

# Curriculum Vitae of Dr Donald Charrett

## Barrister, Arbitrator & Mediator / Engineer

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### Academic Qualifications

BE (Hons); LLB (Hons); MConst Law; PhD; Prof. Cert. in Arb; Grad Dip LPSE; Dip Company Director's Course, Diploma in International Arbitration.

### Professional Affiliations

Member of Victorian Bar; Member Resolution Institute (Graded Arbitrator & Accredited Mediator); Fellow Institution of Engineers Australia; Member Dispute Resolution Board Australasia Inc; Founding Member Society of Construction Law Australia; Accredited FIDIC Trainer; Fellow of Chartered Institute of Arbitrators, Member FIDIC President's List of Adjudicators.

Named as Best Construction Law Practitioner, Australia 2016 by Business Worldwide magazine.

### Professional Experience

#### **2004 – Present: Victorian Bar**

Barrister, Arbitrator and Mediator practising in building and engineering disputes, arbitration/mediation, construction law, commercial law, contract law, insurance law and professional negligence. Briefs have included:

- Expert determination of disputes on a road construction project.
- One person Dispute Board on design and construct contract for a major highway bridge.
- One person Dispute Board appointed under FIDIC MDB Contract to adjudicate on a number of disputes on an international bridge construction project
- Facilitation of Experts' Conferences on technical and quantum disputes arising from a mineral processing facility
- Chair of Dispute Avoidance Board appointed to a design and construct contract for a major highway upgrade
- Facilitation of Experts' Conference on disputes over defects in a rural highway in a high rainfall area
- Expert Determination of a dispute over defects in a water treatment plant
- One person Dispute Adjudication Board, appointed under FIDIC Silver Book to adjudicate on a number of disputes on an EPC project in Africa, subject to Australian law.
- Member of Dispute Resolution Board on a Transport for NSW infrastructure project (2011 - 2013).
- Chair of Neutral Evaluation Panel to recommend resolution of disputes over time extension claims on a large resource project in Australia.
- Advice on the application of FIDIC contracts to infrastructure and technology projects.
- Counsel in a stop clock arbitration of a complex dispute on an oil and gas project involving an offshore platform, onshore gas plant and pipelines, involving preparation of opinions, submissions and pleadings, briefing experts and interviewing lay witnesses and cross-examining witnesses.
- Appointment as Mediator, Arbitrator and Expert in construction disputes.
- Facilitation of an Experts' Conference of international experts and preparation of Joint Experts' Report for a three party dispute involving material failure in a mineral processing plant.
- Court and Victorian Civil & Administrative Tribunal appearances in a range of construction disputes involving payment, variations, defects, extensions of time and applications in connection with statutory provisions for security of payment.

Delivery of training courses on EPC and FIDIC contracts in Indonesia, Korea, Qatar, South Africa, China, Singapore, England and Australia.

**2012 - 2014: AMOG Pty Ltd Non-Executive Chairman                      2010 – 2011: Non-Executive Director.**

AMOG is a consulting engineering firm that provides a broad range of specialist services to the offshore oil and gas, mining, process and defence sectors, marine construction companies and government organisations in high technology niche areas, with particular expertise in structural engineering and expert witness work. It has offices in Melbourne, Perth, Houston USA and Colombia.

**2000 - 2004: Mallesons Stephen Jaques**

Solicitor in Construction Group, acting in Supreme Court litigation, mediation, expert determination and arbitration of construction disputes, including:

- Litigation in design and construct tunnel project: large volume of discovered documents required use of computer data base technology and preparations for a full electronic trial.
- Litigation on design and construct contract for construction of a road.
- Dispute over payment for variations in a power station project.
- Various contractual disputes on a major road infrastructure project arising from technical defects.
- Litigation on building projects including applications for security for costs and costs applications before the Taxing Master.
- Arbitration on hydroelectric power station: assisting engineering witnesses whose first language was not English.

