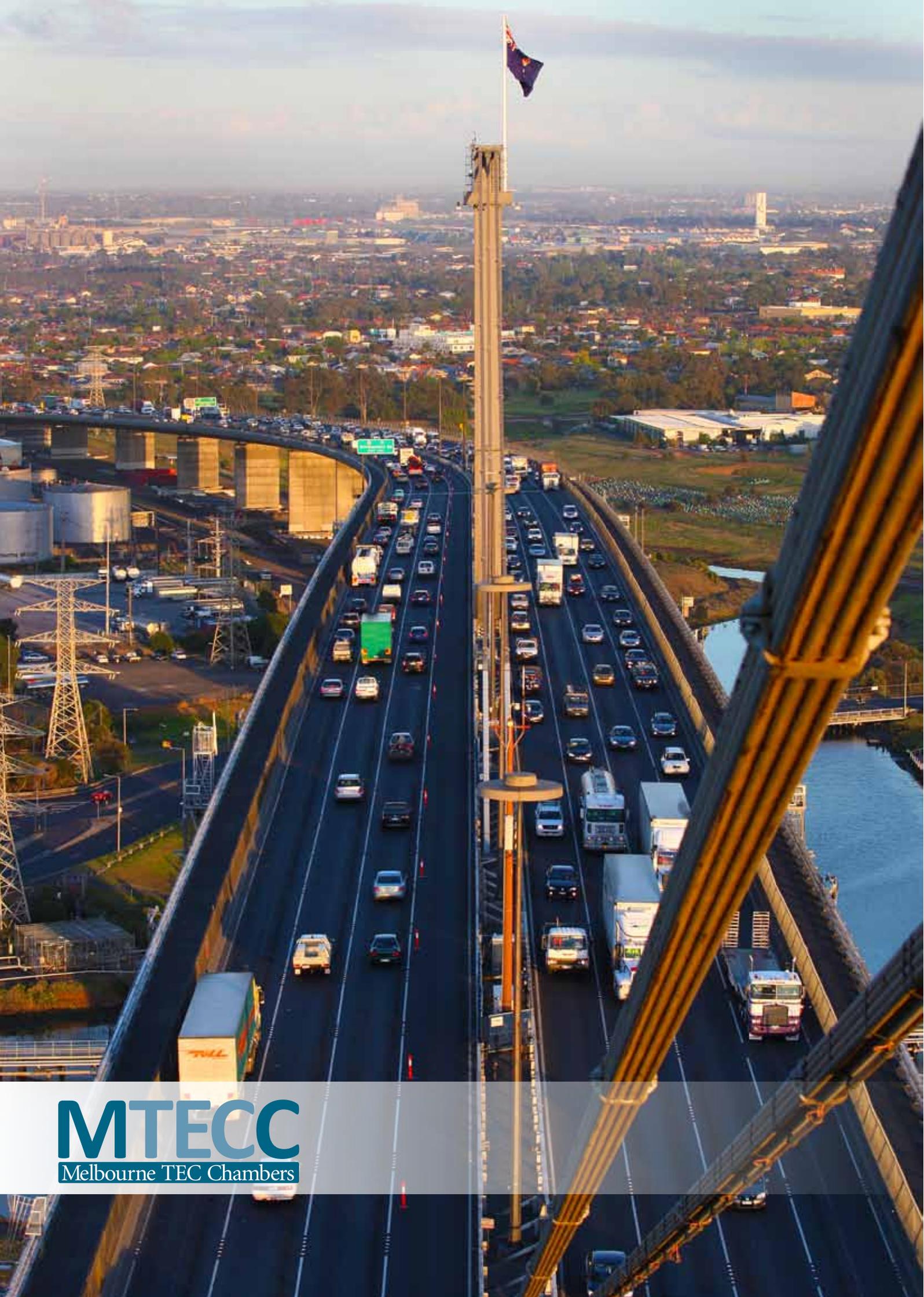




**MTECC**  
Melbourne TEC Chambers

*Technical Expertise in Dispute Resolution*



**MTECC**  
Melbourne TEC Chambers



## Melbourne TEC Chambers Inc

### *Technical Expertise in Dispute Resolution*

Melbourne TEC Chambers comprises the leading specialist counsel at the Victorian Bar who practise as barristers, arbitrators and alternative dispute resolution (ADR) practitioners in technology, engineering and construction (TEC) law. It has been established to assist solicitors and corporate counsel select and brief counsel and arbitrators for disputes associated with technology, engineering and construction projects.

The specialist barristers of Melbourne TEC Chambers have world class skills and extensive experience in litigation and arbitration as well as experience in the full range of alternative dispute resolution processes in TEC disputes. The international nature of both TEC disputes and the major clients in such disputes means that the skills and reputation of the highly specialized MTECC members put them at the forefront of TEC disputes around the world. Their experience and qualifications are as appropriate in Hong Kong, Singapore and Dubai as they are in Australia.

Australian lawyers have a reputation second to none, and the specialist counsel in MTECC are no exception. Melbourne has long been the home of arbitration in Australia and its specialist construction and arbitration courts have consistently led the world in the introduction of innovative techniques in managing TEC disputes, and quality ADR processes. The TEC disputes that have emerged from Australia's mining and infrastructure development are as large and as complex as any in the world.

The members of Melbourne TEC Chambers not only have expertise in technology, engineering and construction law the equal of any in the world, they also have a number of competitive advantages over counsel from other chambers:

- Australian barristers have a well deserved "hands-on" reputation for active involvement in the preparation of cases, including interviewing witnesses, briefing experts and a well informed and pragmatic approach to discovery;
- A number of MTECC barristers are also arbitrators with considerable experience in domestic and international arbitration, including UNCITRAL and ICC arbitrations;
- Many MTECC members have graduate and postgraduate qualifications in fields other than law, including engineering, IT, economics, commerce and arts;
- Typical "all in" daily rates for members of Melbourne TEC Chambers (including travel and accommodation) are competitive with barristers from other countries;
- Melbourne is almost in the same time zone as Singapore and Hong Kong and is well served by frequent overnight direct flights.

Australia is well known for its substantial mineral deposits, and oil and gas reserves. Its mines, offshore gas platforms and mineral processing facilities are operated by some of the largest resource companies in the world. As the mining boom has abated

and prices for raw materials are off from their high of 2011-2012, there are considerable time and cost pressures on construction projects in the resource sector. The last 20 years has also seen Australia enjoy significant development in public infrastructure. A corollary of all this is that technical and legally complex litigation and arbitration (including chess-clock arbitration) are common in Australia. MTECC members have skills and expertise in contracts for the design, construction and operation of resources projects that are of the highest quality.

Arbitration has long been the primary means of resolving major TEC disputes in Australia. The members of MTECC have wide experience as arbitrators and counsel in Australian and international arbitrations in disputes in engineering, oil, gas and minerals process facilities, infrastructure and large scale industrial projects. MTECC counsel have acted in all of the largest TEC arbitrations in Australia conducted on a chess- clock basis.

In addition to their expertise in arbitration, MTECC members have considerable experience and expertise in the various forms of ADR used in the resolution of TEC disputes. MTECC members act as third-party neutrals and counsel in mediations, expert determinations, adjudications and dispute boards and panels. Members have accreditation from various professional organisations as Arbitrators, Mediators, Advanced Mediators, Adjudicators and Dispute Board members. This wide



background in ADR, as well as in traditional arbitration and litigation, gives MTECC members a unique perspective in advising on strategies for the most appropriate method of dispute resolution relevant to a particular dispute, and the most effective way of implementing it.

MTECC and its members are committed to contributing to the profession both in Australia and internationally. MTECC has been a sponsor at Australian and international conferences on TEC law. Its members travel widely, and are active in presenting seminars, training and conference papers and publishing papers in learned journals. Copies of the numerous recent papers published and presented by MTECC members are available on the website [mtecc.com.au](http://mtecc.com.au).

Melbourne TEC Chambers has taken its name from the Technology, Engineering and Construction (TEC) list in the Supreme Court of Victoria. In "launching" MTECC in 2009, the Judge in Charge of the TEC list, Justice Peter Vickery, said of MTECC: "What does stand out from the brochure is the extraordinary innovation and energy reflected in these Chambers. Indeed, they are not chambers at all in the traditional sense. These are in every sense 'virtual chambers'. That does not mean, however, that its members are mere holograms or

figments of a fertile imagination. The services offered by MTECC are very firmly grounded in reality.

In this regard I note particularly:

- the facility to offer the full range of alternative dispute resolution processes in TEC disputes;
- the courageous international focus of the Chambers which seeks to project itself onto the world stage and be competitive at that level; and
- perhaps above all, the skill and depth of experience offered in this specialised area of legal practice to be provided by members of the Chambers. MTECC very clearly embraces the technical age which is now upon us and will be ever more so into the future."

