

# **PATRICK O’SULLIVAN QC FCIArb FACICA**

## **CURRICULUM VITAE**

### **OVERVIEW**

Patrick O'Sullivan QC is a leading commercial silk, with a specialist practice in major public and mining infrastructure arbitrations, and commercial construction disputes.

Patrick offers deep experience as a court, arbitration, and appellate advocate with a general commercial practice. Patrick accepts instructions to appear as Senior Counsel in arbitrations (both domestic and international), first instance and appellate hearings in the Federal Court of Australia, and superior courts in all Australian jurisdictions. Patrick also accepts appointment as an Arbitrator, Expert Determiner, and Mediator in his areas of expertise.

Patrick was recognised in *Doyle's Guide to the Australian Legal Profession* (2018) as a "Pre-eminent South Australian Senior Counsel" in the field of construction, and as a "Leading South Australian Senior Counsel" for commercial litigation.

Patrick is a past President of the Australian Bar Association, the South Australian Bar Association, and is the current Chair of the ABA's International Committee.

Prior to joining the Bar in 1997, Patrick practiced as Senior Crown Counsel with the Hong Kong Government, appearing regularly in the High Court of Hong Kong and the Privy Council, in addition to roles as Partner of commercial law firms Lynch & Meyer, and Fisher Jeffries. Patrick signed the roll of counsel in 1997 and took Silk in 2008.

### **TERTIARY QUALIFICATIONS AND ADMISSIONS**

Bachelor of Laws (Adelaide), 1981

Graduate Diploma in Legal Practice (SAIT), 1982

Bachelor of Applied Science (Wine Science) (Charles Sturt University), 2001

Admitted to the Supreme Court of South Australia on 21 December 1981

Admitted to the High Court of Australia, December 1981

Admitted as a Solicitor to the High Court of England and Wales, 1991

Appointed Queen's Counsel 17 January 2008

### **APPOINTMENTS**

Fellow of the Chartered Institute of Arbitrators (CIArb), 2017

Fellow of the Australian Centre for International Commercial Arbitration (ACICA), 2017

President, Australian Bar Association, 2016-2017, Vice President, 2015-2016

Chair, International Committee, Australian Bar Association, 2017-

President South Australian Bar Association, 2012-2014, Vice-President, 2012

Council of the South Australian Bar Association Bar, 2010-2016

Council of The Law Society of South Australia, 1994-1997

Chairman, Institute of Arbitrators and Mediators (SA Chapter), 1996, 1997, 1998

## **PROFESSIONAL EXPERIENCE**

**Since July 1997**

**Barrister & Arbitrator, Australian Bar  
(Jeffcott Chambers; previously at Edmund Barton Chambers)**

Practising in commercial construction and infrastructure, general commercial litigation, arbitration and mediation.

Appearing as counsel in arbitrations (both domestic and international), and superior courts in matters involving

- construction and engineering
- contract
- corporations
- professional liability
- trade practices
- insurance

**October 1992 – July 1997**

**Partner, Fisher Jeffries**

Areas of practice:

- construction and engineering law
- commercial litigation
- corporations
- intellectual property disputes
- arbitration and alternative dispute resolution

Responsible for conduct of complex commercial litigation involving contract, negligence, trusts, fiduciary duties, & trade practices.

Involvement in major infrastructure projects including the \$60m Flinders Medical Centre Private Hospital development, the demolition of Osborne “B” Power Station, Berri Bridge, Tantanoola Pulp Mill.

**July 1988 -  
September 1992**

**Senior Crown Counsel, Hong Kong Government**

Responsible for the conduct of complex commercial litigation, international arbitration and mediation arising out of the many contracts let by the Hong Kong Government and ranging up to HK\$180m.

Appeared as Counsel in the High (Supreme) Court and Court of Appeal in Hong Kong, in Arbitrations and attended before the Privy Council.

**1981 – June 1988**

**Partner, Lynch & Meyer  
(Solicitor December 1981-June 1983)**

All aspects of commercial litigation and common law, involving contract, negligence, trade practices, construction and engineering, misrepresentation.

