

Anthony Peter (Tony) Horan

LLB, BA (Hons)

Barrister and mediator

Isaacs Chambers, Melbourne

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Employment History

Barrister, Victorian Bar (read with Jeff Gleeson QC)	2007 to date
Senior Fellow, Law School, University of Melbourne	2008 to date
Nationally Accredited Mediator	2010 to date
Presenting courses on contract, construction and insurance law in Australia and New Zealand for engineering and consultant members of Consult Australia (formerly ACEA) as well as councils and government authorities	2008 to date
Member, Legal Practice List, VCAT (sessional)	2005 - 2018
Partner, DLA Phillips Fox (now DLA Piper), solicitors (Melbourne office)	1997 - 2007
Member, Victorian Legal Profession Tribunal (sessional)	1997 - 2005
Senior Associate, Herbert Geer & Rundle, solicitors, Melbourne (now Thomson Geer)	1993 - 1997
Solicitor/Senior Assoc., Dunhill Madden Butler, solicitors, Melbourne (now Norton Rose Fulbright)	1990 - 1993

Professional expertise and experience

Areas of practice:

- building, construction, infrastructure and mining
- insurance
- commercial contracts and torts
- professional negligence
- liability of councils and other public authorities
- environmental law, contamination, nuisance
- professional misconduct
- mediation.

Tony is currently recognised in Doyle's Guide in the following categories:

- Leading Mediator – Victoria 2018
- Leading Construction & Infrastructure Junior Barrister – Australia 2018
- Leading Construction & Infrastructure Junior Barrister – Victoria 2018
- Leading Insurance Barrister – Victoria 2017.

In 2017, Tony was awarded the President's Award by Consult Australia, the peak national body representing engineers and related professions in the built and natural environment. The annual award was given for his contribution to the engineering profession, particularly legal advice on law reform and policy issues, and professional development and training.

Tony has represented, advised and resolved disputes for local, state and federal government, statutory authorities, property owners, contractors, construction professionals, as well as professional indemnity, construction risk and liability insurers. He has negotiated and drafted construction and consultancy contracts for contractors, proprietors and consultants, both in Australia and overseas, and has advised and assisted insurers and government in the drafting of insurance policies.

Tony has advised government, statutory bodies and others on law reform, particularly in relation to proportionate liability, insurance as it affects the construction industry, local government liability, nuisance, regulating and insuring building surveyors, and trade practices/consumer protection (incl. Federal Government proposed reform in 2010 of s 61 of the Australian Consumer Law as it affects qualified architects and engineers).

In 2007, Tony produced 'Proportionate Liability: Towards National Consistency' report for a working group of the former Standing Committee of Attorneys-General to review the national legislative framework on proportionate liability. The report has been cited as authority before the High Court of Australia (*P-Value Pty Ltd v Wellara Holdings Pty Ltd & Ors* [2017] HCATrans 78), and is currently cited in Cheshire & Fifoot, Law of Contract (11th Aust ed.), Thomson, Warnick and Martin, Commercial Contract Clauses (2nd ed.), and Bailey, Construction Law in Australia (4th ed.). Tony represented the

Victorian Bar on the Law Council of Australia working group on proportionate liability law reform.

Tony is a nationally accredited mediator, and a member of the ADR committee at the Victorian Bar.

Tony has been a Senior Fellow of the University of Melbourne Law School since 2008, and is a guest lecturer at the Monash University Law School.

Tony was a partner at DLA Piper (Phillips Fox) for 10 years. For 21 years, he was a Member of the Victorian Legal Profession Tribunal and its successor, the VCAT Legal Practice List.

Recent experience includes:

- acting for design engineers in defending claims involving allegedly defective design of a public hospital redevelopment: *Lendlease Building Contractors Pty Ltd v WE Bassett and Partners Pty Ltd & ors*, Vic. Supreme Court;
- advising contractors in relation to claims on contractors all risks insurance policies arising from allegedly defective design and construction of energy and resources plant;
- acting for a group of property owners in relation to claims against municipalities and statutory authorities in respect of soil contamination;
- acting as a mediator in a broad range of insurance, construction, professional negligence and general commercial disputes both before and during litigation;
- representing a landowner in a claim to recover the cost of remediating contaminated land (with AJ Finanzio SC);
- representing a landowner in relation to liability risks associated with a recycling facility (with AJ Finanzio SC);
- representing land owners, building surveyors and engineers in various VCAT and court proceedings relating to construction and design defects;
- representing building surveyors and fire services engineers in civil claims involving the use of aluminium composite panels (ACP) as external cladding in buildings, VCAT;
- represented building surveyors (with OP Holdenson QC) in disciplinary inquiries relating to the use of ACP;
- represented a building surveyor in an Inquiry before the Building Practitioners Board relating to a major land subsidence (with OP Holdenson QC);
- represented the City of Yarra in common law and statutory claims involving contaminated land: *MFESB v City of Yarra* [2015] VSC 773, *City of Yarra v MFESB* [2017] VSCA 194 (with OP Holdenson QC (appeal), and with FJ Tiernan QC and previously with JR Dixon SC, now the Hon. Justice John Dixon);

