DR ANDREW HANAK QC

Barrister, arbitrator and mediator



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Profile

Dr Andrew Hanak QC is a member of the Victorian Bar practising in commercial law. Dr Hanak has substantial experience in providing advice and appearing in a wide range of matters at both trial and appellate level in Superior Courts. He is a qualified arbitrator and accepts briefs in both international and domestic commercial arbitration disputes. He practises in all Australian jurisdictions.

Dr Hanak is frequently briefed in matters arising in a complex factual or legal setting. He has been retained to represent numerous Australian publicly listed companies, leading professional services firms and a range of national and international organisations. He is acknowledged as an advocate who works well with the client and other members of the legal team.

Dr Hanak is a Fellow and National Councillor of the Chartered Institute of Arbitrators, a Director and Fellow of the Australian Centre for International Commercial Arbitration and a Fellow of the Resolution Institute. He accepts briefs in arbitral disputes in both ad hoc arbitrations and those arising under ICC, SIAC, HKIAC AIAC/KLRCA, ACICA and UNCITRAL arbitration rules. He is also a nationally accredited mediator.

Education

PhD (Monash) BA, LLB (Hons) (Monash).

Diploma in International Commercial Arbitration (UNSW)

Professional

Signed Victorian Bar Roll as Counsel (2000).

Appointed Queen's Counsel for the State of Victoria (2018).

Barrister and Solicitor of the Supreme Court of Victoria, Supreme Court of Queensland and the High Court of Australia. Reciprocal rights to appear in all other Australian jurisdictions.

National Councillor, Treasurer, member of the Approved Teaching Faculty and Fellow, Chartered Institute of Arbitrators.

(*Professional, cont.)*

Director, member of the Advisory Board and Fellow, Australian Centre for International Commercial Arbitration

Fellow, Resolution Institute.

Member, National Sports Tribunal Legal Assistance Panel.

Recognised in *Best Lawyers Australia* and *Doyle's Guide*.

Accredited advocacy coach by Australian Advocacy Institute (2013).

Accredited Mediator under the Australian National Mediator Accreditation System (2008).

Member, List Committee – List A (2009 - 2018).

Director, List A Barristers Pty Ltd (2009 - 2018).

General Editor *Australian Property Law Journal* (2003 - current) with Professor the Hon Dr Clyde Croft AM SC and Professor Paul Babie.

Member Australian Insurance Lawyers Association.

Deputy Chair of Victorian Bar International Arbitration Committee (2021).

Member Victorian Bar Council Readers' Course Committee (2015 - 2017).

Member Victorian Bar Council Human Rights Committee (2015 - 2016).

Member Victorian Bar Council Pro Bono Committee (2018).

Member of Victorian Bar Pro Bono Scheme and the Pro Bono Scheme conducted by the Registrar of the Victorian Legal Admissions Board.

Consultant *CCH Victorian Conveyancing Law & Practice* (2003 - 2013).

Member, Law Council of Australia (2001 - 2011).

Member, Law Council of Australia Corporations Committee (2007 - 2008).

Assistant Secretary, Commercial Bar Association, Insolvency Law Section (2002 - 2007).

Member, Law Council of Australia, Insolvency and Reconstruction Committee (2001 - 2002).

Selected cases

Retained as Counsel in cases in Superior Courts, Arbitral and Statutory Tribunals including the following.

- Retained to act for global technology company in two arbitration disputes under ICC Rules before the Hon Robert McDougall QC (President), the Hon Wayne Martin AC QC, and Mr G Harris QC. Leading Mr A Di Pasquale.
- *Re Seladene Pty Ltd* [2021] VSC – trusts – application to remove trustee – application to set aside deed pursuant to principles in *Pitt v Holt* [2013] 2 AC 108. Leading Mr J B Masters.
- *Blockchain Global Ltd v Liu* [2021] VSC – Appeal against decision of County Court of Victoria – cryptocurrency contract – nature of contract – whether contract incorporated terms in letter of commitment – whether agent required to account to principal. Leading Mr G J Redenbach.
- *Karam Investments Pty Ltd v CBRE (Vic) Pty Ltd* [2021] VSC – claim against real estate agent re leasing of land – whether agent required to investigate financial capacity of tenant – whether agent made representations to landlord. Leading Ms A Batrouney.

(Selected cases, cont.)