## **SELECT CASES**

- Acting for Multiplex in actions against Singaporean contractor over design, construct and install contract for mechanical services at St John of God Hospital in Midland, Western Australia.
- Acting for the international operator of Port Melville in the Northern Territory in an international arbitration against McMahon Contractors.
- Acting for Lucas Earthmovers in an access road claim to Anglo-Gold mine site in remote Western Australia.
- Acted for the Special Purpose Vehicle for the design, construction and operation of the \$2.8 billion Royal Adelaide Hospital Public Private Partnership Project involving competing claims between the SPV, the State and Joint Venture Builders.
- Acting for Alderbarran Contractors in relation to a road development in the Tiwi Islands.
- Acting for DTMT in claim against RCR concerning the Rio Tinto's Silver Grass iron ore mine.
- Acting for Bardavcol in dispute with insurers over failure of a rail tunnel and policy response.
- Acting for an owner/developer of a supermarket complex in Brisbane, Queensland against claims for consequential loss of income from development.
- Acting for the owners of a residential care facility over defective design.
- Acting for Viterra in dispute with Cortex over defective design and construction of a grain conveyer.
- Acted for the Perth Airport Authority defending construction claim over upgrade of international airport terminal.
- Acted for the Northern Territory Government in litigation dispute concerning offshore supply facility to Darwin Ports.
- Acted for a quarrying sub-contractor in dispute over supply of quarry products for the construction of a marine outfall facility on the Wheatstone LNG plant at Port Hedland.
- Acted for ElectraNet in relation to potential claim by AGL following failure of electrical switchgear associated with a major power generating plant in South Australia.
- Acted for General Electric Corporation in relation to the termination of a contract between the joint venturer and principal on a multi-billion petro-chemical facility in Darwin.
- Acted for Downer EDI in train derailment action brought by Flinders Power.
- Acted for Kaefer Novacoat in arbitration with PIC concerning tank fabrication and installation at an iron ore site in remote Western Australia.

- Acted for Darwin Waterfront Corporation in significant public infrastructure claim concerning the upgrade of stormwater treatment in Darwin CBD.
- Acted for Leighton Contractors in Federal Court proceedings by sub-contractor on construction of water treatment facility as part of a Queensland Coal Seam Gas project.
- Acted for Wirra Wirra and its insurer in Supreme Court of South Australia proceedings for compensation following the catastrophic collapse of fermenters at a winery.
- Acted for Viterra in arbitration dispute with Cargill over the failure of a grain loader at Port Adelaide.
- Acted for sub-contractor in Roy Hill iron ore mining project in dispute in relation to the design and installation of electrical services at a construction camp.
- Acting for Ausbulk (Viterra) in arbitration dispute with Ewing Contractors (NZ) over design and construction of grain silos at Port Adelaide.
- Acted for Bardavcol in dispute concerning the refurbishment of defence facilities at RAAF Edinburgh.
- Acted for a national franchise in class action claim brought by a Pets Paradise franchisee alleging misleading and deceptive conduct in Federal Court proceedings.
- Acted for QBE, insurer of financial advisors, in Federal Court proceedings in leading case on proportional liability.
- Acted for Seskui Riblock Australia in dispute over the licensing of intellectual property for pipe extrusion involving rectification of contracts.
- Acted for the South Australian Government in arbitration dispute with Santos concerning the rent payable under a long-term contract for a jetty and loading facility from which different petroleum products were exported from a deep-water port in South Australia (before former Supreme Court and Federal Court Justice Mr J von Doussa QC).
- Acted for Genesee Wyoming in dispute over loss sustained as a result of a derailment of a coal shipment from Lee Creek to Port Augusta.
- Acted for contractor in dispute concerning design, construction and supply of a crushing facility for an iron ore plant in Pine Creek in the Northern Territory.
- Acted for United Infrastructure in dispute over the refurbishment of a blast furnace at a BHP One Steel at near Whyalla, South Australia.
- Acted for Thiess Limited in dispute over the development of a processing facility including solvent extraction at an iron ore mine near Whyalla, South Australia.
- Acted for South Australian Government in dispute over the failure of a coffer dam during marine works which led to flooding.

