

**DR ANDREW HANAK KC**  
Barrister, arbitrator and mediator

**LIST A**  
BARRISTERS



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**Profile**

Dr Andrew Hanak KC is a member of the Victorian Bar practising in commercial law. Dr Hanak has substantial experience in complex commercial litigation and arbitration matters across various sectors, and in providing strategic advice.

He accepts briefs to advise or appear in matters at both trial and appellate level in Superior Courts and Statutory Tribunals, and in domestic and international commercial arbitration disputes. Dr Hanak practises in all Australian jurisdictions.

**Education**

PhD (Monash) BA, LLB (Hons) (Monash).

Diploma in International Commercial Arbitration (UNSW)

**Professional**

Signed Victorian Bar Roll as Counsel (2000).

Appointed Queen's Counsel for the State of Victoria (2018).

Barrister and Solicitor of the Supreme Court of Victoria, Supreme Court of Queensland and the High Court of Australia. Reciprocal rights to appear in all other Australian jurisdictions.

President, Director and Fellow, Chartered Institute of Arbitrators Australia. Director (2021 - 2023); President (2022 - 2023).

Fellow, Australian Centre for International Commercial Arbitration. Director and Member of the Advisory Board (2020 - 2023).

Fellow, Resolution Institute.

Member, National Sports Tribunal Legal Assistance Panel (2020 - 2023).

Recognised in *Best Lawyers Australia* and *Doyle's Guide*.

Accredited advocacy coach by Australian Advocacy Institute (2013).

Accredited Mediator under the Australian National Mediator Accreditation System (2008).

Director, List A Barristers Pty Ltd (2009 - 2018).

General Editor *Australian Property Law Journal* (2003 - 2022) with Professor the Hon Dr Clyde Croft AM SC and Professor Paul Babie.

Member Australian Insurance Lawyers Association.

Member, Victorian Bar Ethics Committee (2022 - 2024).

Deputy Chair of Victorian Bar Arbitration Committee (2021 - 2023).

Member Victorian Bar Council Readers' Course Committee (2015 - 2017).

Member Victorian Bar Council Human Rights Committee (2015 - 2016).

Member Victorian Bar Council Pro Bono Committee (2018).

Member of Victorian Bar Pro Bono Scheme.

Consultant *CCH Victorian Conveyancing Law & Practice* (2003 - 2013).

Member, Law Council of Australia (2001 - 2011).

Member, Law Council of Australia Corporations Committee (2007 - 2008).

Assistant Secretary, Commercial Bar Association, Insolvency Law Section (2002 - 2007).

Member, Law Council of Australia, Insolvency and Reconstruction Committee (2001 - 2002).

### **Selected cases**

Retained as Counsel in cases in Superior Courts, Arbitral and Statutory Tribunals including the following.

#### **A. General commercial**

- *Baxter v Berrybank Developments Pty Ltd* [2024] SCV. Retained to represent wind farm operator relating to noise emission from the wind farm. Leading S McArdle and N Baum.
- *Australian Securities and Investments Commission v Mercer Superannuation (Australia) Ltd* [2024] FCA 850. Acted for superannuation trustee in the first financial services greenwashing case involving misleading and deceptive conduct by a superannuation fund in *marketing* material. Leading Mr N Walter.
- *Australian Securities and Investments Commission v Mercer Financial Advice (Australia) Pty Ltd* [2023] FCA 1453. Represented superannuation fund in civil penalty proceeding alleging various failures to comply with financial services laws. Leading Mr N Walter.
- *Biodiversity Sub TC Pty Ltd v Vaughan Constructions Pty Ltd & Ors* [2023] VSC. Represented defendant in multi-party dispute related to warehouse construction, addressing foundation design adequacy and claims under the Water Act 1989 (Vic) for unreasonable water flow damage. Leading Mr R Rozenberg.
- *John Barr Investments Pty Ltd v Mordialloc Sporting Club Inc and Stuart v Mordialloc Sporting Club Inc* – Represented sporting club in claim involving breaches of duties by former office holders in managing gaming venue, focusing on document discovery failures and abuse of process arising out of earlier proceeding commenced in Victorian Civil and Administrative Tribunal [2022] VSC 100, [2021] VSC 244. Leading Dr E Kelly.
- *Australian Swimming League v Swimming Australia* [2022] VSC – claim for breach of memorandum of understanding in relation to operation of professional swimming league – construction of MOU – enforceability – assessment of lost commercial opportunity. Leading W J Newland.

