

# Brian Millar - Curriculum Vitae



Brian specialises in resolving claims and disputes on major projects in the construction, infrastructure, energy and resources sectors. He practices as an independent Barrister and Arbitrator from Francis Burt Chambers in Perth. Prior to joining Francis Burt Chambers, he was a Partner in the Litigation and Projects Departments of Allens Linklaters.

Brian is a Fellow of the Chartered Institute of Arbitrators, a Fellow and panel member of the Australian Centre for International Commercial Arbitration (ACICA) and a member of the List of Arbitrators for the Hong Kong International Arbitration Centre (HKIAC). He is a member of the International Committee of the Australian Bar Association and an executive board member of the Dispute Resolution Board Foundation (Region 3). Brian was the recipient of the Resolution Institute Australian Arbitrator of the Year award at the 2019 Australasian Law Awards.

Brian's experience covers a significant cross-section of major projects, including railways, roads, mines, ports, shopping centres, bridges, jetties, dams, seawalls, pipelines, processing plants (including LNG/oil refining), power plants, commercial, industrial and residential building and other infrastructure projects, utilising a variety of project delivery methods.

He has expertise in a broad spectrum of dispute resolution methods, including arbitration (international and domestic), litigation, expert determination, adjudication, mediation, conciliation, negotiation, the use of dispute resolution/dispute avoidance boards and other proactive project management tools to minimise the impact of claims and disputes on the successful completion of major projects.

Brian has experience acting in international and domestic arbitration proceedings as both counsel, tribunal member and tribunal secretary in Australia and Asia. His international arbitration experience includes two recent arbitrations in which he was chairman of the three-member panel and prepared the award (HKIAC Rules, Singapore law and UNCITRAL Rules, Western Australian law). He has also acted as tribunal secretary on an ICC international arbitration involving a major infrastructure project in the Middle East (ICC Rules, English law) and as counsel in a SIAC arbitration involving parties from Vietnam and Australia (Vietnamese law, SIAC Rules). (Examples of particular matters involving arbitration are marked with an asterix below.)

Brian has spent over 20 years advising principals/owners, government entities, developers, contractors, engineers, architects and insurers on major projects in Australia and South-East Asia. Brian has acted for clients such as Chevron, Rio Tinto, QIC, PetroVietnam, Samsung, Monadelphous, JKC, Transport for NSW and the WA Public Transport Authority.

His experience includes resolving claims and disputes relating to variations, extensions of time, defective works, delay and disruption, procurement, tenders, site access, contract administration / project management, design and engineering issues, construction deficiencies, project completion, termination, liquidated damages, contractual entitlements, quantum meruit and performance bonds/securities, based on contractual, tortious and equitable legal principles and trade practices, security for payment (including applications for judicial review of adjudicator's determinations) and other relevant legislation.

Brian's experience includes:

## **Mining**

- Iron Ore mine and railway – acting for a head contractor in respect of disputes with various subcontractors over the construction of land and port side facilities and railway line from the mine to the port, including Supreme Court proceedings arising out of performance bonds being encashed and applications for judicial review of determinations made by adjudicators under the Construction Contracts Act 2004 (WA) and subsequent appeals.
- Iron Ore purchase contract – acting as presiding arbitrator (chairman) in international arbitration under UNCITRAL Rules seated in Perth between two Asian companies involved in a dispute over the

purchase of a cargo of iron ore fines. \* (Time between appointment of tribunal and date of award - 12 months.)

- Iron Ore Mine Seawall - acting in Supreme Court proceedings for a principal in respect of a dispute with an engineering consultant arising out of the collapse of a seawall that flooded the mine.
- Iron Ore mine - acting as presiding arbitrator (chairman) in arbitration under UNCITRAL Rules seated in Perth between two companies involved in a dispute over the construction of facilities for an iron ore mine. \*
- Nickel and cobalt facility – acting for a principal in respect of disputes with an EPCM contractor and a piping contractor arising out of the project management, design and construction of a processing plant and performance bonds being encashed, including in various Supreme Court and domestic arbitration proceedings. \*
- Tailings dam construction (Indonesian gold mine) – acting for a principal in relation to a dispute with a contractor over the design and construction of a tailings dam.
- Iron Ore Mine Plant – acting for a contractor in Supreme Court proceedings against a subcontractor over the detailed design of plant for an iron ore mine.
- Open cut and underground mining (including iron ore, gold and nickel) – advising principals and contractors regarding claims and disputes on various mining projects, including those involving preparatory site works, road works, drill and blast, load and haul, variations, extensions of time, defective work, performance bonds, drafting deeds of variation and deeds of settlement and release.

#### **Oil & Gas**

- LNG project – acting for an EPC head contractor in relation to disputes with its owner/principal over the engineering, design and construction of an LNG project in the Northern Territory, including ICC Arbitration proceedings (Singapore seat, WA law), related Supreme Court proceedings and Construction Contracts Act applications. \*
- Loading Jetty for LNG Plant - acting for a principal in disputes in excess of a billion dollars with a head contractor over the construction of a loading jetty for an LNG project in the North West of Western Australia.
- LNG Pipeline - acting for a contractor in disputes with a principal arising out of inadequate access being provided and performance bonds being encashed, including related Supreme Court proceedings and Construction Contracts Act applications.
- Acting for a Vietnamese Government entity in respect of claims for over US\$500 million made by a consortium of international contractors over the design and construction of an oil refinery in Vietnam. \*
- Advising a principal in a dispute with a head contractor in relation to a subsea facility installation for an offshore gas project in Vietnam. \*

#### **Infrastructure & Transport**

- Advising the New South Wales Government (Transport for New South Wales) on claims and disputes with a head contractor on a major rail project.
- Advising Western Australian Government authorities in relation to disputes with contractors on various rail and road infrastructure projects, including the NewMetroRail Project.
- Acting for a Western Australian Government principal in Supreme Court proceedings regarding the adequacy of the design and construction of a major bridge.