- *GW Performance Pty Ltd v Guild Insurance Ltd* [2021] VSC – claim by insured for business interruption losses resulting from COVID-19 lockdown – whether policy responds – whether losses caused by insured event. Leading Mr J B Masters.
- *Goenka v PricewaterhouseCoopers (a firm)* [2021] VSC – professional liability – taxation advice – residency of foreign entities – treatment of intercompany loans as deemed dividends. Leading Mr G J Redenbach.
- *KDR Victoria Pty Ltd v JC Decaux Australia Pty Ltd* [2020] VSC 390; [2021] VSCA – claim for declaration of revenue share provisions of contract for advertising on Yarra Trams network – Appeal to VSCA settled. Leading Ms K Brazenor.
- Three complex arbitration disputes conducted under modified UNCITRAL Rules before the Hon R A French AC – alleged breaches of development and operating agreements for electricity facility – alleged duty of care relating to development and operations of facility. With Mr J Delany QC, Mr N Pane QC and leading Mr R Rozenberg and Mr R Chaile.
- *Trustees of the Roman Catholic Church for Diocese of Maitland-Newcastle v Insurance Australia Ltd* [2021] NSWSC – retained to act for insurer to defend claims brought by Diocese under public liability policies in relation to historical sexual assaults within Church institutions. Leading Ms F Spencer.
- *Braham v ACN 101 482 580 Pty Ltd & Ors* [2020] HCASL 199; [2020] VSCA 108; [2018] VSC 575 – investment in managed investment scheme – claim against firm of solicitors regarding advice – whether solicitor retained – whether duty of care owed to investor – whether misleading conduct by firm, reliance by third party on misleading conduct. Successfully resisted appeal to Victorian Court of Appeal and special leave application to High Court of Australia. Appeal and Special Leave to Appeal leading Mr N Walter.
- *Re Ekera Medical Pty Ltd* [2019] VSC – oppression proceeding alleging breach of directors' duties arising from pursuit of corporate opportunity. Leading Mr J Corbett.
- *Kanyon Pty Ltd v Hartwig; Hunter v Berkley Capital Partners & Ors* [2018] VSC – joint venture dispute relating to several property developments – oppression claim and derivative proceeding – breach of director's duty claim. Leading Ms G S J Berlic.
- *Peter Urban v Junior Academy ELC Pty* Ltd [2018] VSC 192 – application to bring derivative proceeding on behalf of trustee company. Junior to Mr T J North QC.
- *Jia v Lee* [2018] VSC 164 – application to strike out defences – destruction of discovered documents – whether order striking out defences is appropriate.
- *Braham Investments Pty Ltd v Sovereign MF Limited* [2017] VSC 801 – trust and trustees – whether express trust settled – legal profession – holding and disbursing of trust money – breach of statutory duty. Appeal [2018] VSCA 291.
- *Metricon Homes Pty Ltd v Great Lakes Insurance SE* [2017] VSC 749 – builders' liability insurance – scope of insuring clause – professional services exclusion – products liability insurance exclusion – whether house a 'product'. Junior to Mr Chris Caleo QC.
- *Gee Dee Nominees Pty Ltd v Ecosse Property Holdings Pty Ltd* (2017) 91 ALJR 486 – appeal against decision of Victorian Court of Appeal on construction of the terms of a lease. Appeared in High Court of Australia as junior to Mr Noel Hutley QC and unled in the special leave application ([2016] HCATrans 231) and in Victorian Court of Appeal ([2016] VSCA 23).
- *Bower v BC Coatings (Vic) Pty Ltd* [2017] VSC 712 – defamation – interlocutory injunction – adequacy of damages.

(Selected cases, cont.)