- *Blockchain Global Ltd v Liu* [2021] VSCA – Appeal against decision of County Court of Victoria in [\[2021\] VCC 798](#). Issues in dispute involved nature of cryptocurrency contract, whether contract incorporated terms in letter of commitment and whether agent required to account to principal. Leading Mr G J Redenbach.
- *KDR Victoria Pty Ltd v JC Decaux Australia Pty Ltd* [\[2020\] VSC 390](#); [2021] VSCA – claim for declaration of revenue share provisions of contract for advertising on Yarra Trams network – Appeal to VSCA settled. Leading Ms K Brazenor.
- *Gee Dee Nominees Pty Ltd v Ecosse Property Holdings Pty Ltd* [\(2017\) 261 CLR 544](#) Appeal against decision of Victorian Court of Appeal on construction of the terms of a lease. Appeared in High Court of Australia as junior to Mr Noel Hutley QC and unled in the special leave application ([2016] HCATrans 231) and in Victorian Court of Appeal ([\[2016\] VSCA 23](#)).
- *Archibald v Powlett* [\[2017\] VSCA 259](#). Appeal against award of damages for loss of opportunity, distress, anxiety and inconvenience. Issue estoppel arising from separate trials against defendants.
- *Fuji Xerox Australia Pty Ltd v Xtream Pty Ltd* [\[2017\] VSC 333](#). Enforcement and specific performance of deed of settlement. Whether deed created penalty.
- *Chin Dai Industrial Co Ltd v Australian Pipe & Tube Pty Ltd* [2016] VSC. Commercial dispute between manufacturer and purchaser of steel products involving allegations of fraud, misleading conduct, breach of terms of trade and damages for loss of opportunity. Leading Ms Katherine Brazenor.
- *Fuji Xerox Australia Pty Ltd v Xtream Pty Ltd* [2016] VSC. Claim by supplier arising out of nine separate equipment rental contracts involving allegations of breach of contract and misleading and deceptive conduct.
- *Re Sportsbet Pty Ltd* [2014]. Dispute involving sale of shares. Whether misleading statements made to minority shareholder. Junior to Mr Philip Crutchfield QC.
- *Pacific Brands Ltd v PD Enterprise Pty Ltd* [2014] VSC. Dispute between manufacturers and distributor relating to long term supply agreement.
- *Unger v Vision Group Ltd* [2014] VSC. Claim involving alleged misleading conduct and breaches of ASX Listing Rules relating to continuous disclosure.
- *Dale v Clayton Utz* [\[2013\] VSC 577](#). Partnership dispute. Application to restrain senior counsel from acting. Junior to Mr Alan Archibald QC and Mr Ross Macaw QC.
- *APN Funds Management Limited v Chapel Developments Pty Ltd & Ors* [2011] VSC. Joint venture dispute for development of luxury apartment complex. Junior to Mr Peter Jopling AM QC.

## **B. Insurance**

- *Princess Theatre Pty Ltd & Ors v Ansva Insurance Limited* [\[2024\] VSC 363](#). Retained for insurer resisting a claim to recover COVID-19 pandemic losses. Principal issues in dispute involved whether insured was entitled to indemnity under industrial special risks policy for losses sustained due to closure of businesses, whether infectious disease extension in the form of a hybrid clause was engaged and whether sub-limits applied. Leading X Teo and J B Waters.
- *Trustees of the Roman Catholic Church for Diocese of Maitland-Newcastle v Insurance Australia Ltd* [\[2023\] NSWSC 1284](#). Acted for the insurer in defending 131 claims related to historical sexual assaults within Church institutions from the 1950s to 1980s. Issues included

proof of lost policies, policy interpretation, non-disclosure, aggregation of claims, and reasonableness of settlements. Leading Ms F Spencer SC and Ms P Kelly.