- Port development – acting for an engineering company in New South Wales Supreme Court proceedings in relation to a dispute with a port operator over a container terminal upgrade and alleged defects in the design and construction of an asphalt pavement.
- Dam construction – acting for a contractor in domestic arbitration and subsequent Supreme Court proceedings arising out of a dispute over the design and construction of a reservoir. \*
- Road projects generally – advising principals in relation to disputes with contractors over defective roadwork and related claims.
- Rail projects generally – advising principals in relation to disputes with contractors over claims for additional costs and time arising due to alleged contractual entitlements and/or breaches of contract and in relation to defective work, failure to complete on time and related claims.

#### **Power & Utilities**

- Power plant construction – acting for the receivers and managers of a head contractor in respect of disputes over the design and construction of a power station, including related State Administrative Tribunal proceedings regarding a determination under the Construction Contracts Act (WA).
- Power plant operation – acting for a contractor in Supreme Court proceedings arising out of a dispute over the operation and maintenance of a coal fired power station.
- Electricity supply – acting for an owner in relation to a dispute with a design engineer and electricity supplier over the upgrade of electricity supply to a quarry operation.

#### **Real Estate / Commercial Building / Other commercial disputes**

- Shopping Centre development – acting for a major developer in New South Wales Supreme Court proceedings in relation to disputes with a head contractor over the termination of a shopping centre development project involving claims in excess of \$200 million.
- Advising the New South Wales Government in relation to claims and disputes arising out of the Building the Education Revolution program, including acting in expedited binding expert determination proceedings involving claims in excess of \$100 million.
- Distributorship contract – acting as presiding arbitrator (chairman) in international arbitration under HKIAC Rules seated in Hong Kong between two Asian companies involved in a dispute over the purchase of industrial goods. \* (Time between appointment as chairman and date of award - 6 months.)
- Acting for an Australian developer in international arbitral proceedings administered by the Singapore International Arbitration Centre arising out of a dispute with a foreign state-owned entity regarding a joint venture agreement to develop real estate (Vietnamese governing law). \*
- Acting for an engineering company in disputes with a major contractor over the design and construction of a quayside development.
- Acting for a contractor in a Supreme Court action and related proceedings arising out of a dispute over the project management, design and construction of a nightclub venue.
- Acting for insurers of a contractor in Supreme Court proceedings in relation to alleged defects in an asphalt pavement at an industrial facility.
- Acting for insurers of an engineering design consultant in Supreme Court proceedings in relation to the design of part of a high rise commercial building.

### **Adjudication applications**

- Acting for various clients, including principals, developers, contractors, engineers and architects on adjudication applications and related disputes under state Security of Payment legislation, including applications in the State Administrative Tribunal of Western Australia and the Supreme Courts of Western Australia and the Northern Territory in respect of judicial review of adjudicator's determinations and for enforcement of determinations.

### **Construction contracts generally**

- Advising principals and contractors regarding various construction contracts and disputes, including disputes arising out of structural, civil, mechanical and geotechnical engineering and project management related issues.

### **Occupational Health & Safety**

- Mining and civil construction work safety – advising principals and contractors in relation to Workplace Safety incidents, coronial inquiries, prosecutions and acting for them in related Supreme Court proceedings and appeals.

### **Presentations and Publications**

Presentations include:

- For the Ministry of Justice Vietnam regarding Construction Law (to Vietnamese legal community in Hanoi and HoChiMinh City)
- To Allens' clients on topics such as International Arbitration, Construction law, Contract law, Expert Determination, Proportionate Liability, Dispute Resolution Boards, Dispute Avoidance and Resolution and Consequential Loss
- To members of IAMA / RI on topics such as the Construction Contracts Act and recent case law
- Various CLE seminars to legal and industry representatives on topics such as International Arbitration, Construction law, Contract law, Expert Determination, Proportionate Liability, Dispute Minimisation and the use of Dispute Resolution Boards (DRB's)
- Geotechnical Engineering Symposium - presentation for Golders and its clients on dispute resolution

Publications include:

- Various articles in industry publications and Allens' client updates on topics such as construction law, international arbitration, security of payment legislation and case law developments

### **Education**

- Christ Church Grammar School WA (1985 - 1989) – Western Australian Tertiary Entrance Examination Certificate 1989 (Awarded General Exhibition)
- LLB; University of Western Australia 1996
- Diploma in International Commercial Arbitration; Chartered Institute of Arbitrators (2016) (Practice and Procedure (2008); Award Writing (2015))
- Certificate in Adjudication; Resolution Institute (2015)

**Admission (barrister and solicitor)**

- 20 December 1996, Western Australia (also admitted to practise in Federal and High Courts)

**Memberships**

- Brian is a member of various industry bodies, including the Chartered Institute of Arbitrators (Australia), ACICA, ICC (Australia), PCERA, Dispute Resolution Board Foundation and Resolution Institute (formerly Institute of Arbitrators and Mediators Australia / LEADR).

**Contact Details**

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