

S.R. Horgan KC

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PRIVATE & CONFIDENTIAL

Curriculum Vitae

February 2023

A. PARTICULARS

- (a) Samuel Richard Horgan KC
- (b) *Date of Birth:*
11 April 1963
- (c) *Post Admission Legal education and relevant academic record:*
Bachelor of Science from the University of Melbourne, 1987.
Bachelor of Laws from the University of Melbourne, 1987.
- (d) *Date, month and year of admission in each jurisdiction:*
- | | |
|-------------------------|------------------|
| Victoria | 29 February 1988 |
| High Court of Australia | 9 March 1988 |
| Queensland | 12 March 1990 |
| New South Wales | 6 April 1990 |
| Western Australia | 2 April 2003 |
- (e) *Date of signing the Roll of Counsel:*
26 May 1988
- (f) *Date of appointment as Senior Counsel:*
26 November 2008

B. PRACTICE PARTICULARS

(a) *General commercial matters*

I have appeared at trial and on appeal in many significant commercial disputes including the following matters in recent years:

- *Break Fast Investments Pty Ltd v Rigby Cooke Lawyers* [2022] VSCA 118, Equity – Fiduciary Duties – Knowing receipt.
- *Stuart v Said* (2021) 65 VR 50, Appeal – Security for Costs – Impecuniosity of individual plaintiff – Additional factor.
- *Bolitho v Banksia Securities Limited (No 18)* (remitter) [2021] VSC 666, Administration of Justice – Group Proceeding – Conduct of funder and counsel in contravention of *Civil Procedure Act 2010 (Vic)*.
- *Break Fast Investments Ltd v Rigby Cooke Lawyers* [2021] VSC 398, Equity – Conflict of Interest – Causation – Knowing Receipt.
- *Rivex Crane Hire Pty Ltd v Armquip Pty Ltd & Ors* [2019] VSC 122, Contract – Right of Refusal.
- *Winky Pop Pty Ltd v State of Victoria & Anor* [2019] VSCA 9, Issue Estoppel – Negligence, nuisance – Damages – Contamination.
- *Dalby Bio-Refinery Ltd v Allianz Australian Insurance Ltd* [2018] FCA 1806, Insurance - Industrial Special Risks Policy – Exclusion Clause.
- *Australian Funding Partners Limited v Botsman* [2018] VSC 303, Group proceeding – restraint against appeal from settlement approval.
- *McCrohan Super Investments Pty Ltd v Ashdown* [2018] VSC 422, Consumer Law – misleading and deceptive conduct.
- *Dedert Corporation v United Dalby Refinery Pty Ltd* (2017) 59 VR 607, Building Contract – Recourse to Bank Guarantee.
- *United Petroleum Pty Ltd v Bonnie View Petroleum Pty Ltd* [2017] VSC 185, Contract – contamination – loss and damage – bank guarantee.
- *Winky Pop Pty Ltd v Mobil Refining Australia* [2016] VSCA 187, Tort – damage to land – nuisance – damages – diminution in property value.
- *Chong & Neale v CC Containers Pty Ltd* [2015] VSCA 137, Tort – conspiracy – evidence – inferences – privilege against self-incrimination.
- *Cornerstone Hardware Brokers (Australia) Pty Ltd v Methven Australia Pty Ltd* [2015] VSCA 128, Contract – variation – proof of loss.
- *Vic Hotel Pty Ltd v DC Payments Australasia Pty Ltd* [2015] VSCA 101, Evidence – waiver of privilege – test for waiver.
- *Robinson v Jones* [2015] VSC 22, Succession wills and probate – informal will – testamentary capacity.
- *Vasco Investment Managers Ltd v Morgan Stanley Australia Limited* [2014] VSC 455, Confidential information – identification of information – restitution – quantum meruit – success fee.

- ***CC Containers Pty Ltd v Lee & Ors*** [2014] VSC 151, tort – conspiracy to defraud – inferences – equity – secret commission.

I advise in relation to a broad range of commercial and regulatory matters.

(b) ***Admiralty and Maritime Law***

I have frequently appeared in the Supreme, County and Federal Courts on behalf of Protection and Indemnity Societies representing ship owners and charterers. I have also frequently acted on behalf of defendant shipowners in cargo proceedings in both the Supreme and Federal Courts.

I have particular experience in matters concerning the arrest and the release from arrest of vessels in the Admiralty jurisdiction.

I have acted on behalf of the Seafarers Union, the International Transport Workers Union and the various Maritime Unions in relation to issues concerning the rights and entitlements of the crews of ships under arrest. Additionally, I have been involved in administrative challenges to the issue of coastal shipping permits under the *Navigation Act* 1912 (Cth).