This brochure contains a "skills matrix" which lists contact details for each member. Members welcome direct enquiries about their skills, experience and availability. If you cannot contact a known barrister directly, the skills matrix contains the contact telephone number for the barrister's Clerk.

If you need assistance in identifying a suitable barrister in Melbourne TEC Chambers, you may enquire by email to [info@mtecc.com.au](mailto:info@mtecc.com.au) to put you in touch with a barrister member of MTECC's

Executive Committee. That barrister will be in a position to discuss a potential brief in response to any query, and make recommendations for three suitable barristers from MTECC. Thus, an inquirer contacting MTECC by email will be put directly in touch with a barrister who is knowledgeable in technology, engineering and construction law, and who knows the capability of all the other members of MTECC. The knowledge of other MTECC members' capabilities results from appearing with, against or in front of fellow members as counsel, Arbitrators, Mediators or Adjudicators. Solicitors and corporate counsel will find this knowledge in the process of selection of counsel invaluable.

MTECC's professionally designed website contains further details on Melbourne TEC Chambers and further details of its members, including a search facility to identify particular expertise. It contains an extensive list of papers published by MTECC members since 2007. This is regularly added to, and can be searched to find specific resources. In addition, MTECC publishes an occasional email newsletter to keep its contacts up to date with TEC matters.



## Francis Tiernan QC

BJuris; LLB

Francis Tiernan practises predominantly in large scale arbitration, litigation and security of payment cases arising in relation to construction and engineering projects. He also works in the areas of product liability, professional negligence, trade practices, environmental law and energy and resources.

Example cases in which he has been briefed include:-

- major road and bridge construction projects for VicRoads;
- arbitration concerning the Victorian Public Hospitals Co-generation Project involving the alleged failure of the Rolls Royce gas fired turbines;
- the dispute between the major electrical subcontractor and the main contractor for the Southern Suburban Railway Project in Perth;
- arbitration concerning the rolling out of the natural gas pipe network in Tasmania;
- litigation and arbitration concerning the Melbourne City Link project;
- litigation arising in relation to a product liability claim concerning the HDPE tank lining material at BHP's Olympic Dam Mine;
- arbitration between the architects and the owner concerning the Herald & Weekly Times building;
- litigation concerning the failure of the concrete pavement at the TNT Laverton Airport;

- a dispute over the design and construction of an autoclave and associated vessels at a copper mine in Laos;
- litigation concerning the alleged pollution of the former Richmond City Council site;
- litigation and arbitrations relating to numerous projects in the Melbourne CBD including Nauru House, 101 Collins Street, 120 Collins Street, 450 Little Bourke Street, 620 Collins Street, 46 Flinders Street and 19 A'Beckett Street;

Francis is a member of the Society of Construction Law (UK), the Society of Construction Law (Australia) and the Building Disputes Practitioners Society (Victoria).

He has published articles in both the Australian Construction Law Newsletter and in the Building Disputes Practitioners Society Newsletter.

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## Toby Shnookal QC

BE (Civil); LLB (Hons) MIAMA

Toby Shnookal qualified and practiced as an engineer, first working in the oil industry and then in civil construction, before turning to the law 25 years ago. His practice is increasingly as arbitrator (international or domestic), expert or adjudicator. He maintains an extensive practice as counsel and as mediator. He is recognised as a senior Mediator by the Victorian Bar.

He is commonly engaged in disputes that involve complex engineering issues, software disputes, disputes that involve building or engineering technology, and cases that involve complex construction programming and sequencing.

Some of the multi million dollar disputes Mr Shnookal has appeared or been arbitrator in:

- Cost growth of a design and construct Woodside FPSO (WA)
- Delays, defects and cost growth Bass Strait (Origin) oil platform and on shore gas processing plant (VIC)
- Catastrophic collapse Cement Silo (TAS)
- Design failure Adelaide Oval retractable light towers (SA)
- Design failure of Anaconda Nickel Laterite processing plant, a \$1b dispute encompassing many areas of the plant (WA)
- Rubber lining failures Uranium processing plant, Olympic Dam (SA)
- Functional growth of major software design, Melbourne's public transport ticketing system (VIC)

- Earth dam wall failure (VIC)
- Design failure of 5 large gas turbine based cogeneration plants installed as a package in Melbourne's largest hospitals (VIC)
- Design failure and construction delays of windfarms (SA and TAS)
- Design failure of Melbourne City Link tunnel (VIC)
- International diary trade agreement dispute (NZ)
- Construction dispute regarding Australia wide satellite television service
- Design based cost overruns, Lucas Heights Nuclear Facility (NSW)
- Ship loader design based cost increases

Mr Shnookal was a part time member of the Victorian Civil and Administrative Tribunal (VCAT) for 10 years. As arbitrator, expert, VCAT member and adjudicator he has published over 65 determinations.

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### Martin Scott QC

BA; LLB; LLM

Martin Scott principally appears in superior courts of record and large commercial arbitrations (including expedited arbitrations) in general commercial, engineering and construction matters. A significant part of his practice involves related legal advice, both tactical and strategic.

He has practised as an advocate for 17 years, and has been briefed as both as lead and second counsel.

Recent engagements include:

- advising and for state interests in an expedited arbitration concerning one of the largest public/private partnership toll-roads in Australia. Technical issues included road and traffic engineering, strategic traffic modelling and microsimulation, financial modelling;
- advising and appearing for an international pipeline contractor in claims against its principal and in response to claims by a subcontractor. Technical issues included the construction methodology of several hundred kilometres of gas pipeline carried out across simultaneous spreads;
- advising an international joint venture as principal in connection with an expedited arbitration arising from a wind-farm project. Technical issues included aspects of plant construction, control of electricity generation and its integration into the broader network, high voltage power transmission and

critical path analysis of the project's construction;

- advising and appearing for maritime interests in connection with an incident involving a submarine gas pipeline. Technical issues included seamanship, metallurgical analysis, impact analysis (including finite element analysis), and pipeline damage diagnosis and repair;
- advising and appearing for water and sewerage infrastructure owners in cases involving main and sewer failures;
- advising directors and senior executives of stock exchange listed public companies in connection with directors' duties;
- advising and appearing for the Australian Securities and Investments Commission in a series of cases concerning investment schemes.

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### Nicholas Pane QC

LLB; LLM; BSc; DipEd

Nick Pane has been practicing as a barrister for in excess of 15 years specialising in engineering and construction disputes. He has been retained in many complex arbitrations which have been conducted on a stop clock basis. Bringing a practical approach to dispute resolution, Nick relates to and works effectively with clients, experts and witnesses alike and is willing to descend into the detail when required.

Nick graduated from Monash University in 1987 with a B. Sc and a LLB, he completed an LLM in 1997. The skills Nick acquired when completing his science degree have proved useful when dealing with TEC disputes.

Nick has been involved in the following major engineering and construction disputes:

- an arbitration dealing with onshore and offshore defects at a gas processing plant and a platform in Bass Strait. In addition to the technical issues Nick was responsible for industrial relations issues and the quantification and proof of rectification costs;
- an international arbitration dealing with design failures at a nickel laterite processing plant. Nick dealt primarily with process issues and corrosion issues;
- an international arbitration involving a hydro electric plant in the Philippines. Nick was responsible for construction programming issues, lined and unlined tunnel design failures, alternator design failure, flood level mapping and construction issues;

- an arbitration involving the failure of 5 cogeneration plants. Nick dealt primarily with issues relating to the overstressing of turbine blades and the failure of gear boxes;
- Supreme Court litigation involving the contamination of a site and groundwater with perchlorethylene and its subsequent remediation;
- Supreme Court litigation involving the construction of a 440 kilometer pipeline. The dispute involved consideration of alternative construction methods adopted following extensive flooding and consideration of extension of time and force majeure issues;
- Supreme Court litigation involving horizontal directional drilling beneath a 500 meter wide riverbed.

Nick has acted for, amongst others, Abigroup, Anaconda Operations, Axa Australia, Brookfield Multiplex, Building Practitioners Board, Data Connection, McConnell Dowell, Meinhardt Infrastructure, Pacific Hydro Ltd, the State of Victoria, Transurban Citylink, VLine and Vicroads.

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### **Albert Monichino QC**

*BEC; LLB (Hons); LLM(Cambridge); Grad Dip Intell Prop Law; FCI Arb; FACICA; FIAMA*

**A**lbert practises as a barrister, arbitrator and mediator. With over 20 years' experience, he is an IAMA Grade 1 Arbitrator and is accredited by the Victorian Bar as an advanced Mediator. He was appointed to Senior Counsel in 2010.