- *Re Victorian Managed Insurance Authority* – Advised on insurance questions in a representative proceeding involving Junior Doctors. Leading Ms A Crittenden.
- *GW Performance Pty Ltd v Guild Insurance Ltd* [2021] VSC. Claim by insured for business interruption losses resulting from COVID-19 lockdown. Principal issues in dispute included whether policy responds and whether losses caused by insured event. Leading Mr J B Masters.
- *Metricon Homes Pty Ltd v Great Lakes Insurance SE* [2017] VSC 749. Acted for insurer in claim against builders' liability insurance. Issues in dispute included the scope of insuring clause, application of professional services exclusion and application of products liability insurance exclusion. Junior to Mr Chris Caleo QC.
- *Metropolitan Waste Management Group v CGU Insurance Ltd* [2012] FCA. Claim by waste management body under professional indemnity insurance policy in relation to construction of pollution exclusion clause. Junior to Mr James Elliot QC.
- *Catholic Church Insurance Ltd v QBE Insurance Ltd* [2010] VSC. Reinsurance dispute involving management of hundreds of primary claims concerning sexual abuse within Catholic church. Whether primary claims fall within terms of reinsurance agreement. Junior to Mr Simon Marks QC.

### C. Arbitration

- Retained to advise Government authority in relation to arbitration dispute under ICC Rules relating to land contamination. Leading Mr A Di Pasquale.
- Retained to act for global technology company in two arbitration disputes under ICC Rules ([ICC Case 01916](#)). Claims involved to alleged breaches of agreements for the provision of IT systems, data network services, telephony network services and operational services. Arbitral tribunal comprised the Hon Robert McDougall QC (President), the Hon Wayne Martin AC QC, and Mr G Harris QC. Leading Mr A Di Pasquale and Ms A Crittenden.
- Retained for operator of Basslink interconnector in three complex ad hoc arbitration disputes brought by State of Tasmania and Hydro Tasmania (see [link](#)). Arbitrations were conducted under UNCITRAL Rules before the Hon R A French AC. Claims involved alleged breaches of development and operating agreements, alleged duty of care relating to development and operations of power facility. With Mr J Delany QC, Mr N Pane QC and leading Mr R Rozenberg.

### D. Professional liability

- *Braham v ACN 101 482 580 Pty Ltd & Ors* [2020] HCASL 199; [2020] VSCA 108; [2018] VSC 575. Professional liability claim against solicitor regarding investment in managed investment scheme. Principal issues in dispute included whether solicitor was retained to provide advice, whether duty of care was owed to the investor, whether misleading conduct by firm in absence of duty, and alleged reliance by third party on misleading conduct. Successfully resisted appeal to Victorian Court of Appeal and special leave application to High Court of Australia. Appeal and Special Leave to Appeal leading Mr N Walter.
- *Karam Investments Pty Ltd v CBRE (Vic) Pty Ltd* [2021] VSC. Claim against real estate agent re leasing of land in relation to leasing of allegedly contaminated land. Issues in

dispute included whether agent required to investigate financial capacity of tenant and whether agent made representations to landlord. Leading Ms A Batrouney.