- *Archibald v Powlett* [2017] VSCA 259 – appeal against award of damages for loss of opportunity, distress, anxiety and inconvenience. Issue estoppel arising from separate trials against defendants.
- *Fuji Xerox Australia Pty Ltd v Xtreem Pty Ltd* [2017] VSC 333 – enforcement and specific performance of deed of settlement. Whether deed created penalty.
- *Middendorp Electric Co Pty Ltd v Garrisson & Ors* [2017] VSC – claim against solicitors and accountants in connection with the purchase of shares in a national company selling solar panels.
- *Sino Iron Pty Ltd v World Wide Wagering Pty Ltd* [2017] VSC 101 – claim involving restitution, money had and received, knowing receipt, knowing assistance and fraud allegations. Leading Mr John LM Leung.
- *Fuji Xerox Australia Pty Ltd v Xtreem Pty Ltd* [2016] VSC – claim by supplier arising out of nine separate equipment rental contracts involving allegations of breach of contract and misleading and deceptive conduct.
- *Trust Company Nominees Ltd v Mulqueen Griffin Rogers Pty Ltd* [2016] VSC – negligence and breach of statutory duty claim brought against auditor of substantial lending and investment institution arising out of the collapse of the Banksia Group and part of the Banksia class action proceeding. Junior to Mr David Collins QC.
- *Braham Investments Pty Ltd v Wantrup* [2016] VSC – dispute concerning ownership of funds in a trust account of legal practice.
- *Chin Dai Industrial Co Ltd v Australian Pipe & Tube Pty Ltd* [2016] VSC – commercial dispute between manufacturer and purchaser of steel products involving allegations of fraud, misleading conduct, breach of terms of trade and damages for loss of opportunity. Leading Ms Katherine Brazenor.
- *Bill Express v Pitcher Partners* [2015] VSC – substantial claim involving alleged negligence of auditor of listed public company. Quantum in excess of $230m. Junior to Mr Philip Crutchfield QC, leading Ms Claire Excel.
- *Re Sportsbet Pty Ltd* [2014] – dispute involving sale of shares – whether misleading statements made to minority shareholder. Junior to Mr Philip Crutchfield QC.
- *Glenvue Nominees Pty Ltd v Trumble Szanto* [2015] VSC – professional negligence – solicitors – whether duty to consider and advise on deficiencies in valuation of land.
- *Kyriakou & Ors v Edwards* [2015] VSC – professional negligence – solicitors – whether solicitor acted for parties to joint venture – causation – whether breaches of duty caused loss arising from ASIC investigation and litigation.
- *Pacific Brands Ltd v PD Enterprise Pty Ltd* [2014] VSC – dispute between manufacturers and distributor relating to long term supply agreement.
- *Unger v Vision Group Ltd* [2014] VSC – whether company engaged in misleading conduct and whether company breached ASX Listing Rules relating to continuous disclosure.
- *Re Environinvest Ltd* [2013] FCA – claim against directors of failed investment scheme – duties of CFO of company. Junior to Mr Simon Marks QC.
- *Dale v Clayton Utz* [2013] VSC – partnership dispute – application to restrain senior counsel from acting. Junior to Mr Alan Archibald QC and Mr Ross Macaw QC.

(Selected cases, cont.)

- *Metropolitan Waste Management Group v CGU Insurance Ltd* [2012] FCA – claim by waste management body under professional indemnity insurance policy – construction of pollution exclusion clause. Junior to Mr James Elliot QC.
- *Newtronics Pty Ltd (In Liq) v Russell Kennedy* [2012] VCS – professional negligence – solicitors – conduct of litigation – whether claim bound to fail – duty of solicitor to recommend settlement of claim. Junior to Mr Paul Santamaria QC.
- *South Eastern Secured Investments Ltd v Birch Ross and Barlow & Ors* [2012] VSC – claim by liquidator against former directors of finance company. Junior to Mr Simon Marks QC.
- *Richard Kirby v Centro & Ors* [2011] FCA – liability of directors, officers and auditors of Centro Group. Junior to Mr Ted Woodward QC.
- *AED Oil Ltd v Back & Ors* [2011] VSC – professional negligence – solicitors – drafting of agreement for charter of oil production vessel – duties of loyalty owed to client. Junior to Mr Peter Jopling AM QC.
- *APN Funds Management Limited v Chapel Developments Pty Ltd & Ors* [2011] VSC – joint venture dispute for development of luxury apartment complex. Junior to Mr Peter Jopling AM QC.
- *Brickland Nominees Pty Ltd & Anor v Ballarat City Council* [2011] VSC – contaminated land – land previously used for deposit of rubbish – liability of local council. Junior to Mr Jeffrey Gleeson QC.
- *Catholic Church Insurance Ltd v QBE Insurance Ltd* [2010] VSC – reinsurance agreement – management of hundreds of primary claims concerning sexual abuse within Catholic church – whether primary claims fall within terms of reinsurance agreement. Junior to Mr Simon Marks QC.
- *Watson v Ebsworth & Ebsworth* [2010] VSCA 335 – professional negligence – solicitors – solicitor acting for several parties – whether duties of loyalty and good faith were owed – causation and equitable compensation. Application for special leave refused [2011] HCA Trans 246. Junior to Mr Cameron Macaulay QC and Mr Peter Jopling AM QC.
- *ASIC v Lindberg* [2009] VSC – corporations – breach of director's duties – civil penalty proceedings involving directors and officers of AWB Ltd. Junior to Mr Norman O'Bryan QC.
- *Premier Building and Consulting Pty Ltd v Spotless Group Ltd* [2007] VSC 377; [2005] VSC 19; [2004] VSC 522 – long multiparty trial involving apartment development on contaminated land – duty of municipal authority when rezoning – duties of authority when granting planning approval. Junior to Mr Cameron Macaulay QC.