He has a general commercial litigation practice in the Supreme and Federal Courts in Australia, and also in commercial

arbitrations (domestic and international). He has substantial experience in construction, engineering and transport logistic disputes, including acting as senior junior counsel for Fluor in the Fluor v Anaconda arbitration, 2001 - 2003, involving claims exceeding \$A1 billion.

He holds the degrees of BEc, LLB (Hons) from Monash University, an LLM from the University of Cambridge and a Grad Dip Intell Prop Law from the University of Melbourne. He is a Fellow of the Australian Centre for International Commercial Arbitration (ACICA), the Chartered Institute of Arbitrators (CI Arb), and the Institute of Arbitrators and Mediators Australia (IAMA).

He is an Executive Committee Member (and former Vice President (Convenor)) of the Commercial Bar Association of the Victorian Bar (COMMBAR) and Co-Chair of its Arbitration and ADR Section. He is also a member of the ACICA, Building Disputes Tribunal (New Zealand), IAMA, Kuala Lumpur Regional Centre for Arbitration (KLRCA) and the Korean Commercial Arbitration Board (KCAB) Arbitration Panels.

### **Academic/Publications**

Albert has lectured/tutored in the CI Arb Diploma Course in International Commercial Arbitration since 2007. He is a Visiting Lecturer at the University of New South Wales, and has published and presented widely in the areas of commercial law, construction law, arbitration and ADR, including:

"Termination for convenience and removal from scope of works – absolute right or not", paper presented to SoCLA Conference, Sydney, 3 August 2013.

"International Arbitration in Australia: The need to centralise judicial power" (2012) 86 Australian Law Journal pp 118 - 133.

"Australia: Apex court speaks out on adequacy of arbitral reasons", Global Arbitration Review Journal (online, 12 January 2012).



## Tim Margetts QC

LLB; LLM; BEc

Tim Margetts practices in construction/engineering disputes, many of which have been conducted in the domestic and international arbitration process. He has extensive trial experience in highly technical construction/engineering disputes which has included the examination and cross examination of numerous expert witnesses, including time programming

experts typically used in delay claims.

Some of the larger engineering related claims Tim has acted in have involved the following types of issues.

The use of steel and over-engineering in the design and construction of steel structures such as an aircraft hanger and material storage facilities. Disputes that have focused on the building of power generation plants, including hydro power. These cases have involved issues of tunnel design and construction, including rock engineering, hydraulics and hydrology. The design and construction of co-generation power plants focusing on the workings and failures of gas turbines, alternators and power generators. Large civil works claims for road works and bridge building.

Tim has acted on behalf of many leading international consulting engineering firms and contractors involved in the mining industry. These disputes have concerned issues such as the construction and design of a copper/uranium smelter and refinery, including the treatment of smelter off-gases, corrosion and metal failure in major mechanical equipment. He has also acted in other mining disputes concerning the iron ore industry, and claims relating

to the gas and oil industry including the engineering, procurement and construction of gas plants and off shore platforms, pipelines and wells.

Tim has experience in litigation involving complex issues of material failure, geotechnical engineering and environmental design and rehabilitation.

Tim has appeared in complex and lengthy ICC Arbitrations. These disputes involved extensive hearings and travel throughout the Asian regions.





### Richard Manly QC

BA; LLB; LLM (Melb)

Mr Manly holds the degrees of Bachelor of Arts, Bachelor of Laws and Master of Laws from the University of Melbourne, Australia.

Mr Manly has practiced at the Victorian Bar since November 1983 predominantly in the fields of building, construction and engineering litigation in the superior courts and before arbitrators.

Mr Manly is registered as a Grade 1 Arbitrator with the Institute of Arbitrators and Mediators Australia and is the holder of The Practitioners Certificate in Mediation issued by that Institute.

Mr Manly has acted as an Arbitrator and Mediator in a wide range of building, construction and engineering cases.

In recent years Mr Manly has acted as Arbitrator in disputes regarding:

- The operation of a gold mining project,
- The construction and development of a supermarket project, and
- A contract for the construction of locomotives.

Mr Manly has appeared in complex building, construction and engineering cases involving:

- The development of land severely contaminated with chemical byproducts of a long running dry cleaning business,
- The failure of sewerage lagoons at coastal towns in Victoria, Australia,
- The design and construction of a road and tunnel system in the City of Melbourne, Australia,

- The failure of an aircraft hangar at Nandi, Fiji,
- Advising on contractual issues relating to a tunneling project in Singapore,
- The breach of a charter party for a vessel to be utilized to lay pipes in Bass Strait, Australia,
- The breach of a contract to construct a section of highway in Tasmania, Australia, and
- The breach of a contract to design and construct a cobalt processing plant in Queensland, Australia.

Mr Manly is a member of:

- The Supreme and County Courts Building Cases List Users Committees,
- The Building Dispute Practitioners Society,
- The Society of Construction Law (Australia),
- The Institute of Arbitrators and Mediators Australia, and
- The Chartered Institute of Arbitrators.

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### David Levin QC

MA(Cantab); MCI Arb; MLCIA

David Levin is a member of the Victorian Bar, having obtained his university degree at Cambridge and practised as a barrister there until 1977. He has been a barrister for more than 40 years and a QC for about 16 years.

He practices generally in the construction area and has been involved in many infrastructure disputes in Victoria and elsewhere in Australia involving roads

(including disputes over the \$2bn Melbourne Eastlink freeway development), tunnels (\$2bn Melbourne Citylink Burnley tunnel litigation), power stations (Loy Yang B and Hazelwood), road and rail bridges, railways (including the Victorian Fast Train project and the West Australian Mandurah Railway project), windfarms, offshore and onshore gas and oil wells and pipelines (including a \$2bn dispute relating to the incidence of Resource Rent Tax on the purchaser of gas from the Bass Strait offshore fields), major retail developments (including major developments in Melbourne and Geelong city centres) and many multi-storey office buildings.

He has acted for many of the major construction, engineering design and development companies in Australia including Grocon, McConnell Dowell, Multiplex, John Holland, GLNG, and Leighton.

For many years he was a director of Barristers Chambers Ltd and he also held positions on the committee of the Victorian Society of Computers and the Law and as chair. For two years he was chair of the Victorian Bar Dispute Resolution Committee.

He is currently:

- a Victorian Bar representative on both the Supreme Court TEC List Users Group and the Arbitration List User Group.
- a member of the LCIA and the Chartered Institute of Arbitrators,
- a member of the WIPO Domain Name Disputes Panel and a WIPO Neutral;
- a Grade 1 Arbitrator accredited by the Institute of Arbitrators and Mediators Australia.
- a member of the Victorian Bar Commercial Bar Association.

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### **Caroline Kirton QC**

BA (Hons); LLB; LLM

Caroline Kirton graduated from Melbourne University in 1986 with a LLB and a BA with Honours in Mandarin. She graduated from Monash University in 1994 with an LLM.

Caroline Kirton is the Convenor of the Commercial Bar Association and also Chair of the Construction Law Section of the Commercial Bar Association. She is a representative of the Victorian Bar on the

Victorian Supreme Court's Technology Engineering and Construction List Users Group.

Caroline Kirton has experience in a wide range of complex commercial, construction and engineering disputes in State Supreme Courts, the Federal Court, the High Court and in commercial arbitrations. Substantial matters in which Caroline Kirton has been involved with have included:-

- Supreme Court litigation involving the construction and maintenance of offshore production platforms in Bass Strait.
- Litigation involving roof replacement works to the Sydney Myer Music Bowl in the Botanical Gardens, Melbourne.
- An arbitration dealing with the failure of a sewerage treatment facility servicing a Victorian western coastal region.
- Supreme Court Litigation involving a dispute over the installation of V6 engine manufacturing lines for a major international motor vehicle manufacturer at its Melbourne assembly plant.

- Advice for the Victorian State Government concerning issues arising from the construction of the Southern Cross Railway Station in Melbourne.

Caroline Kirton became a nationally accredited mediator in 2008 and has acted as the mediator in numerous large and complex mediations concerning construction, engineering and commercial disputes. Caroline also regularly appears as counsel in mediations and is experienced in assisting clients with other forms of appropriate dispute resolution procedures, including expert determination and early neutral evaluation.

Caroline is a past President of Australian Women Lawyers and a past Convenor of the Women Barristers Association. Caroline was a member of the Victorian Bar's Ethics Committee for four years. She is presently the Chair of the Victorian Bar's Equality and Diversity Committee and a member of the Bar Readers Course Committee and the South Pacific Education Committee. Caroline is an experienced advocacy teacher and has taught advocacy nationally and internationally with the Australian Bar Association and the Australian Advocacy Institute.



