



Merissa Hannah Martinez
Barrister-at-Law

Areas of Practice

Commercial Law
Public Law
Tribunals - QCAT & AAT
Litigation
ADR/Mediation/Expert Determination

Specialist Construction
Projects & Engineering
Transport & Infrastructure
Payment & Delay Claims
Adjudication

Professional history

- 2017 Recommended in Doyle's Guide as Emerging Construction & Infrastructure Junior Counsel, Queensland 2017.
- Shortlisted for the WLAQ Regional Woman Lawyer of the Year Award 2017.
- Appointed to the External Panel Junior Counsel for the Commonwealth Director of Public Prosecutions February 2017 - February 2021.
- 2015 Commenced practice at Paloma Chambers, Townsville.
- 2010 - 2014 Partner at Trowers & Hamblins LLP (London), a London City and International Law Firm, which won Construction Law Firm of the Year (2011) and Legal Firm of the Year (2010).
- 2013 Recommended by the Legal 500 (leading law firms guide in the UK).
- 2013 *Construction Adjudication and Payments Handbook* published by Oxford University Press (OUP). A compendium of cases, legislation, material and commentary, relied upon at least twice in the High Court in 2014.
- 2008 *Encyclopaedia of Forms and Precedents - Building and Engineering (Volume 5)* published by Butterworths Lexis Nexis publication, updating all areas of construction law since 2004.
- 2007 Acknowledged in the foreword to *Construction Adjudication* (OUP) by His Honour Justice Coulson (High Court, Technology and Construction).
- 2006 - 2010 Solicitor - Trowers & Hamblins' (London) contentious construction.

April 2005	Admitted as a Solicitor in England and Wales.
2005 - 2006	In-house assistant counsel, Bechtel - Channel Tunnel Rail Link (London).
2005	Treasury Solicitor, discovery for civil litigation arising from the Paddington Rail disaster (London).
2004	Qualified Lawyers' Transfer Test in UK.
2001 - 2004	Paralegal, working on site with Alstom Transport (Birmingham).
March 2001	Admitted as Barrister-at-law in Queensland, Australia.
1999 - 2000	Associate to Deputy President Forgie, Administrative Appeals Tribunal (AAT) Brisbane. Broad experience including: social security, veterans, environment, FOI, immigration, customs, aviation and pharmacies.
1998 - 1999	Legal Officer, Great Barrier Reef Marine Park Authority (GBRMPA), Townsville. Processing FOI requests, negotiating and drafting contracts, providing support in AAT proceedings and multi-disciplinary liaison.

Recent Queensland Supreme Court cases

Brisbane Airport Corporation Pty Ltd v Arup Pty Ltd [2017] QSC 232 - representing the Principal in a complex claim for \$40m against its designers for professional negligence and breach of ss.51A, 52 and/or 53 of the *Trade Practices Act* - leave granted by Justice Applegarth under r.376 - new cause of action arising from substantially the same facts as pleaded in the original statement of claim (Junior Counsel to Gareth Beacham QC).

Annie Street JV Pty Ltd v MCC Pty Ltd [2016] 49 QLR 7; [2016] QSC 268 (Justice Flanagan)- whether adjudicator's determination was without foundation and illogical - whether adequate reasons were provided in accordance with s.26(3) of the *BCIPA (Qld)* - whether natural justice had been denied - whether function discharged when adjudicator refused to consider relevant contract clauses (Junior Counsel to Gareth Beacham QC).

Grocon Constructors (Qld) Pty Ltd v Juniper Developer No 2 Pty Ltd [2015] QCA 291 (CJ Holmes, Atkinson and McMeekin JJ - applicability of the penalty doctrine to a Liquidated Damages provision in a construction contract (research note for Peter Franco QC).

BRB Modular Pty Ltd v AWX Constructions Pty Ltd [2015] QSC 218 (Justice Applegarth)- a 'reference date' arose under the *BCIPA (Qld)* - contractual pre-requisite of a statutory declaration contrary to the Act and void by s.99 (Junior Counsel to Peter Franco QC).