- *Goenka v PricewaterhouseCoopers (a firm)* [2021] VSC. Professional liability claim against accounting firm in relation to taxation advice, residency of foreign entities and treatment of intercompany loans as deemed dividends. Leading Mr G J Redenbach.
- *Middendorp Electric Co Pty Ltd v Garrisson & Ors* [2017] VSC. Claim against solicitors and accountants in connection with the purchase of shares in a national company selling solar panels.
- *Trust Company Nominees Ltd v Mulqueen Griffin Rogers Pty Ltd* [2016] VSC. Negligence and breach of statutory duty claim brought against auditor of substantial lending and investment institution arising out of the collapse of the Banksia Group and part of the Banksia class action proceeding. Junior to Mr David Collins QC.
- *Bill Express v Pitcher Partners* [2015] VSC. Substantial claim involving alleged negligence of auditor of listed public company. Quantum in excess of \$230m. Junior to Mr Philip Crutchfield QC, leading Ms Claire Excel.
- *Glenvue Nominees Pty Ltd v Trumble Szanto* [2015] VSC. Professional negligence claim against solicitors involving an alleged duty to consider and advise on deficiencies in valuation of land.
- *Kyriakou & Ors v Edwards* [2015] VSC. Professional negligence claim against solicitors. Primary issues included whether solicitor acted for parties to joint venture, causation, whether breaches of duty caused loss arising from ASIC investigation and litigation.
- *Re Environinvest Ltd* [2013] FCA. Claim against directors of failed investment scheme. Junior to Mr Simon Marks QC.
- *South Eastern Secured Investments Ltd v Birch Ross and Barlow & Ors* [2012] VSC. Claim by liquidator against former directors of finance company. Junior to Mr Simon Marks QC.
- *Watson v Ebsworth & Ebsworth* [2010] VSCA 335 – professional negligence – solicitors – solicitor acting for several parties – whether duties of loyalty and good faith were owed – causation and equitable compensation. Application for special leave refused [2011] HCA Trans 246. Junior to Mr Cameron Macaulay QC and Mr Peter Jopling AM QC.
- *Newtronics Pty Ltd (In Liq) v Russell Kennedy* [2012] VCS. Professional negligence claim against solicitors in relation to conduct of litigation. Principal issues included whether litigation was bound to fail and the duty of a solicitor to recommend settlement of claim. Junior to Mr Paul Santamaria QC.
- *AED Oil Ltd v Back & Ors* [2011] VSC. Professional negligence claim against solicitors relating to drafting of agreement for charter of oil production vessel. Junior to Mr Peter Jopling AM QC.

#### **E. Corporations and related matters**

- *WilCha Bro Pty Ltd v Australian Business Growth Fund Pty Ltd* [2024] FCA. Retained to represent investment fund to defend a claim of oppressive conduct. Leading A L Ounapuu.
- *Re Ekera Medical Pty Ltd* [2019] VSC. Acted for director and shareholder in oppression proceeding alleging breach of directors' duties arising from pursuit of corporate opportunity. Leading Mr J Corbett.

- *Kanyon Pty Ltd v Hartwig; Hunter v Berkley Capital Partners & Ors* [2018] VSC. Acted for shareholder in oppression claim, breach of director's duty claim and derivative proceeding arising from complex joint venture dispute relating to several property developments. Leading Ms G S J Berlic.
- *Peter Urban v Junior Academy ELC Pty Ltd* [2018] VSC 192 Application to bring derivative proceeding on behalf of trustee company. Junior to Mr T J North QC.
- *Richard Kirby v Centro & Ors* [2011] FCA. Liability of directors, officers and auditors of Centro Group. Junior to Mr Ted Woodward QC.

#### F. Property, equity and related matters

- *Merost Pty Ltd v Kmart Australia Ltd* [2022] TASSC – Represented lessor in a claim related to rent calculation in a long-term lease, involving conventional estoppel, lease rectification based on common mistake, and abuse of process from related proceedings. Leading Ms P Thiagarajan.
- *Re Seladene Pty Ltd* [2021] VSC. Application to remove trustee and to set aside deed pursuant to principles in *Pitt v Holt* [2013] 2 AC 108. Leading Mr J B Masters.
- *Braham Investments Pty Ltd v Sovereign MF Limited* [2017] VSC 801; [2018] VSCA 291. Acted for legal firm in a claim alleging breach of trust and breach of statutory duty arising from the holding and disbursing of trust money.
- *Sino Iron Pty Ltd v World Wide Wagering Pty Ltd* [2017] VSC 101. Claim involving restitution, money had and received, knowing receipt, knowing assistance and fraud allegations. Leading Mr John LM Leung.
- *Brickland Nominees Pty Ltd & Anor v Ballarat City Council* [2011] VSC. Claim by developer and purchaser of contaminated land. Land previously used for deposit of rubbish. Liability of local council for historical contamination of land. Junior to Mr Jeffrey Gleeson QC.
- *Premier Building and Consulting Pty Ltd v Spotless Group Ltd* [2007] VSC 377; [2005] VSC 19; [2004] VSC 522. Long multiparty trial involving apartment development on contaminated land, the duty of municipal authority when rezoning and duties of authority when granting planning approval. Junior to Mr Cameron Macaulay QC.