### Nick Hopkins QC

LLB (Hons); BEc (Hons in Accounting and Finance)

Nick Hopkins practices extensively in the TEC area and has been retained in many large and complex arbitrations and court proceedings.

Nick graduated in 1988 from Monash University with a BEc (Honours in Accounting and Finance) and a LLB (Honours). He completed articles with Mallesons Stephen Jaques and worked at

that firm and Baker & McKenzie (London and Melbourne offices) until coming to the Bar in 1995.

Nick has appeared in numerous superior court trials and arbitrations. Some substantial matters include:

- acting for Toyo Engineering Corp in the 'chess clock' arbitration against John Holland Pty Ltd - an ICC arbitration conducted in Vancouver and Singapore in 1998 and 1999 regarding the Mobil Altona Refinery upgrade;
- acting for Fletcher Construction in the Supreme Court proceeding against LMM in 2000 regarding the design of the Laverton Maximum Security Prison;
- acting for Anaconda Operations Pty Ltd in the dispute with Fluor Australia Pty Ltd concerning the Murrin Murrin nickel project;
- this was a long running 'chess-clock' arbitration conducted in two phases from 2001 to 2004 with hearings in Melbourne and London;
- acting for Origin Energy in the 'BassGas' arbitration with Clough Engineering regarding the off and on shore development to exploit the gas

reserves in the Yolla field in Bass Strait, which was conducted from 2005 to 2007 in Melbourne.

Nick has also acted for, amongst others, Abigroup, Adelaide Brighton, Boulderstone Hornibrook, Brady Constructions, Brookfield Multiplex, Delco Australia, Kvaerner, Krupp, La Trobe University, Leightons, Mayne Nickless, McConnell Dowell, Melbourne Cement Facilities, Shell, Transurban, the State of Victoria, Vicroads and various local councils and shopping centres.

Nick is co-lecturer of the Melbourne Law Masters subject 'Construction Dispute Resolution' and also lectures to the Victorian Bar Readers Course about Commercial Arbitrations.

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### Michael Heaton QC

LLB; LLM; BJuris; FCI Arb (UK); MIAMA

Michael Heaton Q.C. holds a Masters degree in Law from the University of Melbourne as well as a Bachelor of Laws and a Bachelor of Jurisprudence from Monash University in Victoria Australia.

Mr Heaton was appointed Queens Counsel in 1999. He is a Fellow of the Chartered Institute of Arbitrators (UK), and a Fellow of ACICA. He is also a Member of the

Institute of Arbitrators and Mediators Australia, and an IAMA registered Grade 1 arbitrator.

Mr Heaton is an Adjudicator under the Building and Construction Industry Security of Payment Act in Victoria Australia.

He is an accredited Mediator under the National Mediation Accreditation System in Australia, is on the ACICA Mediation Panel and is a Victorian Bar accredited Advanced Mediator. He is on the panel of franchise mediators under the Franchise Code in Australia.

In recent years Mr Heaton has practised in a broad range of areas including building and construction, commercial, corporations, trade practices, sale of land, mortgages, landlord and tenant, professional negligence, equity, constructive trusts, testators family maintenance, administrative law and town planning. He acts as an Adjudicator. He also acts as a Mediator.

Cases in which Mr Heaton has been involved include a dispute between two publicly listed companies relating to the Eastlink toll way project in Victoria (Adjudication), substantial claims in an

arbitration over construction of a nursing home, leave to appeal and appeals under the Commercial Arbitrations Act, indefeasibility of title under the Transfer of Land Act, landlord and tenant and repudiation, disputes between mortgages and mortgagors including fraudulent registration of mortgages, corporations including validity of dispositions, directors liabilities and ASIC examinations, equity including fiduciary obligations, constructive trusts, proprietary estoppel and equitable compensation, professional negligence including stockbrokers and solicitors and vendor and purchaser disputes.

Mr Heaton chairs the Dispute Resolution Committee of the Victorian Bar.

He is author of the Guarantee and Indemnity Section of the Lexis Nexis Court Forms and Precedents Victoria.

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**Dr Robert Harper SC**

BA, LLB, PhD (Syd)

Robert Harper was admitted to the Role of Barristers on 20 December 1985 and commenced practice in February 1986. He was appointed Senior Counsel for the State of New South Wales on 29 September 2004. He is an Accredited Mediator (NMAS) and has nearly 20 years experience in alternative dispute resolution, including arbitration.

He appears mainly in the Supreme Court of NSW, the Federal Court of Australia, and on occasion the High Court of Australia. He conducts a broad practice but has focussed on Building and Construction litigation, including arbitration and mediation, design and construction contracts, negligence of builders and construction professionals, and liability of developers, Property Law disputes, including commercial property rights and leases. He is a member of the Society of Construction Law Australia.

He also has extensive experience in Family Law, Banking, Trade Practices and Competition Law, Restraints of Trade, International Transport, Insurance, including Marine Insurance, individual and corporate Insolvency, Equity, Administrative Law, Probate.

He has appeared as an expert witness on NSW law in the Supreme Court of Singapore, and serves on the Equity Division Liaison Committee of the Supreme Court of NSW.

From 1986 to 1993 he was reporter for the New South Wales Law Reports. In 2000 he was appointed Adjunct-Lecturer in UniNSW Law School, teaching "Trial

Process". He has lectured for NSW Bar Readers Course and contributed to various publications on easements, and procedural topics for litigation, as well as numerous seminar and conference papers on diverse subjects such as evidence, leases, practice and procedure, evidence, trading cartels, and trade practices for practitioners.



**Dr Gavan Griffith QC**

LLM; DPhil (Oxon)

Dr Gavan Griffith has practiced as an international commercial and investments disputes arbitrator since leaving office as Solicitor-General of Australia in 1997. Prior to his appointment in that office he practiced as counsel in Australia and London and elsewhere. He has chaired many Tribunals administered by institutional Rules, including by the ICC, LCIA, KLRCA, HKIAC, the Permanent Court

of Arbitration and also ad hoc commercial arbitrations with seats in Singapore, Hong Kong, India, PNG and Malaysia and the Pacific region as well as in England and Europe. He also has sat frequently as a sole arbitrator. He also holds many appointments as Chairman of Tribunals and Annulment Committees administered by ICSID at the World Bank.

The subject matter of disputes has included infrastructure and energy, including water, electricity, oil and gas, coal, roadways, power stations and commercial buildings (on and offshore), intellectual property, acquisitions, mining, licencing, domain names, pollution, acquisitions, guarantees and indemnities, marine and insurance, shipping and cargo claims, and other contractual claims.

Dr Griffith has experience as counsel in regional issues and has given expert evidence on the subject to the ASEAN treaty, and also has appeared as counsel in the Court of Appeal and the High Court of Malaysia and other regional and Pacific Appeal Courts.

He was admitted to Lincoln's Inn by Lord Denning and after completing his D.Phil at Magdalen College Oxford, has kept chambers in Melbourne and at Essex Court

Chambers, London. He has led many international delegations, including to the United Nation 6th Committee and to UNCITRAL upon the adoption of the Model Law. He led Australia's delegation to the Hague Conference, and he was Chairman of the Intelsat Panel of Legal Experts. He was a Member of the Permanent Court of Arbitration for 14 years and been agent and counsel at the International Court of Justice and also frequently a member of treaty based Tribunals. He has been a Member of the ICSID Panel of Arbitrators for 20 years.

He is a Chartered Arbitrator.



### **Hugh Foxcroft QC**

BA (Hons); LLB

Since the early 1980's Hugh Foxcroft has developed a civil practice involving appearances and paperwork relating to construction and commercial matters predominantly before arbitrators, special referees and in the Supreme Court of Victoria. During the last twenty years his practice has been principally concerned with major commercial construction and civil

engineering project litigation, appearing mainly in arbitrations and special references.

Hugh Foxcroft regularly appears as an advocate and acts as an arbitrator. He has provided advice in proceedings related to major projects in Victoria, interstate and overseas (including the Philippines, Malaysia and Brunei). Representative projects include building construction projects (Crown Casino, Victorian Hospitals Cogeneration Project), road construction projects (such as Melbourne City Link, Geelong Road, and Eastlink), railway construction projects (such as Victoria Regional Fast Rail Project, Spencer Street Station Redevelopment, and South Improvement Alliance), hydro-electric projects (the Bakun Hydro-power Project, Philippines), construction of port and naval facilities (South Wharf redevelopment, the Muara Naval Base, Brunei) and various types of chemical engineering plant (including phosphate, mineral sands processing and nickel recovery plants).

