



# ANDREW DOWNIE

T: +61 3 8600 1783

List Y: +61 3 9225 6777

downie@chancery.com.au

*Chancery Chambers & Melbourne TEC Chambers*

Level 26, 200 Queen Street

Melbourne VIC 3000

## ADMISSIONS

Admitted to practice as a barrister and solicitor of the Supreme Court of Victoria in 2004.

Signed the Victorian Bar Roll in 2008.

Member of the Tasmanian Independent Bar from 2012.

## QUALIFICATIONS

**LLB (Hons) | BSc (Hons) - Monash University**

**Master of Commercial Law - The University of Melbourne**

## AREAS OF PRACTICE

- ADR & Arbitration
- Building and Construction
- Commercial Law
- Consumer Credit
- Corporations and Securities
- Equity | Trusts
- Infrastructure
- Insurance Law
- Professional Negligence
- Property Law
- Residential | Retail Tenancies
- Sports Law
- Trade Practices
- Water Law

## PROFESSIONAL EXPERIENCE - SUMMARY

Andrew has 20 years' experience in commercial law and litigation, particularly in building and construction, infrastructure, water, insurance, property law and subdivisions, corporations law, administrative law and interpretation of contracts and statute matters. He appears in all jurisdictions, both for trials and arbitrations and as a lead counsel and a junior.

Andrew is recognised in Doyles Guide as a leading construction barrister, both in Victoria and Australia-wide.

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Immediately prior to coming to the Bar, Andrew was a dispute resolution lawyer at MolinoCahill Lawyers, specialising in large-scale construction, mining, infrastructure and defence projects. Prior to being admitted as a solicitor Andrew worked in the chemical sciences field.

When he came to the Bar, Andrew read with Richard Attiwill KC (now Justice Attiwill of the Supreme Court of Victoria).

Andrew is the chair of Melbourne TEC Chambers (MTECC). Andrew works and has worked on many committees and Boards including: the Bar Council and Counsel Committee of the Victorian Bar (VicBar), the Commercial Bar Association (CommBar), the Essoign Club and the editorial panel of the Australian Construction Law Bulletin.

Andrew is also the author of the LexisNexis service Court Forms, Precedents and Pleadings: Building Contracts Victoria.

## PROFESSIONAL EXPERIENCE – NOTABLE CASES

Andrew has appeared as sole counsel, or led, in a range of courts and tribunals. Notable cases include (client underlined):

- *Alphington Developments Pty Ltd v Amcor Limited* (VSC No. S ECI 2017 00145). Reserved for judgment. Briefed by Kalus Kenny Intalex. Led by Daniel Aghion. Leading “quantum” and “delay” issues. Claim for recovery of payments for remediation of contamination at the Alphington Amcor Paper Mill Site.
- *BCS Infrastructure Support Pty Ltd v Jones Lang Lasalle (NSW) Pty Ltd* [2020] VSC 739. Briefed by Gadens. Successful resistance of an application for judgment under Security of Payment legislation, including issues relating to electronic service and the existence of a payment schedule.
- *In the matter of 750 Collins Street, Docklands* [2020] VBAB 33. Briefed by Clayton Utz. Led by Jeremy Twigg QC. Successful s160A Building Act 1993 application on behalf of Monash College to determine that existing combustible panels on a large building complied with the BCA.
- *Lacrosse case - Owners Corporation No 1 of PS 613436T & Ors v Property Development Solutions & Ors* (VCAT No BP350/2016). Briefed by Sparke Helmore. Negligence – fire – non-combustibility requirements in the BCA – pure economic loss and property damage – apportionment. Resolved in 2018 for the Superintendent shortly before trial.
- *Epworth Foundation & Anor v Piranha Services Pty Ltd & Ors* (VSC No. S ECI 2017 00213 & 00194). Briefed by Sparke Helmore. Negligence – flooding – plumbing works – property damage – apportionment. Resolved in 2018 shortly before trial.
- *Quality Roads Pty Ltd v Baw Baw Shire Council* (VSC No. SCI 2015 06427, inc. [2016] VSC 477 ruling). Briefed by Maddocks. Road maintenance contract – duty of good faith and cooperation – incorporation of terms – allocation of Council funding. Resolved in 2019.
- *Leung v Harris* [2018] VCAT 1630 & [2019] VCAT 608. Briefed by Gadens. Water Act – unreasonable flow of water – steps to prevent flow - meaning of ‘interior face’ – damages awarded – costs awarded to applicant.
- *May Constructions Residential Pty Ltd v Creative Property Developments Pty Ltd* [2017] VCAT 484 & [2017] VCAT 1314. Briefed by Gadens. Led by F Tiernan QC. Injunction to restrain call on security – contracting party not owner of land – injunction dismissed – costs awarded to respondent.

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## PUBLICATIONS AND SEMINARS

- Regular CPD seminar and webinar contributions for MTECC, Leo Cussen, Legalwise, Society of Construction Law Australia and Law Institute of Victoria including on the following topics: offers of compromise, use of technology and remote hearings, limitation periods, construction law updates, security of payment legislation, restraining recourse to bank guarantees, and defects in large construction projects.
- Regular articles for the Australian Construction Law Bulletin, Building Dispute Practitioner Society News, Australian Construction Law Newsletter, Commercial Bar Association (CommBar) news on the topics above.
- Vignette contribution on time bars in the law textbook by Lukas Klee, *International Construction Contract Law* (1st Ed, 2014, Wiley and 2nd Ed, 2018)
- Seminar and paper for the 2014 National Mediation Conference: *'Crossing the line: misleading conduct, 'privilege' & good faith in mediation'*, 10 September 2014
- Article for the Precedent journal (Australian Lawyers Alliance), *'Playing the ball and not the man – The duty to an opponent'* (2014) 123 Precedent 26
- Article for Construction Law International (International Bar Association), *'Time Bars as Penalties after Andrews v ANZ'* (2014)
- Article for the Law Institute Journal, *'A fair share of the blame'*, (2014) 88.05 LIJ 48
- Article for the New South Wales Law Journal, *'Electronic briefs to counsel'* (2014) 52 LSJ 60
- Article for the Building and Construction Law Journal, *'Time Bars after Andrews v ANZ'* (2014) 30 BCL 7

## MEMBERSHIP AND APPOINTMENTS

### **Past and present committee/board memberships**

- MTECC executive (2013 to present), treasurer (2015 to 2019) and chair (2019 to present)
- Australian Construction Law Bulletin Editorial Panel (2015 to present)
- Commercial Bar Association (CommBar) Civil Procedure section Secretary (2014 to present).
- Executive Member of CommBar (2015 to 2017)
- Chair of the CommBar working committee updating the Supreme Court of Victoria's technology practice note (2016)
- CommBar, Honorary Secretary (2014 to 2015)
- The Essoign Club Ltd, Ass. Hon. Treasurer (2012 to 2013) and Hon. Treasurer (2013 to 2015)
- CommBar Construction Law section, Assistant Monitor (2012 to 2014)
- CommBar Sports Law section, Monitor (2012 to 2014)
- The Essoign Club Ltd, Assistant Honorary Treasurer (2012 to 2013)

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# YOUNG'S LIST

- Health and Wellbeing Committee of the Victorian Bar (2011 to 2013)
- Victorian Bar Council and Counsel Committee (2011 to 2012)

**Current association memberships**

- Melbourne TEC Chambers
- The Building Dispute Practitioners' Society
- Society of Construction Law Australia, and the Society of Construction Law UK
- The Resolution Institute
- Commercial Bar Association
- Law Hawks

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