- represented civil engineers in a claim involving a major flooding of the Yallourn coal mine: *EnergyAustralia Yallourn & ors v SMEC Australia & ors*, Vic. Supreme Court (with JJ Gleeson QC);
- represented the EPA (Vic) in common law claims and judicial review sought by licensed landfill operators: *Hi-Quality Quarry Products & Anor v EPA (Vic) & Anor*, Vic. Supreme Court (previously with KL Walker QC, now Victorian Solicitor-General, and with S Molesworth AO QC, formerly Acting Justice of the NSW Environment Court);
- acted for a national contractor in a claim under the *Water Act* 1989 relating to the flooding of 52 floors of a high rise apartment building, VCAT;
- advised insurers on the operation of the Victorian plumbers warranty insurance scheme;
- acted for design engineers in a multi-party Supreme Court claim by Melbourne Water arising from the alleged failure of sewerage treatment tanks and associated infrastructure (with DS Levin QC);
- acted for a train operator in a dispute involving a metropolitan railway level crossing collision: *Metro Trains Melbourne Pty Ltd v Bollen*, Vic. Supreme Court (with GG McArthur QC);
- acted for a train operator in a dispute involving a regional railway level crossing collision: *V/Line v Jenkins & Ors*, Vic. Supreme Court (with JJ Gleeson QC);
- acted for geotechnical engineers in a dispute involving the alleged failure of a municipal recreation facility, including claims against a Lloyd's of London syndicate, Vic. Supreme Court;
- acted for project managers in a multi-party dispute arising from alleged negligent specification of specialist technology research laboratories at a university, including advice on related insurance issues, Vic. Supreme Court;
- acted for Latrobe City Council in a dispute involving the closure of the Princes Highway adjacent to the Hazelwood Power Station: *Hazelwood Power v Dept of Primary Industries* [2011] VCAT 719;
- acted for EPA (Vic.) in a class action involving a landfill owned by the City of Casey at Cranbourne: including *Wheelahan v City of Casey & Ors* (No. 10) [2011] VSC 546 (with CJ Canavan QC);
- acted for mechanical services engineers in a multi-party construction and insurance dispute arising from the alleged failure of a waste treatment facility in Western Australia: *Biovision 2020 Pty Ltd & SITA Australia Pty Ltd v CGU Insurance Ltd & Ors*, Vic. Supreme Court (with JH Gobbo QC);
- acted for a media company in construction and insurance claims arising from the catastrophic collapse of a structural steel building, Vic Supreme and County Courts (with P Murdoch QC);

- acted for geotechnical engineers in a multi-party dispute involving the failure of sewerage treatment tanks: *Aquatec-Maxcon v Barwon Regional Water Authority*, Vic Court of Appeal (with JR Dixon SC, now the Hon. Justice John Dixon));
- acted for building surveyors in a professional negligence claim involving proportionate liability before the Victorian Supreme Court and Court of Appeal: *Godfrey Spowers v Lincolne Scott Australia & Ors* (2008) 21 VR 84; [2008] VSCA 208 (with JR Dixon SC, now the Hon. Justice John Dixon));
- acted for environmental consultants/engineers in a negligence claim arising from water sampling in Port Phillip Bay, Vic Supreme Court (with H Foxcroft QC);
- acted for civil and structural engineers involving a \$100M claim by national joint venture contractors regarding the design of a major tollway;
- acted for a water authority in a claim involving the flooding of a Melbourne CBD apartment block, VCAT;
- acted for a national contractor in a dispute arising from the failure of a gantry crane, including related insurance issues;
- heard misconduct inquiries and appeals as a Sessional Member of the Victorian Legal Profession Tribunal (Full Tribunal) (1997-2005) and the VCAT Legal Practice List (2005-2018), sitting with Justices Southwell, Fullagar and Ross, and with Judges Spence, Cullity and Dee, including: *Law Institute of Victoria v Brott* [2008] VCAT 1998, *Law Institute of Victoria v Singer* [2005] VLPT 10, *Law Institute of Victoria v Parsons* [2005] VLPT 7, *Law Institute of Victoria v Forstner* [2005] LPT, *Law Institute of Victoria v Forster* [2005] LPT, *Law Institute of Victoria v Dean* [2004] LPT, *Abdel-Sayed v Wilson Potter Nicholson* [2002] LPT, *Budzynski v Southall Partners* [2001] LPT, *Roubos v Shatin Bernstein Kolsky* [2000] LPT, *Vic Lawyers RPA Ltd v Kiatos & Karamountsos* [1999] LPT, *Vic Lawyers RPA Ltd v Bakhaazi* [1998] LPT, *Vic Lawyers RPA Ltd v Fitzgerald* [1998] LPT;
- defended architects before the Architects Registration Board of Victoria;
- acting for and advising insurers, including contribution and subrogated claims;
- advice work primarily in the areas of insurance, proportionate liability, construction law, local government and statutory authorities, environmental law, and common law contract and tort.