Some of the more important matters in which I have appeared in this area recently include:-

- ***Chong & Neale v CC Containers Pty Ltd*** [2015] VSCA 137, Tort – conspiracy – container service and storage business – evidence – inferences – privilege against self-incrimination.
- ***Transfield ER Futures Limited v The Ship “Giovanna Iuliano”*** [2012] FCA 548, Admiralty – Arrest – forward freight agreements – set aside arrest.
- ***Jebsens International (Australia) Pty Ltd v Interfert Australia Pty Ltd*** [2012] SASC 50, International arbitration – Shipping and Navigation – Breach of Charterparty – sea carriage document.
- ***Strong Wise Ltd v Esso Australia Resources Pty Ltd (The “APL Sydney”)*** [2010] 2 Lloyd’s Rep 555; (2010) 185 FCR 149 and 237, Admiralty – Limitation of Liability – Convention – multiple claims arising out of ship’s anchor fouling submarine gas pipeline.
- ***Qenos Pty Ltd v The Ship “APL Sydney”*** (2009) 187 FCR 282, Shipping and Navigation – Limitation of Liability – consequential loss – pure economic loss.

(c) ***Regulated Industries / Competition***

Since the mid 1990’s I have been regularly engaged on behalf of privatised and regulated energy businesses in relation to regulatory issues and other disputes. I have acted alone and also together with junior counsel advising gas, electricity, telecommunications and inter-connector interests in relation to the regulation of their businesses by various regulatory authorities. This work involves an understanding of various administrative, economic and regulatory issues.

In addition to regularly appearing before statutory review bodies I have also appeared in several court cases on appeal or judicial review from regulatory decisions made in this area including in recent times:

- *Applications by CitiPower Pty Ltd and Powercor Australia Ltd* [2017] ACompT 4, Energy and resources – Applications for merits review of 2016 EDPR.
- *Application by Actew AGL Distribution* [2017] ACompT 2, Energy and resources – Applications for merits review of 2016 EDPR.
- *Australian Energy Regulator v Australian Competition Tribunal (No. 2)* [2017] FCAFC 79, Administrative law – judicial review – National Electricity Rules.
- *Applications by Public Interest Advocacy Centre Ltd and Ausgrid* [2016] A CompT 1 – Energy and Resources – applications for review of distribution determinations NSW and ACT.
- *SPI Electricity v Australian Energy Regulator* [2014] FCA 1012 – administrative law – ADJR Act review of regulator’s decision on distributor’s approved budget.

(d) ***Property Law***

I have appeared in many matters in relation to the proper interpretation of the *Subdivision Act* 1988 (Victoria) and its interaction with the *Transfer of Land Act* 1958. In particular, I have been involved in a number of cases involving the extent of lot owners’ rights in respect of Body Corporate land.

I am also frequently briefed in matters involving caveats, restrictive covenants, easements, adverse possession of land, leases and contracts of sale.

Some of the more important cases in which I have appeared recently are as follows:

- *Bottos v Citylink Melbourne Ltd* [2022] VSCA 266, Real Property – Title – Adverse Possession
- *John Dahlsen Superannuation Fund Pty Ltd v Dove* [2022] VSC 34, Property Law – Unused public road – implied easement
- *Bottos v Citylink Melbourne Ltd* [2021] VSC 585, Real Property – Trespass – Adverse Possession – Subterranean incursion.
- *Stockfeld v Hendon* [2021] VSC 133, restrictive covenant – construction.
- *K7 Developments Pty Ltd v Abbotsford Estates Pty Ltd* [2021] VSC 422, Contract for Sale of Land – Default – Damages.
- *Caltex Australia Petroleum Pty Ltd v Agtan Pty Ltd* [2017] VSC 593, Contract – construction of lease covenant – relief against forfeiture – damages.
- *Janney and Foti v Steller Works Pty Ltd* (2017) 53 VR 677, Trespass – Airspace nuisance by crane.
- *Impact Funds Management Pty Ltd v Roy Morgan Research Ltd* [2016] VSC 221, Leases and tenancies – construction – repudiation – relief against forfeiture.
- *Prowse v Johnson* [2015] VSC 621, Real Property – Restrictive covenant – validity.

- *Carbon Black Lab Pty Ltd v Launer* [2015] VSCA 126, Caveat – interest as purchaser – notice of default and rescission.

C. OTHER RELEVANT INFORMATION

I have been a Member of the Victorian Bar for 35 years. I have had three readers: Tim Grace, Carl Möller and Ben Murphy.

I am a Member of the Judicial Panel and Appeals Committee for the Victorian Rugby Union. I advise Life Saving Victoria in matters involving Crown leaseholds for Surf Life Saving Clubs and sit on the Life Saving Victoria Club Lease Committee.