courts, including at intermediate level and in ADR processes, arbitration, adjudication, expert determinations, and mediations.

I regularly appear unled before Australian Defence Force Disciplinary Tribunals (Court Martials and Defence Force Magistrates) in my role as a Squadron Leader (Reserve Legal Officer) in the Royal Australian Air Force. In 2020, I acted on behalf of a Defence Member in the Inspector-General ADF Afghanistan Inquiry into the conduct of Australia's Special Operations Task Group in Afghanistan between 2005 and 2016.

I have developed expertise in alternative dispute resolution. I am an accredited arbitrator and mediator and have been engaged by parties to act as an arbitrator, mediator and expert determiner in several construction related disputes. I am an adjudicator registered in the South Australia, the Northern Territory, Western Australia, Queensland and Malaysia. I have adjudicated payment disputes totalling more than AUD\$100 million under these Acts. I am a regular speaker on alternative dispute resolution issues.

I am recognised in *Doyle's Guide* as a leading construction dispute resolution, commercial litigation and arbitration barrister and mediator.

Prior to my call to the South Australian Bar in 2003, I was called to the New South Wales Bar and had previously worked as a commercial litigation and dispute resolution solicitor in Sydney (with Allen Allen & Hemsley) and London (with Clifford Chance). Prior to returning to Adelaide, I joined the secretariat of the Claims Resolution Tribunal in Zurich, Switzerland where I arbitrated World War II-era claims on unclaimed Swiss Bank accounts.

## APPOINTMENTS

### 2020

Deputy Presiding Member of the South Australian Parole Board

Adjudicator under the Queensland *Building Industry Fairness (Security of Payment) Act 2017*

Company Secretary, Chartered Institute of Arbitrators (CIArb)

Senior Fellow Bali International Arbitration and Mediation Centre Member of Victorian Bar



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- 2019** Singapore International Mediation Institute (SIMI), Mediator  
Royal Institute of Chartered Surveyors (RICS) Dispute Resolution ACRE accredited Evaluative Mediator  
National Councillor of CIArb
- 2018** Asian International Arbitration Centre, Kuala Lumpur, Malaysia, Adjudicator and Arbitrator
- 2017** Grade 2 Arbitrator, Resolution Institute
- 2016** Fellow of CIArb  
Fellow and Arbitrator of the Australian Centre for International Arbitration (ACICA)  
Committee of the South Australian Chapter of CIArb
- 2015** RICS Dispute Resolution, Adjudicator
- 2014** Squadron Leader (Specialist Legal Reserve), Royal Australian Air Force (RAAF)
- 2012** Resolution Institute, Adjudicator
- 2004** Resolution Institute, Mediator  
Flight Lieutenant, RAAF
- 2003** Member of the South Australian Bar
- 1998** Member of the New South Wales Bar

## QUALIFICATIONS

- 2020** Certificate in Adjudication (QLD), Contract Administration Group
- 2019** Certificate in Evaluative Mediation, Singapore Management University and RICS(DRS)
- 2018** Certificate in Adjudication (Malaysia), Asian International Arbitration Centre, Kuala Lumpur, Malaysia
- 2017** Certificate in Maritime Disputes and Arbitration, Lloyd's Maritime Academy  
Certificate in Adjudication (Western Australia), RICS(DRS)
- 2016** Diploma in International Commercial Arbitration, CIArb
- 2015** Graduate Diploma in Military Law, Australian National University



<b>2012</b>	Certificate in Adjudication (South Australia), The Institute of Arbitrators and Mediators Australia (now Resolution Institute)
<b>2005</b>	Certificate in Mediation, Institute of Arbitrators and Mediators Australia
<b>2004</b>	Professional Certificate in Arbitration, University of Adelaide
<b>2001</b>	Qualified Lawyers Transfer Test, The College of Law of England and Wales
<b>1997</b>	Graduate Certificate in Legal Practice, University of South Australia
<b>1996</b>	Bachelor of Laws, Queensland University of Technology
<b>1993</b>	Bachelor of Commerce, University of Adelaide

## PROFESSIONAL RECOGNITION

<b>2020</b>	<i>Doyle's Guide</i> - Leading Arbitration Counsel - Australia <i>Doyle's Guide</i> : Leading Construction & Infrastructure Junior Counsel – Australia <i>Doyle's Guide</i> : Leading Construction Barristers – South Australia <i>Doyle's Guide</i> : Leading Commercial Litigation & Dispute Resolution Barristers - South Australia
<b>2019</b>	<i>Doyle's Guide</i> : Leading Mediators – South Australia <i>Doyle's Guide</i> : Leading Construction Barristers – South Australia <i>Doyle's Guide</i> : Leading Commercial Litigation & Dispute Resolution Barristers - South Australia
<b>2018</b>	<i>Doyle's Guide</i> : Leading Construction Barristers – South Australia <i>Doyle's Guide</i> : Leading Commercial Litigation & Dispute Resolution Barristers - South Australia
<b>2017</b>	<i>Doyle's Guide</i> : Leading Construction Barristers – South Australia <i>Doyle's Guide</i> : Leading Commercial Litigation & Dispute Resolution Barristers - South Australia
<b>2016 - 2014</b>	<i>Doyle's Guide</i> : Leading Construction Barristers – South Australia

## COMMERCIAL ARBITRATION

Acted as arbitrator in disputes involving:

- construction of the AGL Silverton Windfarm, New South Wales. The dispute was between the head contractor and subcontractor and involved payment and extension of time claims.
- a multi-storey residential development in the Pilbara, Western Australia. The dispute involved the assessment of extension of time claims, variation claims and delay damages claim.