Hugh Foxcroft was appointed Senior Counsel in 2000. He is admitted to practice in all Australian jurisdictions. As a Grade 1 arbitrator, Fellow and former National

Councillor of the Institute of Arbitrators & Mediators Australia he has extensive experience in the conduct of arbitrations, including international arbitrations. He is a Fellow of the Australian Centre for International Commercial Arbitration (ACICA), and a member of the International Chamber of Commerce Australia (ICC).

Accredited by the Institute of Arbitrators & Mediators Australia as an adjudicator under the Building and Construction Industry Security of Payment Act 2002 (Vic) Hugh Foxcroft has published adjudication determinations with reasons. He is an honorary life member of the Building Dispute Practitioners' Society (Victoria), and is a member of the Supreme Court of Victoria TEC List advisory committee, the Construction and Infrastructure Law Committee of the Law Council of Australia, Business Law Section, the Society of Construction Law and the International Bar Association.

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## Michael Whitten

BCom; LLB

Michael Whitten has practiced in the law for over 20 years. He has gained broad experience in various aspects of the profession. He practises in commercial litigation, and specialises in building and construction disputes. He appears in all jurisdictions and forums across Australia.

Michael also appears in commercial arbitrations, both domestic and

international, and expert determinations. In 2004, he appeared in the case of *Rofin v Permasteelisa*, an arbitration in Hong Kong concerning a 130,000-metre, 12,000-points of light, feature lighting system installed in the Cheung Kong Centre.

Other notable and recent technology and construction cases in which Michael has appeared include:

- Godfrey Spowers (Victoria) Pty Ltd v Lincolne Scott Australia Pty Ltd & Ors [2008] VSCA 208 involving cutting edge commercial building 'green' technology.
- AJ Lucas Drilling Pty Ltd v McConnell Dowell Constructors (Aust) Pty Ltd (No 3) [2008] VSC 315 involving the undersea Minerva gas pipeline project off Port Campbell in Victoria and innovative horizontal directional drilling engineering issues.
- Premier Building & Consulting Pty Ltd v Spotless Group Limited & Ors (No 14) [2008] VSC 126, a contamination case.

Alternate dispute resolution is an important part of Michael's practice. He is an accredited mediator and has served on the Victorian Bar's ADR Committee.

Michael is a co-author of the 4th edition of "Brooking on Building Contracts" published by Lexis Nexis Butterworths. He has presented a number of papers and seminars for the Victorian Bar, the Law Institute of Victoria and private legal education organisations such as Legalwise. Recent presentations include:

- "The application of the 'Cardinal Change' doctrine to claims for variations due to changes to scope of works".
- "Arbitration, Apportionment & Part IVAA of the Wrongs Act 1958 (Vic)".
- "Ensuring the validity of Penalty Clauses"

Professional associations of which Michael is a member include the Building Dispute Practitioners Society and the Australian Society of Construction Law.

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## Jeremy Twigg

LLB; BA (Melb); LLM (Monash)

Since 1992, Jeremy has developed a commercial law practice specialising in construction, engineering and property law appearing regularly in the Superior Courts. His appearances in major commercial litigation include disputes concerning:

- price determination of a long term energy supply contract;

- the engineering design and construction of a nickel processing facility, refinery and ancillary services, including an acid plant;
- design and construction of a gas platform and onshore processing facility, including contractual claims for delays;
- development and construction of a port facility in Asia, including contractual claims for delays;
- the design of a hydraulic cylinder for a canting keel on a racing yacht; and
- the dredging of a port and channel off the coast of Western Australia.

Jeremy has acted for developers, builders, subcontractors and engineers in disputes in court and arbitration concerning commercial, residential and industrial construction, earthworks and civil works, technical design and rail and road infrastructure.

He is familiar with the standard forms of contract used in Australian Engineering and Construction Works and has experience with the Building Act, Building and Construction Industry Security of Payment Act (Vic), (NSW) and

(Qld), Domestic Building Contracts Act and the Planning and Environment Act. As counsel, he has appeared in a number of cases commenced pursuant to the Security of Payment Act and has adjudicated a number of payment disputes.

Jeremy is accredited by the Institute of Arbitrators and Mediators Australia as a Grade 3 Arbitrator, and as an Adjudicator under the Building and Construction Industry Security of Payment Act.

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### Dr Anton Trichardt

BLur, LLB, MALS, MLM. PhD., PhD

Dr Anton Trichardt has more than 30 years' experience in all aspects of legal practice, having appeared in Higher Courts in Australia, South Africa and Namibia. Anton has more than 17 years' experience in Australian legal practice, of which more than 10 years are at the Victorian Bar. His commercial practice is varied. He specialises in a number of areas, in particular, building

and construction law, trade and maritime law, corporate law (including corporate insolvency), property law, and banking and finance law. Anton is a Fellow of the Chartered Institute of Arbitrators, a Fellow of the Australian Centre for Commercial Arbitration, a Fellow of the Institute for Arbitrators and Mediators Australia, and regularly appears in international arbitrations both in Australia and Singapore.

Dr Trichardt's practical legal experience is augmented by his academic prowess. He completed his BLur LLB at the University of Pretoria, South Africa. Anton also undertook a Master of American Legal Studies (MALS) on a Fulbright scholarship at Chicago-Kent College of Law, and a Master of Law and Management (MLM) at the University of New South Wales. He was awarded a PhD from the University of Western Australia for his thesis on maritime liens and conflict of laws. The Centre for Business Law at the University of the Free State, South Africa, published this thesis as part of its transactions series of books in 2012 (with a Foreword by Martin Davies, Admiralty Institute Professor of Maritime Law, Tulane University Law School). Anton was also awarded a PhD by UNSW

for his thesis, "Letters of comfort - a trans-systemic analysis of chameleonic instruments", published by Kluwer Law International in 2012.

Dr Trichardt previously practiced at Mallesons Stephen Jacques (Perth) (now King + Wood Mallesons) and Freehills (Sydney), before being called to the Victorian Bar in 2002. In addition to Mallesons Stephen Jacques and Freehills, Anton's legal career has seen him work for a number of leading firms, including Baker and McKenzie, Chicago, USA; and Edward Nathan and Friedland Inc, Johannesburg, South Africa. He practiced at the Johannesburg Bar from 1989 - 1996, before emigrating to Australia.

Dr Trichardt is professionally fluent in English and Afrikaans.

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### Jim Stavris

LLB (Monash); GDLP (ANU)

Jim Stavris accepts briefs in all matters involving technical, engineering and construction disputes. Jim qualified as an A Grade electrician in 1987 and subsequently gained qualifications in refrigeration and air conditioning. His work experience in the Building and Construction industry coupled with an extensive legal practice provides for sound advice and representation for most TEC disputes.

Jim is a Nationally Accredited mediator conducting and appearing in mediations.

Some examples of projects undertaken in the Building and Construction Industry include:

- Manufacture and installation of type tested electrical switchboards to Australian Standards including Form 3 Appendix E unlimited arc fault containment.
- Manufacture and installation of blast freezing tunnels, chambers and cold rooms to minus 45 degrees Celsius.
- Manufacture of HACCAP certified food-processing facilities, temperature controlled storage facilities, transport terminals and produce markets.
- Automation of factory processes and manufacturing.
- General Electrical and Refrigeration contracting.

Some examples of legal matters Jim has been briefed in include:

- Supreme Court of Victoria - Construction dispute involving Security of Payments and expert adjudication.

- County Court of Victoria - Construction dispute involving a pipeline construction for BHP in Port Headland, Western Australia.
- County Court of Victoria - Construction dispute involving a failed roadway and paving in a shopping mall.
- Supreme Court of Queensland at Brisbane - Engineering dispute regarding misrepresentation in the sale of a Refrigeration contracting business.
- Queensland Civil and Administrative Tribunal - Engineering dispute involving leaking high-pressure hoses used in the refrigeration industry.
- Local Court of New South Wales at Sydney - Construction dispute regarding air conditioning unit manufacture and supply alleged defects.
- VCAT - Construction dispute involving the construction of a 100 sq. home. Counterclaim and defects alleged. Two experts.

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### James Shaw

BE (Hons); JD; MIStructE

James Shaw's practice as a barrister is predominantly in disputes with a significant technical or engineering focus. With a background as a practising structural engineer for over 10 years prior to turning to the law, Mr Shaw has a thorough understanding of the technical issues associated with TEC disputes, as well as having a practical knowledge of procurement and contractual issues associated with TEC industries.

Mr Shaw has a great interest in understanding the technical issues in a dispute, and how such issues relate to the legal and strategic aspects of the case.

