



James B Waters BE (Hons), JD (Melb)
Barrister, former Professional Engineer

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James practices primarily in commercial law, with a focus on technical, engineering and construction disputes, equity and class actions.

Prior to joining the Bar, James was an Associate at Allens for three years in the construction disputes and commercial litigation teams. His practice included advising construction and engineering clients on complex construction and technical disputes and the administration of major projects. James was also involved in complex class actions, insurance disputes and product liability claims.

Prior to his legal career, James worked as a mechatronics engineer in both industrial and consulting environments. Mechatronics combines computer and software engineering, electronics and mechanical design. As an engineer, James was involved in the construction of a major arterial transport link and consulted in relation to the design, installation and commissioning of a diverse range of bespoke robotics in various industrial settings

Professional
Experience

May 2016 – present: Barrister at Law

James's matters have included:

- **Building and construction matters** – Security of Payments claims, various commercial / industrial and domestic building disputes in VCAT relating to defects, quality, delays, costs; various standard form contracts, including AS2124, AS4000-series, HIA, MBC4
- **Maritime law** – Disputes arising as to the seaworthiness and fitness for purpose of a commercial vessel following sale; acting for a prominent Victorian yacht club in relation to oppression proceedings brought by members;
- **Arbitration** – representing the owner of a large industrial parts business in dispute following an assets sale (and associated Supreme Court action); dispute involving the software and control systems on very large agricultural machinery for a US-based manufacturer;
- **Disciplinary matters and associated administrative law reviews** – Registered Building Practitioners, VicRoads fit and proper accreditations
- **Contract and commercial law matters** – *Dove Investments Pty Ltd v Mallee Track Health and Community Service* [2016] VCC 1055 (led by Aileen Ryan QC) . Appearing for the plaintiff in relation to claims of unlawful termination of employment; various sale of business / assets disputes, involving misrepresentations, Australian Consumer Law claims and common law claims;
- **Equity** – Acting for a substantial trading trust in a family / matrimonial dispute; applications for constructive and resulting trusts in family business disputes; applications for testators family maintenance
- **Insolvency** – applications to wind up companies; *Kapila (Trustee), in the matter of Edelsten (Bankrupt) (No 2)* [2016] FCA 1269 in relation to a dispute as to the application of US and Australian bankruptcy provisions;
- **Costs** – Applications for non-party costs orders; claims under the Legal Profession Act 2004 and Legal Profession Uniform Law;

February 2013 – February 2016: Allens – Associate

- **Offshore LNG** – acting for the owners of a \$34b LNG project in relation to disputes with the pipeline contractor.
- **Great Southern** – acting for the Bendigo and Adelaide Bank in the class action.

	<ul style="list-style-type: none"> • Legislated construction progress payment claims – acting for the principal / owner of a \$2.6 billion coal export terminal in relation to monthly payment claims made by the contractor under Australian Security of Payments legislation on a AS4204 contract and related EPC contract, including preparation of payment schedules, adjudication responses and engagement with engineering, programming and quantum experts. • Desalination plant – acting for a consortium of London underwriters in relation to claims in excess of \$280 million made by a contractor for the design and construction of a large reverse osmosis desalination plant. James utilised his engineering experience to engage with the significant volume of technical material and engaged numerous technical experts (delay analysis, fire engineering, materials and RO process disciplines). • Australian hardware chain good faith dispute – running an action in the Victorian Supreme Court for an Australia-wide hardware chain. • Operators of economic and social infrastructure PPP – advising a national PPP consortium in relation to disputes against a State counterparty that arose during the project's operations phase; advising a PPP operator including in relation to contract variations, the supply of utilities and contract administration. • Water treatment plant – acting on behalf of the superintendent to advise on its contractual right to deduct amounts for works not completed by the contractor under an AS4902 design and construct contract and providing strategic advice as to the merits and quantum of the contractor's claims. • Advising a major Australian biomedical company – to achieve mediated settlement in relation to a commercially-sensitive product liability dispute in the Federal Court of Australia. • Various pro bono matters – including instructing at tribunal hearings, advising a homeless client in relation to a dispute with a Victorian Government Department and drafting a policy for aboriginal support organisations in response to a Royal Commission investigation.
Previous Experience (Legal)	<p>2010 – 2012: Allens – Business Development Paralegal</p> <p>Based in the firm's Financial Services & Projects practice group, James assisted in preparing pitches for potential infrastructure projects of significant or strategic value, maintained databases of business capability and prospective clients and gave internal presentations and briefing sessions.</p> <p>2010 - 2012 Seasonal Clerkships</p> <p>James completed seasonal clerkships at Allens Arthur Robinson, Corrs Chambers Westgarth and Blake Dawson (now Ashurst) in the Mergers & Acquisitions, Infrastructure projects and Banking & Finance teams respectively.</p>
Previous Experience (Engineering)	<p>2007 – 2009: kanDO Innovation – Research Engineer</p> <p>kanDO Innovation is an engineering consultancy that specialises in designing automated and robotic solutions for technology-aware industry.</p> <p>2006 – 2007: Fletcher Construction – Site Engineer</p> <p>The Fletcher Construction Company is New Zealand's peak construction company and is the largest listed construction corporation on the NZX. James was involved in the construction of a large-scale infrastructure project delivering a major arterial route to Auckland's public transport network.</p> <p>2005 RPM International Tool & Die Ltd</p> <p>James gained valuable practical trade experience by working in a team of skilled fitter-turners making injection moulds and press tools.</p> <p>2004 Product Development Solutions Ltd</p> <p>Product Development Solutions is the agent for a high-end 3D CAD software package. James was involved in sales of core and complementary software and giving client and trade show presentations.</p>
Education	<p>2010 – 2012 The University of Melbourne: Juris Doctor</p> <p>2001 – 2005 The University of Auckland: Bachelor of Engineering Degree (Mechatronics) (Honours)</p> <p>2001: The Senior College of New Zealand, 1995 – 2000: The Kristin School (New Zealand)</p>

Personal Interests	<ul style="list-style-type: none"> • Mooting – following a number of successful university mooting competitions, James has competed in various young lawyers' moots, including the LIV International Arbitration Moot and Hanover Moot. • 18 foot catamaran racing – James owns and races a Formula 18 catamaran, based at the Port Melbourne Yacht Club • Other interests – when spare time permits, James pursues his other passions of restoring a 1972 Chrysler Valiant Charger, converting his NZ Pilot's Licence and playing guitars
Publications	<ul style="list-style-type: none"> • 'When are Liquidated Damages a Penalty?' (2015) 163 ACLN 51 • 'Casenote: <i>Caratti Holdings Co Pty Ltd v Coventry Group Ltd</i>' (2015) 27(1) ACLB • 'Third parties are no bar to arbitration: A win for arbitration?' Allens Focus (7 May 2015) • 'Insolvent contractors beware: principals can rely upon set-off rights when resisting claims' Allens Focus (29 April 2015)
Referees	Available on request