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- the interpretation on of termination provisions of a development contract for residential townhouses in South Australia.
- the interpretation of terms of a subcontract for the supply and installation of aluminium windows, doors and louvres for the construction of an Ibis Hotel in Adelaide, South Australia

Appearing as counsel for:

- a civil and electrical contractor in an arbitration regarding claims for variation works in relation to the Brisbane Shipping Terminal Redevelopment.
- a head contractor in an arbitration regarding claims by a civil works contractor in relation to stormwater civil infrastructure works undertaken as part of the Torrens Road to Torrens River Highway Project.
- a mining civil works contractor in an arbitration regarding a prolongation claim arising out of the construction of earthworks, foundations and civil works for a multi-metals processing and recovery facility in Port Pirie, South Australia.
- a mechanical engineering company in an arbitration regarding the construction of gas compression plant in remote area of South East Queensland. The dispute involved claims for delay and disruption on a global/total cost basis.
- a mechanical engineering company in an arbitration regarding the construction of the Hobart Class Air Warfare Destroyers in South Australia. The dispute involved claims for delay, disruption and unrecovered overheads arising out of the fabrication of pipe spools and assembly of pipe modules.
- an owner in arbitration regarding a developer's claim for delay damages arising from the builder's delay in the electrification of a housing subdivision in the Pilbara, Western Australia.
- an Australian sporting goods importer and distributor in an UNCITRAL arbitration seated in Wellington, New Zealand, in relation to a dispute arising under a distribution agreement.
- a French owned water utility company in an IOC arbitration with a regional water corporation. The dispute related to the design and construction of waste-water treatment plant in regional Victoria.
- a Canadian owned grain handling business in an arbitration against a New Zealand mechanical engineering company regarding the construction of grain silos in South Australia.
- a mechanical engineering company in a conciliation with a steel manufacturing company regarding the construction of a magnetite ore processing facility in South Australia.
- a civil works contractor in arbitration proceedings against a state government body involving the construction of an underwater pipeline for a marine research laboratory.
- a NSW power station proprietor in a dispute with a mechanical engineering firm regarding the refurbishment of a power station in regional NSW.
- a French bank in an IOC arbitration (London) against a US car hire company regarding a dispute arising out of the cross-border acquisition of UK and European interests in the fleet car hire business.
- a UK armaments manufacturing company in enforcement proceedings brought by a sovereign state in the High Court of Justice England and Wales regarding the enforcement of an IOC arbitral award.
- a US power producer in a LCIA arbitration (London) with a UK power station asset company. The dispute arose out of the cross-border acquisition, by the US firm, of power station assets in the UK.
- a state-owned Chinese pipeline construction company in a dispute with a trans-national consortium (including a sovereign state) involving the engineering, procurement and construction of an oil pipeline in the Sudan.
- a multi-national Canadian rail stock manufacturer in an IOC arbitration with a UK rail transport authority.



## RECOURSE TO THE COURTS - ARBITRATION

- *Ottoway Engineering Pty Ltd v ASC AWD Shipbuilder Pty Ltd* [2017] SASC 69
- *Viterra Operations Ltd (t/a ABB Grain Storage & Handling) v Ewing International Limited Partnership* [2010] SASC 328
- *Viterra Operations Ltd (t/a ABB Grain Storage & Handling) v Ewing International Limited Partnership* [2011] SASC 83

## ADJUDICATION

Acted as adjudicator more than 50 payment disputes in South Australia, the Northern Territory and Western Australia including in relation to:

- The Barker Inlet Power Station Project to build a 210 MW reciprocating engine power station located on Torrens Island, South Australia owned and operated by AGL Energy Limited
- The Ichthys LNG Project, a large-scale project to exploit LNG from the Ichthys Gas Field. The total cost of the Project was in the region of USD 37 billion and the disputes concerned the construction of the onshore processing facilities.
- The Darwin International Airport Terminal Expansion Project.
- The Perth Airport Rail Link Project.
- The new Royal Adelaide Hospital Project.
- The South Australian Health and Medical Research Institute (SAHMRI) Project.
- Mundaring Weir Upgrade Stage 2 Project, Western Australia.
- Jamestown Floating Solar Subframe Project, South Australia.