Examples of cases Mr Shaw has been involved in include:

- design failure of acid leach autoclaves and a desalination plant as part of a wider dispute involving a nickel processing plant;
- defects in large plastic injection moulding equipment;
- defect and delay claims arising out of the construction of major railway infrastructure works;
- claims associated with the design and modification of automobiles;
- numerous defect and delay claims arising out of building and infrastructure works, including disputes about foundations and overall structural adequacy of buildings.

Mr Shaw's practice as an engineer saw him in lead roles on large and complex building projects in Australia, the United Kingdom and Germany. In this capacity he was lead structural engineer responsible for the design of the Tate Modern art

gallery in London and the Australian Embassy in Berlin, as well as senior engineer responsible for a 5,800 seat Olympic capacity underground velodrome and multi-purpose venue in Berlin. Mr Shaw is a chartered member of the Institution of Structural Engineers, London.

Prior to coming to the Bar, Mr Shaw worked as a solicitor with Allens Arthur Robinson in Melbourne, principally involved in TEC and insurance disputes. Mr Shaw's legal qualification is the Juris Doctor from the University of Melbourne, where he obtained prizes for the student placed first in Constitutional Law, Administrative Law, Corporations Law and Intellectual Property.

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### David Sanders

B.Sc. (Computer Science), LL.B. (Hons)

David has an extensive technology and business background and holds degrees in both Computer Science and Law (with honours) from Monash University. Prior to entering the legal profession, David was the Managing Director of a respected strategic and Information Technology consulting business utilising a diverse range of technologies and working with clients of all sizes across a wide range of industry

and community sectors, including finance, cash logistics, public transport, emergency services, health, research & development, mergers & acquisitions, and telecommunications.

Drawing on his "hands-on" experience, David has an ability to efficiently understand the technical and practical circumstances of his clients. He can communicate effectively with engineers, scientists, IT and other specialists as well as corporate management and board level members. He brings all of his past experience as a respected Consultant to his legal practice. He has a general commercial practice, including information technology and intellectual property law.

David has provided prophylactic advice, merits assessments, opinions and/or advocacy in matters concerning:

- Technology and construction related intellectual property rights in: computer software; websites; services provided over the internet; design and other documents; architectural/building plans; architectural models; digital sound and video recordings, innovative transport and mining safety engineering.

- Technology infrastructure, including telecommunications services, virtual private networks, and cloud computing.
- Disputes between contractor/sub-contractors and client/vendor on construction and technology projects.
- Risk management in the development of bespoke computer software systems, provision of services over the internet, audio and multi-media engineering services.

He brings subject knowledge to mediations and arbitrations of disputes involving information technology, electrical and electronic engineering, telecommunications, and logistics.

David is a member of:

- The Victorian Bar's Alternative Dispute Resolution Committee;
- Chartered Institute of Arbitrators;
- the Barnet/JADE IT Expert Panel.

He is a past member of the Institute of Electrical and Electronics Engineers (IEEE) and certified practising member of the Australian Computer Society (ACS).

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### Ian Percy

Ian came to the Victorian Bar having been a commercial litigation solicitor for 15 years – part of that time at partner and consultant level. He now has over 35 years post admission experience.

At the Bar Ian practices in a wide range of commercial matters; frequently major building litigation involving complex construction, technical and legal issues.

Ian has been involved in cases concerning a national sporting stadium, a casino, a uranium and copper solvent extraction plant, a sewage treatment plant, a road tunnel, resort buildings and infrastructure, the tallest residential tower in Southern Hemisphere, various failed concrete structures and other major projects.

Costly and complex disputes need a team approach. The aim is to have everybody working cohesively with the principal objective firmly in focus. Ian has developed a reputation for team building and leadership. He has the experience and confidence to work alone as well as part of an efficient and effective team. Ian is experienced in long cases management and computer litigation support.

Ian has worked with a number of leading senior counsel in a range of large cases. One such case involved 8 parties and over 12 experts from two separate disciplines – Aquatec - Maxcon v Barwon Region Water Authority [2006] VSC 117; [201] VSCA 245 (which was subject to a special leave application to the High Court).

Currently, Ian is junior counsel in major long running litigation arising out failed HDPE linings in a solvent extraction plant - BHP Billiton v Steuler Industriewerke

[2009] VSC 322; [2011] VSC 659. This has involved dealing with technical evidence from various overseas and local experts primarily concerning the compatibility of HDPE with kerosene. Appeals are pending.

More recently, Ian has been involved in the complex Brookland Greens Estate landfill class action which is continuing.

Ian is the current Treasurer of MTECC and the Commercial Bar Association of Victoria. His CommBar profile can be found at <http://www.commbar.com.au/profile/35/128/ian-percy/>

Relevantly, Ian is a Nationally Accredited Mediator in Australia, Member Building Dispute Practitioners' Society and Member Society of Construction Law Australia.

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**David McAndrew**

LLB

David is a Senior Junior Counsel commonly engaged in a broad range of complex building and construction disputes in the Supreme Court of Victoria, and local and international arbitrations. He is frequently engaged to advise clients during projects in connection with emerging disputes and to assist in connection with alternative dispute resolution procedures including expert determinations, neutral evaluations,

mediation and Building & Construction Industry Security of Payment Act adjudications.

**Snapshot:**

- Vice Chairman of the Construction Law Section of the Victorian Commercial Bar.
- Guest Lecturer in International Arbitration Law at the University of Melbourne Faculty of Law (Masters of Law) 2008, 2010 and 2013.

**Examples of briefs:**

**International Chamber of Commerce Arbitrations**

- ICC Arbitration conducted in Melbourne Australia concerning contractual disputes that arose out of Telstra's 3G upgrade in Queensland and New South Wales. Quantum approx. \$30M.
- ICC Arbitration conducted in Vancouver Canada concerning contractual disputes that arose out of the Mobil Refinery Upgrade Project. Quantum approx. \$20M.

**Domestic Commercial Arbitration**

- State of Victoria v Seal Rocks Commercial disputes arising out of the development of the Seal Rocks Tourist Facility at Phillip Island, Victoria.

**Supreme Court**

- Victorian Desalination Plant Dispute (Thiess Degrement Joint Venture (Client) v AquaSure Pty Ltd). Quantum approx. \$1B.
- Adelaide Desalination Plant Dispute (Hatch / SMEC (Client) v McConnell Dowell and Abigroup Contractors). Quantum approx. \$20M.
- Douglas Victoria Mineral Sands Dispute (Downer EDI v Iluka Resources (Client)). Quantum approx. \$60M+
- BHPB off shore works in Port Campbell, Victoria (BHPB v Saipem (Client)). Quantum approx. \$70M+
- Murrin Murrin Nickel Project Western Australia (Fluor Daniel v ASC (Client) and Fluor Daniel v CBI (Client)).
- Spencer Street Station Dispute Melbourne, Australia (Leighton Contractors (Client) v PDA).

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### **William Lye**

MEI (SUT); LLB; BSc (Computer Sc); LLM (Monash); MAICD

**W**illiam Lye has a BSc in computer science, a Master of Laws in intellectual property and a Master of Entrepreneurship and Innovation.

He practises in commercial and corporate law, with emphasis in technology and internet related matters. Typically, William would be retained to act as Counsel,

Mediator, Negotiator or Facilitator. William is also an experienced board member of publicly listed and private companies involved in technology and manufacturing. He was one of the principal architects of the Commercial Bar Association's website at [www.commbar.com.au](http://www.commbar.com.au). He is also the Web Master of the MTECC web site and a "demand" member of the Australian Domain Name Administrator ([www.auda.org.au](http://www.auda.org.au)).

Examples of matters William has been involved in are:

- Top level domain name litigation involving INTERNIC and domain name dispute resolution
- Defects in software including warehouse management software system
- Determination of rights to technology and software including a global shipping liner software system, franchise systems and computer source codes
- Contractual issues arising from supply and installation of hi-tech products during the construction of buildings
- Infringement of intellectual property including software involving major

companies like Microsoft, Intel, Warner Brothers and other computer manufacturers

- Developing strategic alliances for the world's largest loyalty program on the internet

William has appeared in major and complex commercial litigation in the superior courts in Melbourne, Sydney, Adelaide, Perth and Darwin. The breadth of his legal practice has also taken him to Malaysia, Singapore, Thailand, Hong Kong, New Zealand, London, San Francisco and New York.

As an APEC business travel card holder, William is able to work as Counsel (arbitration, mediation or negotiation) in the APEC countries with ease.

