

## Hamish McAvaney



Hamish McAvaney practises in all areas of commercial and public law.

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### QUALIFICATIONS

Bachelor of Arts  
(French Studies Major) (Monash)  
Bachelor of Laws (Hons) (Monash)

### CORRESPONDENCE

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### CHAMBERS

Owen Dixon Chambers West  
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### COMMERCIAL LAW

Bankruptcy | Building & Construction | Class Actions | Competition | Consumer Law | Contractual Disputes | Corporate Insolvency | Corporations & Securities | Energy & Resources | Equity & Trusts | Insurance | Real Property | Residential & Retail Tenancies | Sports Law | Climate Change

### EMPLOYMENT & INDUSTRIAL

Confidential Information | Discrimination | Employment Contracts

### TORT LAW

Appellate | Class Actions | Commissions & Inquiries | Common Law | Defamation | Inquests | Major Torts | Negligence | Personal Injury | Product Liability | Professional Negligence

### PUBLIC LAW

Administrative Law | Civil & Human Rights | Commissions & Inquiries | Constitutional Law | Discrimination | Environment | Freedom of Information | Judicial Review | Planning & Local Government | Privacy | White Collar Crime

This includes advising on matters concerning contract, tort, the Australian Consumer Law, and the Corporations Act. Hamish has acted for numerous parties in oppression proceedings as well as for parties in insolvency, receivership and liquidation related disputes. Hamish has a particular interest in property, building and construction matters and environment matters.

Hamish offers instructors and clients considered and practical guidance at every stage of litigation. Prior to the bar, Hamish worked for more than seven years as a solicitor, most recently as a senior associate at Allens in Melbourne, and prior to that at Linklaters in London, where he worked in the environment and climate change team. Having benefited from working across all aspects of the profession, he knows the pressures facing solicitors, in-house counsel and clients. He prides himself on his commerciality and seeks to ensure he is easy to work with.

Hamish holds a Bachelor of Law (honours) and a Bachelor of Arts from Monash University, where he studied on a merit scholarship recognising academic excellence.

Hamish read with Tom Warner and his senior mentor is the Honourable Justice Claire Harris.

*Liability limited by a scheme approved under Professional Standards Legislation.*

## Recent Cases

### COMMERCIAL LAW

*JBAM & Anor v LBA Capital Pty Ltd & Ors* (VSC): acting for international lenders alleging almost \$400m was advanced to Australian entities following breaches of contract and the ACL, and subsequently dissipated to third parties. The case has involved freezing orders, resisting an application for a stay due to parallel criminal prosecutions and complex questions of insolvency/personal bankruptcy (led by Claire Harris SC (as Her Honour then was) and with Tom Warner, instructed by Allens and JWS)

*Laurus Group Pty Ltd v Mitsui & Co (Australia) Ltd* (VSCA and VSC): acting for Mitsui in contractual dispute regarding non-payment for the supply of in excess of \$7m in steel. Successful at trial. An administrator was subsequently appointed to the Plaintiff and the Honourable Justice M Osborne gave a novel decision about the intersection of the PPSA and the security for costs regime (led by Chris Brown SC, instructed by Corrs)

*FortKn Opco Pty Ltd v FK (Southern) Pty Ltd & Anor* (VSC): acting for a vendor alleged to have engaged in misleading and deceptive conduct in relation to disclosures regarding compliance with the *Building Act* in connection with the \$400m sale of a self-storage business to a private equity firm (led by Michael Roberts KC and instructed by Cornwalls).

*Jasper Nominees Limited (Seychelles Company Number 224224) v Kairouz and Murdaca* (VSCA and VSC): acting for guarantor of loan note subscription agreement in commercial trial involving complex questions regarding pre-contractual misrepresentation, execution formalities and penalty interest. Matter currently reserved on appeal (led by J Ribbons, instructed by Melbourne Legal Chambers)

*MH&NG Investment v Eatertainment Group* (CCV): acting for lender under a bespoke loan facility agreement against defaulting guarantors. Successful after a multi-day trial before Judge MacNamara concerning complex questions regarding fraud, misrepresentations and penalty interest, some of which were not pressed after an unsuccessful adjournment application was made by the guarantors (unled, instructed by Mills Oakley).