- Acted for the State of South Australia in a complex “Stolen Generation” action brought by Bruce Trevorrow, spanning 50 years and multiple causes of action.
- Acted for ABB in lengthy arbitration against NSW Water concerning the refurbishment of the Hydro Electric facility at Burrunjuck Dam in New South Wales.
- Acted for Rio Tinto in dispute over development of Ranger Uranium Mine in Northern Territory.
- Acted for South Australian Government in claim arising out of development of anti-leukaemia drug involving complex questions of structural and metabolic biochemistry.
- Acted for the South Australian Government in claim involving the suitability of a harbour for ferry operations involving complex questions of coastal engineering.
- Acted for Western Mining Corporation in dispute concerning the off-gas train for a copper smelter at Olympic Dam, South Australia.
- Acted for international engineering company on a delay and disruption claim and variations to fabrication of large iron ore car dumping facility at Port Hedland, Western Australia
- Acted for a State of South Australia research facility in arbitration dispute concerning marine outfalls from a research laboratory.
- Acted for international investor in arbitration dispute over the redevelopment of the Torrens Island power station in South Australia and loss alleged to have arisen out of a co-generation plant with Penrice Australia.

*For Hong Kong Government*

- Government re-entry on a HK\$30m contract involving applications before the High Court of Hong Kong and the Court of Appeal.
- Arbitration against New Zealand contractor over design responsibility and interpretation of contract conditions on a claim arising out of the construction of a submarine pipeline across the Ma Wan Channel, Hong Kong.
- HK\$36m arbitration claim by contractor over re-rating because of an increase in quantities on a large earthworks contract before Sir William Stabb QC.
- HK\$30m liquidated damages claim arising out of a major tunnelling and road project, comprising 7 interconnected contracts totalling HK\$699m. Application by the contractor for a declaration that the liquidated damages clause was void. Appeared at all stages including before the Privy Council.
- HK\$58m arbitration by a contractor for new rates arising out of tunnelling project.
- HK\$120m arbitration arising out of the construction of a large public housing project including re-rating, valuation of variation orders, delay and disruption claim. Appeared as junior counsel to London Leader before Mr DN Keating QC.
- HK\$180m rating claim arising out of the assessment of the rateable value of oil terminals.

## PROFESSIONAL PAPERS/ARTICLES

- State Editor (South Australia), *Building and Construction Law Journal*, published by Thomson Reuters Australia
- Contributing author, *A Guide to Arbitration Practice in Australia*, 2<sup>nd</sup> edition, joint publication of the Law School, University of Adelaide & Institute of Arbitrators & Mediators Australia, 2006
- *Dispute Review/Resolution Boards – do they work?* presentation to the Society of Construction Law, Australia, connected by video link throughout Australia and including Hong Kong and New Zealand, 2016
- *Dispute Resolution Boards*, presentation to LEADR IAMA Kongres, 2015
- *Commercial Arbitration and Industrial Referral Agreements Act 1996*, Address to the Law Society of South Australia Commercial Construction Law Conference, 2009
- Trainer, Advanced Advocacy and Essential Trial Advocacy, Australian Bar Association Advocacy Training Council
- Lecturer to the Institute of Arbitrators and Mediators Australia/University of Adelaide course in alternative dispute resolution
- Lecturer, *Professional conduct, ethics and security for arbitrator's fees* - Institute of Arbitrators Australia, Advanced Arbitration course, Adelaide
- Numerous presentations to various professionals in relation to Construction Law issues and Dispute Resolution methods
- Numerous presentations to the Hong Kong Branch of the Chartered Institute of Arbitrators and local profession on topics including expert witnesses, Fast Track, Guaranteed Maximum Price and Incentive Driven Contract, claims for variation of contract