William is also member of the Corporate Malaysia Round-Table of the Asian Strategy and Leadership Institute, and a regular speaker at various conferences including at the World Chinese Economic Forum. He is also a Sessional Tutor in Contracts Law at Monash University and a Sessional Lecturer in Entrepreneurship and Innovation at the Australian Graduate School of Entrepreneurship, Swinburne University.



### Andrew Laird

BA; LLB (Monash)

Andrew Laird was articled to the firm Minter Ellison in 1990 and was a solicitor in the firm's insurance and construction practices until 1992 when he joined the Victorian Bar. Mr Laird read with Peter Vickery (as he then was) now the Honourable Justice Vickery, Judge in charge of the Victorian Supreme Court Technology Engineering and Construction (TEC) List.

Mr Laird specializes in complex technology, construction and engineering disputes and related commercial litigation and has appeared in numerous significant proceedings in major Commercial Arbitrations and in the Supreme and Federal Courts.

Some of the more significant technology, construction and engineering disputes that Mr Laird has been involved in include litigation concerning:

- the tunnels of the multi-billion dollar Melbourne CityLink Project, which involved highly specialised geotechnical and structural engineering issues in the context of a major build, own, operate, transfer (BOOT) project (Supreme Court);
- the design and construction of a large private oceangoing catamaran, which involved marine coating technology and finite element analysis (Federal Court);
- the establishment of a major food processing facility, which involved mechanical engineering, industrial and Trade Practices issues (Federal Court);
- the remediation of contaminated land in the Melbourne Docklands precinct (Commercial Arbitration);

- the design and construction of waste water treatment plants in regional Victoria (Supreme Court);
- the Concession Deed of the Melbourne CityLink Project, which involved highly complex road and traffic engineering and financial modelling issues (Commercial Arbitration);
- the Mechanical and Electrical subcontract for the multi-billion dollar Melbourne EastLink road and tunnel infrastructure project (Commercial Arbitration); and
- the repair and refurbishment of a float glass manufacturing plant (Supreme Court).

Mr Laird has acted for and advised constructors, proprietors, principal sub-contractors and design professionals. Many of the disputes that Mr Laird has appeared in have involved joint ventures and design and construct contracts and have raised complex programming and associated contractual issues including claims for extensions of time, prolongation and acceleration, as well as claims for variations.

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### Tony Horan

LLB, BA (Hons)

For the past 20 years, Tony has specialized in resolving commercial disputes through litigation, arbitration, mediation and other dispute resolution methods, primarily in construction and engineering, insurance, professional negligence and misconduct. He has represented contractors, principals, construction professionals, professional indemnity and liability insurers (US, Australian and London insurers including

Lloyd's), statutory authorities and local, state and federal government.

Tony has negotiated and drafted construction and consultancy contracts for contractors, proprietors and consultants in Australia and overseas. He has advised insurers and federal and state government in drafting insurance policies.

In 2007, Tony produced a report 'Proportionate Liability: Towards National Consistency' for the Standing Committee of Attorneys-General in its review of the current Australian legislative framework on proportionate liability. Tony has also advised government on insurance as it affects the construction industry and the regulation of building surveyors.

Tony is a Senior Fellow of the University of Melbourne Law School, a Member of the Victorian Civil and Administrative Tribunal Legal Practice List, and a guest lecturer at Monash University.

Tony was for 10 years a partner at DLA Phillips Fox, a member of the DLA Piper Group.

Recent experience includes:

- representing geotechnical engineers in a Supreme Court and Court of Appeal

action involving the failure of 2 waste water treatment plants: Aquatec-Maxcon v Barwon Region Water Authority

- representing building surveyors in a professional negligence action involving proportionate liability before the Supreme Court and Court of Appeal: Godfrey Spowers v Lincoln Scott Australia & Ors
- acting for mining engineers in an arbitration involving a copper mine expansion project
- defending claims against Councils involving contaminated sites
- acting for architects in a Supreme Court action by national contractors under a design & construct contract, and pursuing cross-claims to recover professional fees
- acting for a Council in a Supreme Court misrepresentation claim by off-shore investors in a processing plant.

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## Graeme Hellyer

BEC; LLB

Graeme Hellyer has practised as a barrister specialising in technology, engineering and construction cases for over 20 years.

He has acted for a full range of stakeholders including proprietors, builders, subcontractors, engineers, architects, building surveyors, insurers and government instrumentalities.

Mr Hellyer has appeared in more than 50 arbitrations and in something in excess of 100 mediations.

The types of matters in which Mr Hellyer has been engaged include:

- multi storey developments;
- manufacturing plant and equipment;
- civil and road works;
- footings system failures;
- alpine environment developments;
- water management, drainage and dams;
- delay and loss of productivity claims;
- determination of contract issues;
- contractual advice.

For several years Mr Hellyer served as a part-time mediator for the Victorian Civil and Administrative Tribunal. He has conducted more than 40 construction and engineering mediations.

He also has lectured in contract law at tertiary level and advised in relation to the curriculum for a Masters of Law program.

As well as a Bachelor of Law he holds a Bachelor of Economics.

Prior to commencing practise as a barrister, Mr Hellyer worked for 3 years in one of Melbourne's leading construction law department in the firm now known as Deacons.

Mr Hellyer is committed to providing a high level of service and achieving the best possible outcomes for his clients.



## John Gurr

BA; LLB (Hons)

John Gurr is a commercial barrister with a particular emphasis on construction and engineering disputes. He has acted as both junior and sole counsel in the conduct of technically and legally complex disputes arising out of construction, civil engineering and oil and gas projects. His experience extends to proceedings involving design failures and construction defects, as well as disputes concerning delay and cost-overrun claims.

Between 2003 and 2007 Mr Gurr was retained by a multi-discipline engineering contractor as junior counsel in significant Victorian Supreme Court litigation arising out of the termination of the design and construct contract for an offshore pipeline and onshore gas processing facility. The dispute focused particularly on the design and construction of both the onshore processing facility and the HDD shore crossing, and included numerous alleged defects and technically complex delay claims. The amount in dispute was in excess of \$120 million. Mr Gurr was subsequently retained to act in related proceedings against the HDD subcontractor.

Examples of some other matters in which Mr Gurr has been engaged include:

- termination dispute between head contractor and civil subcontractor involving extensive inter-related extension of time claims;
- proceeding between vendor and purchaser involving the mechanical failure of construction equipment;
- dispute between principal and contractor involving alleged defects in

the design and execution of excavation works;

- defective works claim in a multi-unit residential development.

Before joining the bar Mr Gurr worked as a solicitor in the construction and engineering group of a major Australian law firm, where his experience included substantial Supreme Court litigation in relation to a major Victorian toll road. Whilst a solicitor Mr Gurr was seconded for 12 months to the firm's Hong Kong office, where he assisted in a significant arbitration that arose in relation to a major civil engineering project in Hong Kong.

Mr Gurr has a keen interest in all aspects of construction and engineering dispute resolution.

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### Geraldine Gray

BA (UNSW); LLB (UNSW); LLM (Melb)

Geraldine Gray practised as a solicitor in New South Wales, Victoria and Hong Kong prior to joining the Victorian Bar. She also lived in Taiwan and worked at National Taiwan University Hospital, Taipei, for a number of years.

She has experience in building and construction matters both from a construction and insurance point of view. Recent matters have involved construction

of gas infrastructure in a Western Australian project dispute, acting for the contractor in a wide-ranging dispute concerning construction of gas infrastructure offshore and onshore in Victoria, Australia and acting for the Principal in a dispute concerning time claims and latent conditions in a major land remediation and earthworks project.

Areas of experience include:

- Acting for contractors and owners in large and small disputes conducted by way of arbitration and in court
- Advising on regulatory issues in large projects
- Advising on project insurance issues such as coverage and policy interpretation and professional negligence
- Acting and advising in respect of multiple defect claims in gas pipeline construction
- Advice on contractual interpretation for both standard form and bespoke contracts
- Appearance at court, in mediations and at arbitration

Geraldine is a member of the Society of Construction Law, the Building Dispute Practitioners' Society, the National Association of Women in Construction and the Australian Insurance Law Association.

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### Andrew Downie

BSc(Hons), LLB(Hons)

Andrew came to the Bar in 2008 after working with MolinoCahill Lawyers. During his time as a solicitor, Andrew worked on several major construction and infrastructure disputes in Australia, including a dispute concerning the expansion of the wharf facility at Port Hedland.

Since coming to the Bar, Andrew's practice has been diverse, appearing in matters

involving technology, engineering and construction, property law, equity, and corporations law. Andrew has previously worked in the chemical sciences industry which has involved him publishing articles in scientific journals on his work, and this background enhances his ability to address complicated technical and scientific expert evidence.