Professional memberships

Member, Victorian Bar

Member, Victorian Bar, ADR Committee

Member, Victorian Bar News Committee

Member, Society of Construction Law - Australia

Member, Australian Insurance Law Association

Member, Australian Professional Indemnity Group

Member, VCAT Domestic Building List Users' Group

Member, Building Disputes Practitioners Society

Qualifications

Bachelor of Arts, with Honours (Monash University, 1982)

Bachelor of Laws (Monash University, 1984)

Barrister & solicitor (Australian lawyer),
admitted Victoria (1987), High Court of Australia (1987), New South Wales (1994), and
the ACT (1994)

Diploma of Education (University of Melbourne, 1987)

Certificate of Tribunal Practice (Legal Profession Tribunal), Sir Zelman Cowan Centre,
Victoria University, 2004

National accreditation as a mediator (NMAS), 2010

Presentations, publications and papers

Lecturing:

Co-Convenor, Master of Laws intensive course, Law School, University of Melbourne:
'Construction: Risk Allocation and Insurance', 2008 to date

Co-Convenor, Master of Laws intensive course, Law School, University of Melbourne:
'Liability Insurance Law', 2015 to date

Guest Lecturer, Law School, University of Melbourne: 'The Role of the Superintendent,
Novation and Assignment', 'Construction Insurance', Proportionate Liability' and 'The
Development of a Standard Form Construction Contract', 1997 to date

Guest lecturer, construction management course, Faculty of Architecture, Building and
Planning, University of Melbourne, on Construction and Insurance Law, 2015 and 2016.

Guest Lecturer, Monash University Law School: 'Construction and Insurance', 2005-17

Recent seminars/presentations

Various in-house seminars for law firms, engineering firms and other organisations, including Clayton Utz construction and litigation teams (proportionate liability) in 2019, and Corrs Chambers Westgarth national construction team in 2017 (construction related insurance).

Speaker at Asia-Pacific Masterclass on Joint Ventures held by global engineering firm, 2019.

Training course on construction related insurance for Defence Force Engineers, Sydney, 2018.

Presentation to the Australia Pacific Leaders Conference on consultant contracts: 'The Great Contracts Debate' with L Chan of the NSW Bar, Sydney, 2017.

Seminar on insurance and risk management to annual risk managers' conference for a national insurance broker, 2016.

Seminars on contracts and risk for FutureNet Young Leaders course run by Consult Australia, 2012, 2014-18

Training courses on the Role of the Superintendent to a municipal council, 2016-17.

Training courses on the Role of the Superintendent to Major Projects Victoria, 2016.

Victorian Bar's representative on the Law Council of Australia Proportionate Liability Working Group, 2011-2015.

Seminars on Ethics, Leo Cussen Institute, 2014-2015.

Seminar on Changes to Victorian Domestic Building Dispute Resolution Process for Australian Professional Indemnity Group, 2014.

Procurement Contract Risk Mitigation seminar on proportionate liability, Akolade, 2014.

Seminar on misleading and deceptive conduct, In-House Counsel National Conference, Aurecon Engineers, 2012.

Contributor to Victorian Bar submission in response to the Victorian Domestic Building Consumer Protection Framework Public Consultation Paper, 2012.

Select further articles/reports/papers

'Proportionate liability', Annual Insurance Law Review for Australian Insurance Law Association and Australian & New Zealand Institute of Insurance and Finance, May 2011.

‘Future trends in Contracts and Liability’, Consult Australia National Conference, Brisbane, March 2011.

A Horan, ‘Engaging Contracts: 10 Tips for Negotiating Consultant Contracts’ WME Magazine (Water Materials Energy), August 2010.

A Horan, ‘Successful Contracting’ National Outlook, Consult Australia, Nov 2010.

C Macaulay SC (now the Hon. Justice Macaulay) and A Horan, ‘Proportionate liability - an update’ (2009) 20(3) Insurance Law Journal 173.

Paper on ‘Proportionate Liability’, Australian Insurance Law Association National Conference, October 2009.

Paper on ‘Engineers, Lawyers, Clients and Contracting’, Australian Consulting Engineers Association National Conference, Sydney, March 2009.

Report to the Standing Committee of Attorneys General on ‘Proportionate Liability: Towards National Consistency’, 2007

http://www.justice.tas.gov.au/_data/assets/pdf_file/0017/113624/Horan_Report.pdf