**1998 - 2000 - Charrett Consulting Pty Ltd**

Expert witness in litigation on large light towers: preparation of reports on design process and review of structural design and construction issues.

**1995 - 1998 - Hardcastle & Richards - A Division of Dames & Moore**

Senior Principal, Commercial Manager:

- Contract review - vetting, negotiating and approving all non-standard commercial arrangements with particular emphasis on risk management.
- Responsibility for commercial aspects of joint ventures and overseas projects and insurance arrangements.
- Board member of HMA International, a joint venture of three Australian Consulting Engineers operating in Jakarta Indonesia.

**1974 - 1995: Hardcastle & Richards Pty Ltd - Consulting Engineers**

Director: 1985 - 1995; Associate Director : 1980-1985; Executive Engineer: 1974 – 1980:

- Structural design and design management of a variety of industrial and architectural projects, including buildings, bridges, industrial special structures and offshore structures. Significant projects included modular buildings for Antarctica, Northwest shelf supply base for Woodside, Loy Yang Power Station for SECV, guyed towers, specialist studies on bridge loading and offshore cranes, design of complex temporary works, investigation of structural failures.
- Management responsibilities included joint ventures on offshore oil & gas and minerals projects, international operations, corporate re-structuring, change of ownership, computer operations, and Professional Indemnity insurance.

**1970 - 1974: Irwin Johnston & Partners Pty Ltd - Consulting Engineers**

Design Engineer; Senior Engineer:

- Structural design of steel and concrete buildings ranging up to large multi-storey projects.
- Engineer in charge of computer applications.

**1967 - 1969: Monash University - Department of Civil Engineering**

Senior Teaching Fellow:

- Lecturing and tutoring undergraduate engineering students in theory of structures and stress analysis.
- PhD degree in structural engineering: Plastic Analysis and Optimal Design of Slabs, Plates and Frames.

## Publications

Joint author with Philip Loots: “Practical Guide to Engineering and Construction Contracts” (2009, CCH).

Editor of “Global Challenges, Shared Solutions” (2013, Society of Construction Law Australia).

Published papers in legal and engineering journals:

1. “The common law of Australia and the influence of statutory law” in Lukas Klee, “International Construction Law” (2015) 24.
2. “A common law of construction contracts – or vive la difference?” in Lukas Klee, “International Construction Law” (2015) 98.
3. “Statutory adjudication in Australia” in Lukas Klee, “International Construction Law” (2015) 258.
4. “Cost Effective Resolution of Construction Disputes” (2015) 9.33 *International In-house Counsel Journal* 1.
5. “The Commercial Value of Dispute Boards under FIDIC Contracts” (2015) 1.3 *Turkish Commercial Law Review* 205.
6. “The Rules for Expert Evidence in Australia” (2015) 163 *Australian Construction Law Newsletter* 24.
7. “Construction Disputes Australia” (2015) 64-15 *Lawyer Monthly* 52.
8. “Getting the most out of expert witnesses: Lessons from the Victorian Bushfires” (2015) 161 *Australian Construction Law Newsletter* 6.
9. “Challenges in achieving successful megaprojects” (2015) 10.2 *Construction Law International* 18 (Joint author with Philip Loots).
10. “Getting the most out of expert witnesses: Lessons from the Victorian Bushfires” (2015) *Television Education Network* (audio).
11. “Being Held to Ransom or ‘Wielding the Whip or the Rod’” (2014) 31(2) *International Construction Law Review* 211 (Joint author with Philip Loots).
12. “The Use of the UNIDROIT Principles in International Construction Contracts” (2013) 30(1) *International Construction Law Review* 88.
13. “The Art of the Forensic Engineer” (2013) Paper delivered at the Fifth Structural Engineering, Mechanics and Computation, Capetown September 2013; Zingoni (ed), *Research and Applications in Structural Engineering, Mechanics and Computation* 2341.
14. The Duty of Care in Design – Can Engineers Rely on Codes of Practice? (2013) Paper delivered at Third Society of Construction Law of Australia conference, Sydney August 2013; (2013) 152 *Australian Construction Law News* 6 (joint author with Dr Andrew Potts).
15. WHS in Australia – designer’s obligations (2013) 25(6) *Australian Construction Law Bulletin* 101 (joint author with Cherie Holland).
16. “The Canterbury Earthquakes – Lessons for Construction Lawyers” (2013) 8(2) *Construction Law International* 36.
17. “The “best” method of resolution of construction disputes – elusive or illusory?” (2013) 30(1) *International Construction Law Review* 88.
18. “WHS in Australia – the Current State of Play” (2013) 25(3) *Australian Construction Law Bulletin* 46 (joint author with Cherie Holland).
19. “Dispute Boards and Dispute Resolution” (2013) 16(4) *Inhouse Counsel* 59; (2013) 25(3) *Australian Construction Law Bulletin* 59.
20. “The Canterbury Earthquakes – Lessons for Construction Lawyers” (2013) 25(1) *Australian Construction Law Bulletin* 2.
21. “Expert Evidence in the Supreme Court of Victoria” (2012) 24(8) *Australian Construction Law Bulletin* 118.
22. “The Importance of Standard Form Contracts” (2012) 24(7) *Australian Construction Law Bulletin* 106.
23. “Managing Design Contracts” (2012) 15(10) *Inhouse Counsel* 317.
24. “Dispute Boards in Australia – the story so far” (2012) 15 *Buildlaw* 10.
25. “Contracts for Design Services” (2012) 15(9) *Inhouse Counsel* 293 (Joint author with Dan Washington).
26. “Expert reports as evidence in chief – a curate’s egg? (2012) 15(8) *Inhouse Counsel* 266 (Joint author with Dr Andrew Potts).
27. “What corporate counsel need to know about engaging forensic engineers” (2012) 5(19) *International In-house Counsel Journal* 1 (Joint author with Dr Andrew Potts).