## RECOURSE TO THE COURTS - ADJUDICATION

- *McMahon Services Australia Pty Ltd v John Holland Pty Ltd* [2018] SADC 134
- *The Trustee for Allway Unit Trust Trading as Westside Mechanical Contracting Pty Ltd v R&D Airconditioning Pty Ltd & Ors* [2018] SASC 46
- *Mykra Pty Ltd v All State Maintenance Pty Ltd* [2014] SADC 149
- *Built Environs Pty Ltd v Tali Engineering Pty Ltd & Ors* [2013] SASC 84

## CONSTRUCTION LITIGATION

- *Dwain Phillis v J Anderson Constructions Pty Ltd. & Ors; Stephan & Anor v J Anderson Constructions Pty Ltd & Ors* [2020] NTSC 70
- *Adelaide Hills Council v T&R Nominees Pty Ltd* [2020] SADC 145
- *Lucas Earthmovers Pty Ltd v Anglogold Ashanti Australia Ltd & Anor* [2019] FCA 1049 and [2019] FCA 1864
- *McIntyre v Quality Roofing Services Pty Ltd*: [2019] SASCFC 29; [2019] SASCFC 69; [2017] SADC 62 and [2017] SADC 118



- *State of South Australia v Goldstein* [\[2016\] SASC 202](#)
- *Ottoway Engineering Pty Ltd v Westpac Banking Corporation* [2016] FCA 635;(No 2) [2017] FCA 39 and (No 3) [2017] FCA 1500
- *Fabtech Australia Pty Ltd v Laing O'Rourke Australia Construction Pty Ltd* [2015] FCA 1371
- *Aistrope & Aistrope v South Australian Housing Trust* [2015] SASC 202
- *Fitch v S&A Gallo Pty Ltd* [2013] SASC 144
- *Kyren Pty Ltd v Wunda Projects Australia Pty Ltd & Anor* [2012] SASCFC 23
- *Shelton v Oaktech Pty Ltd* [2011] NTSC 11
- *SJ Weir Ltd v Bijok & Anor* [2011] SASCFC 165

## COMMERCIAL LITIGATION

- *International Cleaning Services (Australia) Pty Ltd v Daniel Dmytrenko*. [2020] SASC 222
- *Cooper v Elia & Anor* [2020] SADC 147
- *Schenscher v Adelaide Mushrooms (Nominees) Pty Ltd* [2020] SASC 101
- *TTG Nominees Pty Ltd v Aileron Pastoral Holdings Pty Ltd* [2020] NTSC 4 and [2020] NTSC 15
- *BJEK Pty Ltd v Henbury Cattle Co Pty Ltd & Ors* [2019] NTSC 86
- *FE Accommodation Pty Ltd & Anor v Gold Valley Iron Ore Pty Ltd* [2020] NTSC 61
- *Fazche Pty Ltd v Mounzer & Anor, Fazche Pty Ltd v Internal Lynx Pty Ltd* [2019] SADC 194
- *Pybar Mining Services Pty Ltd v Challenger Gold Operations Pty Ltd* [2018] SASC 156
- *Ecap Finance Pty Ltd v Ottoway Engineering Pty Ltd* [2017] FCA 39 and (No 2) [2017] FCA 237
- *Ross v Perpetual Trustees Victoria Ltd & Ors* [2017] SASC 61
- *Ottoway Engineering Pty Ltd v Westpac Banking Corporation* [2016] FCA 635; (No 2) [2017] FCA 39; (No 3) [2017] FCA 1500
- *Osman v Lockyer and Anor* [2016] SADC 56 (No 2) [2016] SADC 82
- *Daher v Gembane & Anor* [2016] SADC 16
- *Jackson v Abram & Anor* [2014] SADC 118 and [2015] SASCFC 175
- *Allen v Birdanco Nominees Pty Ltd* [2015] FCA 1501
- *Laffer v Michelmore Real Estate Group Pty Ltd* [2014] FCA 495
- *Rocla Pty Ltd v Plastream Pipe Technologies Pty Ltd & Anor* [2011] SASC 80
- *Byrnes v Kendle* (2011) 243 CLR 253
- *Sekisui Rib Loc Australia Pty Ltd v Plastream Pipe Technologies Pty Ltd* [2010] FCA 813
- *Tropeano v Lauro* [2010] SADC 113



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- *Tambakis v Ferluga & Ors* [2010] SASC 122
- *Fitzgerald v Brock Real Estate & Ors* [2009] SASC 183
- *Residential Property Conveyancers v Vincent Bagnato & Ors* [2009] SASC 71
- *Rayner & Anor v Pethick & Anor* [2006] SASC 70

## INQUESTS

- *In the matter of the death of Mark William Payne, Inquest No. 14/2013.*
- *Report of the inquest into the deaths arising from the Thredbo landslide – 29 June 2000.*
- *The Inspector-General of the Australian Defence Force Afghanistan Inquiry – November 2020*

## READERS

**2019**                      Holly Veale

**2017**                      David Billington