*Wheelox Investments Pty Ltd -v- G & A Property Group Pty Ltd* (CCV): acting for vendor seeking to recover a debt

due and payable under a sale of business agreement, as well as damages payable by the purchaser and its director for misleading and deceptive conduct (unled, instructed by Melbourne Legal Chambers).

*Re Property Project Marketing Pty Ltd* (SCV): oppression proceeding concerning highly profitable property development and real estate business in Melbourne. Successfully defended a summary judgment application (see *Re Property Project Marketing Pty Ltd* [2024] VSC 45) before the matter settled (unled, instructed by MST Lawyers, subsequently Sladen Legal).

#### BUILDING AND CONSTRUCTION

*Undisclosed Arbitration*: acting for a contractor on a significant but confidential arbitration seated in Perth concerning allegations of defective construction materials supply on a renewable energy project (led by Michael Roberts KC and with Rebecca O'Brien, instructed by Cornwalls).

*Biodiversity v Vaughan Constructions* (HCA, VSCA, VSC and VCAT): acting for a builder in a large and complex construction dispute concerning allegations of breach of contractual warranties under a D&C Contract. Successfully defended an interlocutory appeal to the VSCA and a High Court Special Leave Application on a complex statutory interpretation question under the Water Act. Settled five weeks into an estimated eight-week trial before the Honourable Justice Delany (led by Tim Margetts KC and with William Thomas and Justin Lipinski, instructed by Piper Alderman).

*Hanson Construction Materials Pty Ltd v Decmil Australia Pty Ltd* [2024] VSC 361: acting for a subcontractor on a wind farm in Western Victoria in relation to a judicial review of an adjudication under the Building and Construction Industry Security of Payment Act 2002 (Vic). The judicial review concerned Victoria's "excluded amounts" regime and the appropriate remedy in the event an adjudicator takes into account an "excluded amount", being remitter (led by Michael Roberts KC and with Alyse Mobrcki, instructed by Cornwalls).

*Owners Corporation Plan No. 445795 v CLARK* (VCAT): acting for lot-owner in claim by an Owners Corporation under the Water Act and the OC Act for payment of a special levy associated with an insurance excess payable by the Owners Corporation to remediate a significant flooding event in multi-story apartment complex (unled, direct access brief).

#### PROPERTY LAW

*Whitty v Talia* (VSCA, VSC): acting for wife in recent Victorian Court of Appeal decision about severance of a joint tenancy (led by S Pitt SC at trial and D Collins KC on appeal, instructed by Mills Oakley)

*Melbourne Yifang Group Pty Ltd v Guangao A Group Pty Ltd & Ors* (VSC) : acting for nominee purchaser in dispute with purchaser under contract of sale of land in large growth corridor in Melbourne. Case concerned interpretation of a contract of sale of land where date of settlement not identified with precision (led by G Costello KC, but did not appear at trial, instructed by Verge Legal)

*Adrian & Gabrielle Pick v Anthony McDonald & Anor* (CCV): acting for tenants in relation to allegations of breaches by the landlords of duty to keep residential property in good state of repair after mould outbreak. Judgment currently reserved under multi-day trial before Judge Ryan (unled, instructed by Lamplugh McIntosh).

*Marina Three Holdings Pty Ltd ATF Marina Three Family Trust v Highprop Pty Ltd* (CCV): acting for purchaser of a

multi-million dollar commercial property in Geelong in dispute with vendor concerning alleged over-payment of purchase price due to misleading disclosures regarding projected rental yield (led by Ian Horak KC and instructed by Antunes Lawyers)

*Sheriff v Ribbands & Anor* [2024] VCC 143: successfully acted in resisting an application to remove a caveat lodged to secure repayment of a debt owing after sale of a hospitality venture (unled, instructed by T F Grundy).

#### PRO BONO

Acting for numerous pro bono clients in homelessness, housing law and residential tenancies matters, as well as advising on property and environmental law matters on a pro bono basis.