Reports, investigations and inquiries

Dr Hanak has been involved in the following investigations, commissions and reviews.

- *Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry* (2018) Retained on behalf of an international superannuation fund manager in the superannuation round of hearings. With Mr Stewart Anderson QC, leading Mr N Walter.
- *Proceeds of crime* (2017). Retained on behalf of Commonwealth Agency to conduct examinations under the *Proceeds of Crimes Act 2002* (Cth) in connection with money laundering and related offences.
- *Expert Determination* (2016). Appointed by the President of the Victorian Bar to act as expert to determine dispute between parties to a commercial lease. Dispute concerned

liability for outgoings and repair obligations under lease and related claims. Nominated by the President of the Victorian Bar to act as expert.

- *Review of Prime Safe Performance* (2015). Appointed by a Victorian statutory authority as part of a three member panel to conduct a review commissioned by the board of a statutory authority into the dealings of the authority with licensees, industry representatives and other stakeholders. With Mr Allan Myers AO QC and Mr Mark Hosking.
- *Royal Commission into Institutional Responses to Child Sex Abuse* (2015). Retained to assist with the preparation of submissions and witnesses on behalf of a body required to appear before the Royal Commission. With Mr Simon Marks QC.

Mediations

Dr Hanak is regularly appointed to act as mediator in a range of commercial disputes. He has acted as mediator in several complex multi-party disputes. He is accredited under the Australian National Mediator Accreditation System.

Publications, papers and seminars

- *Hub Street Equipment Pty Ltd v Energy City Qatar Holding Company* [2021] FCAFC 110 – case note on enforcement of an arbitral award pursuant to s. 8(3) of the *International Arbitration Act* 1974 (Cth). Published by the Chartered Institute of Arbitrators Australia at ciarb.net.au.
- *Feldman v Tayar* [2021] VSCA 185 – case note on the adequacy of reasons of a domestic arbitral tribunal. Published by the Chartered Institute of Arbitrators Australia at ciarb.net.au.
- *Kingdom of Spain v Infrastructure Services Luxembourg* [2021] FCAFC 3 – case note on the recognition and enforcement of an award made under the ICSID Convention in an Australian Court. Published by the Chartered Institute of Arbitrators Australia at ciarb.net.au.
- *Recent Developments in International Arbitration – Implications for Australia and Beyond* Part of the International Arbitration Series, a joint initiative of the CIArb Australia and Federal Court of Australia, held via a virtual platform on 30 March 2021. The webinar considered the Australian implications of two recent judgments by the Supreme Court of the United Kingdom in *Enka Insaat v Chubb* and *Halliburton v Chubb*.
- *Chartered Institute of Arbitrators* regularly teaching in the Institute's Introduction to Arbitration and Award Writing courses.
- *Managing Your Day in Court* A seminar presented to the Victorian Bar Junior Barristers Conference, Melbourne, February 2016. With the Honourable Justice Macaulay, Supreme Court of Victoria.
- *An Update on Professional Liability* A paper presented as part of the Victorian Bar Continuous Professional Development program, November 2015. With Mr Jeffrey Gleeson QC.
- The Interaction of the Company Director's Duty of Care and the Director's Obligations Relating to Insolvent Trading and Financial Reporting (2007) 25 *C&SLJ* 180.
- *A defence of the company director's duty of care, skill and diligence* (PhD thesis, 2006).
- Repudiation of Leases and the Tenant's Proprietary Interest in the Land - Case Note; *Apriaden Pty Ltd v Seacrest Pty Ltd* (2005) 12 *APLJ* 85.

- Does the Bankruptcy Act provide excessive protection for a debtor’s interest in a Superannuation Fund (1999) *New Directions in Bankruptcy*.
- The Wife's Special Equity Survives the High Court (1998) 6 *InsolvLJ* 202.

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