Andrew is frequently briefed to appear in:

- domestic and commercial building disputes concerning issues of defects, variations, extensions of time and technical contractual issues;
- applications for and against claims in respect of the Building and Construction Industry Security of Payment Act 2002 (Vic);
- insolvency, restructuring and management disputes, including in respect of contractors and principals of building projects;
- trade practices claims, particularly for misleading or deceptive conduct and unconscionable conduct, including in respect of contractors and principals of building projects;
- professional negligence disputes, including in respect of architects,

engineers, surveyors, councils, contractors and principals of building projects; and

- insurance disputes relating to building projects.

Andrew is on the management committee of Melbourne TEC Chambers and he is also the Assistant Monitor of the Construction Law section of the Commercial Bar Association.

Andrew has published articles in the Building and Construction Law Journal, the Australian Construction Law Bulletin, Building Dispute Practitioner Society News, and the CommBar newsletter, and he frequently gives seminars and authors papers on his areas of interest, particularly alternative dispute resolution, construction law and civil procedure. Andrew also frequently publishes articles on his website [www.the-civil-lawyer.net](http://www.the-civil-lawyer.net). Andrew is undertaking his Masters in Commercial Law at Melbourne University. He is a member of the Building Dispute Practitioner Society, the Society of Construction Lawyers Australia and United Kingdom, the Institute of Arbitrators & Mediators Australia, and the Intellectual Property Society of Australia & New Zealand.

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### Dr Donald Charrett

BE (Hons); LLB (Hons); MConst Law; PhD; FIE Aust; MIAMA

Dr Charrett practises in building and engineering disputes, and is accredited as an Arbitrator and Mediator by IAMA.

Significant engineering and construction cases he has been involved in include the following:

- 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.

- Arbitrator and Expert in construction disputes on infrastructure and buildings.
- Facilitation of Experts' Conference of international experts for a three party dispute involving material failure in a mineral processing plant.
- Litigation in a design and construct tunnel project using computer data base technology for a full electronic trial to manage the large volume of discovered documents.
- Litigation on building projects and a design and construct contract for construction of a road.
- Dispute over payment for variations in a power station project.
- Expert assisted determination of contractual disputes arising from technical defects on a road project.
- Arbitration on a hydroelectric power station.
- Chairman and referee of a neutral evaluation panel determining disputes on a resource project.
- Member of a Dispute Board on a railway project.

Prior to becoming a lawyer, Dr Charrett worked as an engineer for over 30 years, including 12 years as a director of a multidisciplinary consulting engineer. His engineering experience included computer applications, structural design, managing engineering projects, acting as an expert witness, and management roles in contract negotiation and administration, insurance, international joint ventures and corporate restructuring.

Dr Charrett has published widely in Australian and international journals, and presented papers at Australian and international engineering and legal conferences, workshops, seminars and the Melbourne University Master of Construction Law course. He is an accredited FIDIC trainer, and has presented papers at a number of FIDIC conferences, seminars and workshops. He is a joint author of the book "Practical Guide to Engineering and Construction Contracts".

Dr Charrett is the Chairman of MTECC, a Director of the Society of Construction Law Australia, and was Chairman of the SoCLA Conferences subcommittee that organised the 2012 Fourth International Construction Law Conference in Melbourne.

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**Laina Chan**  
BSc (Hons) LLB (Hons)

Laina Chan graduated from the University of Sydney in 1994 and commenced working for the then Justice Clarke in the Court of Appeal as his researcher. Laina was also assigned to Justice Michael Kirby as his researcher for 6 months where she had the opportunity to work closely with the judge and to prepare several draft judgments.

In early 1998, Ms Chan joined Minter Ellison where her association with building and construction law commenced. During the 5 years that Ms Chan was at Minter Ellison, she worked on many significant construction cases defending architects, engineers and other building professionals.

Ms Chan has been at the bar since 2004 where her main areas of specialty are building and construction law as well as insurance law. This is reflected in the fact that Ms Chan lectured from 2007 to 2010 in the University of Melbourne's graduate construction law program in which she taught *Security for performance and Insuring Risk in Construction Projects*. She is also a contributing author to the latest edition of Bailey and Bell, *Construction Law in Australia*, Thomson Reuters, 3rd edition in which she wrote the chapter on professional liability.

In 2005 Ms Chan represented Taylor Thomson Whitting, the design engineer in *Aquatec-Maxcon Pty Limited v Barwon Region Water Authority* [2006] VSC 117, a significant decision of Byrne J in relation to proportionate liability.

Ms Chan is working on several construction disputes representing major engineering firms in cases including cases involving failures in relation to the Lane

Cove Tunnel project in New South Wales as well as numerous professional indemnity cases representing architects and engineers. Since Ms Chan has been at the bar, Ms Chan has worked on a range of professional indemnity matters defending construction professionals, town planners, pre-purchase building inspectors, real estate agents, financial planners, stock brokers and lawyers. Ms Chan also works on disputes in relation to property and commercial law with a particular emphasis on disputes in relation to guarantees and indemnities.

For more information on Laina Chan, please go to [www.lainachanbarrister.com](http://www.lainachanbarrister.com)

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| SENIOR COUNSEL   |   |  |  |          |             |               |   |
|--|---|--|--|----------|-------------|---------------|---|
| Barrister  | Skills  | Address & contact numbers  | Arbitrator   | Mediator | Adjudicator | Dispute Board | Clerk                                   |
| <b>Hugh Foxcroft QC</b><br><i>BA (Hons); LLB</i>   | Barrister, Arbitrator, Mediator & Adjudicator   | e: foxcroft@chancery.com.au<br>ph: +613 8600 1768<br>m: +61 419 588 084                      | IAMA<br>(Grade 1)  | ✓        | ✓           |               | Patterson's List<br>+613 9225 7888      |
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# Photograph credits

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**INSIDE COVER** West Gate Bridge © John Holland. The West Gate Bridge Strengthening Project was a finalist in the 2012 Australian Construction Achievement Awards.

**PAGE 2** West Seno Mooring Replacement Project, West Seno Field off Kalimantan, Indonesia 2010 © AMOG Consulting.

**PAGE 3** 1) West Gate bridge strengthening project 2012. 2) Derek barge constructed by Baulderstone – Jan der Nul Joint Venture for the Port Botany Expansion Project, winner of the 2012 Australian Construction Achievement Award. 3) Royal Children's Hospital Melbourne, joint winner of the 2013 Australian Construction Achievement Award © Bovis Lend Lease.

**PAGE 4** 1) Construction barge St Kilda marina 2014. 2) Port Botany NSW 2012. 3) West Gate bridge 2012.

**PAGE 5** Access scaffolding for the West Gate Bridge Strengthening Project, a finalist in the 2012 Australian Construction Achievement Awards.

**PAGE 6** Crystal Ocean, Bass Strait Victoria, 2005 © AMOG Consulting.

**PAGE 7** 1) Princes Bridge over the Yarra River. 2) Entrance to the Mullum Mullum Tunnel on the Eastlink toll road. 3) Southern Star Observation Wheel, undergoing rectification works in 2012.

**PAGE 8** Melbourne Arts Centre, Southbank.

**PAGE 9** 1) Princes Bridge over the Yarra River. 2) RMIT University Swanston Academic Building, joint winner of the 2013 Australian Construction Achievement Award for Brookfield Multiplex. 3) Dome of the former banking chamber of the Commercial Bank of Australia Ltd, 333 Collins St.

**PAGE 10** 1) Demolition works for reconstruction of the Melbourne Concert Hall podium, 2010. 2) West Gate Bridge Strengthening Project, a finalist in the 2012 Australian Construction Achievement Awards © John Holland. 3) Steel arch girders of Princes Bridge over the Yarra River (constructed in 1888).

**PAGE 11** Southbank footbridge over the Yarra River.

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**PAGE 13** 1) Melbourne Rectangular Stadium under construction in 2009. 2) Wind turbine, Romania. 3) Westgate Freeway.

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**PAGE 15** RMIT University Swanston Academic Building, joint winner of the 2013 Australian Construction Achievement Award for Brookfield Multiplex.

**PAGE 16** 1) Mullum Mullum tunnel construction, Eastlink © Linking Melbourne Authority. 2) Welding inside steel box girder, West Gate Bridge Strengthening Project, a finalist in the 2012 Australian Construction Achievement Awards © John Holland. 3) Mullum Mullum tunnel construction, Eastlink © Linking Melbourne Authority.

**PAGE 17** Wind turbine, Romania.

**PAGE 18** 717 Bourke St, Docklands.

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**PAGE 20** RMIT University Swanston Academic Building, joint winner of the 2013 Australian Construction Achievement Award for Brookfield Multiplex.

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