28. "Preparation of lay witness statements" (2012) 15(6) *Inhouse Counsel* 243.
29. "Construction Failures – Have We Learned the Lessons of History?" (2012) 143 *Australian Construction Law Newsletter* 40.
30. "Managing Design Risk" (2012) 142 *Australian Construction Law Newsletter* 6.
31. "A common law of construction contracts – or vive la difference?" *Commended entry in 2011 Brooking Prize competition run by Society of Construction Law Australia*; (2012) 6(3) *International Construction Law Review* 23.
32. "Australia's Consumer Protection Law – a Potent Weapon in Construction Law Disputes" (2011) 1 *Construction Law International* 72.
33. "Standard Form Contracting; the role for FIDIC Contracts Domestically and Internationally" (2011) 138 *Australian Construction Law Newsletter* (Joint author with Toby Shnookal).
34. "Statutory intervention into the common construction law of Australia – progress or regress?" (2011) 137 *Australian Construction Law Newsletter* 6; (2012) *Journal of the Canadian College of Construction Lawyers* 11 (Joint author with Matthew Bell).
35. "Australian legal guidelines for forensic engineering experts" (2010) 11(1) *Australian Journal of Structural Engineering* 11 (Joint author with PJ Murphy, L Duthie and B Bielert).
36. "Report on the DRBF 10th Annual International Conference Istanbul 14-16 May 2010 – Construction Disputes at the Crossroads" (2010) 7 *Buildlaw* 73.
37. "Dispute Boards and Construction Contracts" (2010) 132 *Australian Construction Law Newsletter* 19; (2010) 7 *Buildlaw* 37.
38. "Is Contractual Risk a Zero-sum Game in Construction Contracts (2010) 38 *BDPS News* 12; (2010) *Society of Construction Law Australia Conference*, Perth Australia.
39. "The internationalisation of contracting: Australian contractors in Asia and the role for FIDIC contracts domestically and in Asia" (2010) *Society of Construction Law Australia conference*, Perth (joint author with Toby Shnookal).
40. "The Engineer is Dead. Long Live the Engineer!" (2009) *Society of Construction Law Hong Kong*; (2010) 133 *Australian Construction Law Newsletter* 20.
41. "Adjudication and Dispute Boards - the next wave in ADR?" (2009) 35 *BDPS News* 4; (2009) 3 *Buildlaw* 16.
42. "Challenges to an adjudicator's decision with regard to timescales" (2009) April *Asian Dispute Review* 52; (2009) 2 *Buildlaw* 16; (2009) September *ADR Reporter* 12.
43. "Contractual lessons from construction failures: part two" (2009) 4(2) *Construction Law International* 19.
44. "Contractual lessons from construction failures: part one" (2008) 3(4) *Construction Law International* 15.
45. "The Avoidance of Disputes by Contractors in Design and Construct Contracts" (2008) 25(4) *International Construction Law Review* 27.
46. "Avoiding structural disputes" (Paper presented at the Australasian Structural Engineering Conference, Melbourne, 27 June 2008); (2008) V5 No 1 *Australian Journal of Civil Engineering* 25.
47. "Lessons from Failures – WestGate Bridge" (2008) 30 *BDPS News* 4; (2008) 120 *Australian Construction Law Newsletter* 28.
48. "Lessons from Failures – Quebec Bridge" (2008) 119 *Australian Construction Law Newsletter* 14.
49. "Managing time, cost and quality - a tale of two buildings" (2007) 28 *BDPS News* 10.
50. "State of Tasmania v Leighton Contractors Pty Ltd [No 3] [2004] TASSC 132" (2005) 102 *Australian Construction Law Newsletter* 36.
51. "Proportionate liability: uniform legislation in Australia?" (2005) 19 *BDPS News* 19.
52. "Recent Statutory Interventions in Freedom of Contract" (2005) Paper delivered at *Legalwise Seminar "Contract law: from agreement to dissolution"* Melbourne 15 February 2005.
53. "Reinsurance after HIH: Should more project managers consider it?" (2004) 24(3) *Australian Project Manager* 16 (joint author with Peter Megens).
54. "A Tale of Two Bridges: Issues Arising from Design and Construct Contracts" (2004) 17 *BDPS News* 28; (2004) 97 *Australian Construction Law Newsletter* 28.
55. "Recent statutory reforms to the principle of joint and several liability and effect on plaintiff's choice of defendant" (2003) 19 *Building and Construction Law* 345.
56. "Insured's access to insolvent insurer's reinsurance"(2003) 14 *Insurance Law Journal* 221.

57. "Professional Indemnity Insurance - Do third parties have an interest?"(2003) 14 *Insurance Law Journal* 77.
58. "Design and construct contracts and final design cost risk" (2003) 13 *BDPS News* 10; (2003) 91 *Australian Construction Law Newsletter* 5.
59. "Quantum Meruit Claims in Construction Law" (2002) 9 *BDPS News* 6.
60. "ABB Power Generation Ltd v Chapple [2001] WASCA 412" (2002) 8 *BDPS News* 19 (joint author Kathy Bagot).

Author/joint author of five papers on engineering projects and ten papers on engineering science.

### **Legal Presentations**

Presentation at conferences, workshops and training courses in Australia and internationally, including the following topics:

- Expert evidence
- Dispute Boards
- FIDIC Contracts
- EPC Contracts
- Dispute avoidance and resolution
- Alternative dispute resolution
- Contractual dispute resolution
- Dispute resolution alternatives for construction contracts
- Managing claims: strategies and solutions
- Avoiding structural disputes
- The Engineer
- Time, cost and quality challenges in construction contracts
- Contractual risks
- Project case studies
- Stop clock arbitration
- Design and construct contracts
- Engineering quality failures
- Australian Consumer Law
- Adjudication in Singapore
- Statutory intervention into freedom of contract.

### **Limitation of liability**

*Liability limited by a scheme approved under Professional Standards Legislation (Victoria).*