#### Reports, investigations and inquiries

Briefed to appear in and advise on the following investigations, commissions and reviews.

- [\*Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry\*](#) (2018) Retained on behalf of an international superannuation fund manager in the superannuation round of hearings. With Mr Stewart Anderson QC, leading Mr N Walter.
- *Proceeds of crime* (2017). Retained on behalf of Commonwealth agency to conduct examinations under the *Proceeds of Crimes Act 2002* (Cth) in connection with money laundering and related offences.
- *Expert Determination* (2016). Appointed by the President of the Victorian Bar to act as expert to determine dispute between parties to a commercial lease. Dispute concerned liability for outgoings and repair obligations under lease and related claims.
- *Review of Prime Safe Performance* (2015). Appointed by a Victorian statutory authority as part of a three member panel to conduct a review commissioned by the board of a statutory authority into the dealings of the authority with licensees, industry representatives and other stakeholders. With Mr Allan Myers AO QC and Mr Mark Hosking.



- [Royal Commission into Institutional Responses to Child Sex Abuse](#) (2015). Retained to assist with the preparation of submissions and witnesses on behalf of a body required to appear before the Royal Commission. With Mr Simon Marks QC.

### Publications, papers and seminars

- [Hub Street Equipment Pty Ltd v Energy City Qatar Holding Company](#) [2021] FCAFC 110 – case note on enforcement of an arbitral award pursuant to s. 8(3) of the *International Arbitration Act* 1974 (Cth). Published by the Chartered Institute of Arbitrators Australia.
- [Feldman v Tayar](#) [2021] VSCA 185 – case note on the adequacy of reasons of a domestic arbitral tribunal. Published by the Chartered Institute of Arbitrators Australia.
- [Kingdom of Spain v Infrastructure Services Luxembourg](#) [2021] FCAFC 3. Case note on the recognition and enforcement of an award made under the ICSID Convention in an Australian Court. Published by the Chartered Institute of Arbitrators Australia.
- [Recent Developments in International Arbitration – Implications for Australia and Beyond](#) Part of the International Arbitration Series, a joint initiative of the CIArb Australia and Federal Court of Australia, held via a virtual platform on 30 March 2021. The webinar considered the Australian implications of two recent judgments by the Supreme Court of the United Kingdom in *Enka Insaat v Chubb* and *Halliburton v Chubb*.
- *Chartered Institute of Arbitrators* regularly teaching in the Institute's Introduction to Arbitration, Accelerated Route to Fellowship and Award Writing courses.
- *Managing Your Day in Court* A seminar presented to the Victorian Bar Junior Barristers Conference, Melbourne, February 2016. With the Honourable Justice Macaulay, Supreme Court of Victoria.
- *An Update on Professional Liability* A paper presented as part of the Victorian Bar Continuous Professional Development program, November 2015. With Mr Jeffrey Gleeson QC.
- The Interaction of the Company Director's Duty of Care and the Director's Obligations Relating to Insolvent Trading and Financial Reporting ([2007](#)) [25 C&SLJ 180](#).
- *A defence of the company director's duty of care, skill and diligence* (PhD thesis, 2006).
- Repudiation of Leases and the Tenant's Proprietary Interest in the Land - Case Note; *Apriaden Pty Ltd v Seacrest Pty Ltd* (2005) 12 *APLJ* 85.
- Does the Bankruptcy Act provide excessive protection for a debtor's interest in a Superannuation Fund (1999) *New Directions in Bankruptcy*.
- The Wife's Special Equity Survives the High Court (1998) 6 *InsolVLJ* 202.