John Holland Queensland Pty Ltd v Allied Technologies Australia Pty Ltd - resisting challenges to an adjudicator's decision - alleged failure to discharge his obligations under s.26 of the *BCIPA (Qld)* and natural justice breaches (Junior Counsel to Gareth Beacham QC).

Trans City Joint Venture v Energex - resisting challenges to an adjudicator's decision based on non-compliance with s17A(2) and 17(2)(a) of the *BCIPA (Qld)* and multiple alleged natural justice breaches (Junior Counsel to Damien O'Brien QC).

Civil Team Engineering Pty Ltd v Whitsunday Regional Council v Civil Team Engineering Pty Ltd - whether parties had reached a compromise (Junior Counsel to Gareth Beacham QC).

Whitsunday Regional Council v Civil Team Engineering Pty Ltd - severability of an adjudicator's decision under s.100(4) of the *BCIPA (Qld)* (Junior Counsel to Peter Franco QC).

Recent commercial instructions

Advising on prospects of challenging a land tax assessment issued under the *Land Tax Act (2010) (Qld)* - whether a "time-sharing scheme" existed.

Advising on prospects of defending a claim based on breach of intellectual property rights of an Aboriginal artist - consideration of whether moral rights protected by the *Copyright Act 1968 (Cth)* had been infringed - consideration of quantum if claim upheld.

Advising on prospects of success concerning recovery of unfair preference payments under s.588FF(1)(a) of the *Corporations Act 2001* - whether impugned payments are voidable under s.588FF(1) - whether a 'no reasonable suspicion' defence under s.588FG(2) arose.

Advising on prospects of success concerning declarations of contravention of sections 180, 181, 182 and/or 184 of the *Corporations Act 2001 (Cth)*.

Recent construction law instructions

Advising a principal on the effect of *Hamersley Iron Pty Ltd v Forge Group Power Pty Ltd* [2017] WASC 152 in relation to mutual reckoning under s.553C of the *Corporations Act*, the effect on mutuality of a charge under the *Personal Property Securities Act* and whether a clause under a construction contract is a self-executing set-off.

Advising on the justiciability of defences in relation to the statutory insurance scheme administered by the QBCC - quality of the building work - calculation of the reasonable cost of completing the contract works - whether a domestic building contract has been validly terminated.

QBCC v Sullivan & Ors (QDC) - attempted recovery of statutory insurance payments under s.71(1) of the *Queensland Building and Construction Commission Act 1991* - whether policy exclusion defences were justiciable - meaning of "building contractor" - whether an individual was a de facto director (Junior Counsel to Melanie Hindman).

Representing a national plumbing company in the Magistrates Court (Brisbane) in a claim against a sub-contractor for defective works - settled at Court led settlement conference.

Advising a home owner on a potential action against a builder and an architect for claiming and approving (respectively) payment for variations not in accordance with the *Domestic Building Contracts Act 2000 (Qld)* - whether amounts to misleading and deceptive conduct under *Consumer Protection Laws*.

Advising a Principal as to the validity of a payment certificate not served within 14 days of the claim - compliance with conditions precedent - effect of subsequent payment certificates.

Advising a Main Contractor on termination options under AS4901-1998 - requirements for a valid contractual show cause notice - whether a common law repudiation had occurred.

Advising a Principal of the efficacy of standard and modified time bar provisions and whether issues of waiver / estoppel could arise.

Advising a Superintendent on the operation of Latent Conditions and Variation clauses under an AS 4000 - 1997 with minor amendments.

UK Infrastructure / Live Project Risk Minimisation 2001 – 2013

Luton and Cambridgeshire Guided Busways 2011 – 2013	Partner representing one of the UK's largest civil engineering contractors: <ul style="list-style-type: none">• multiple technical and disallowed cost related adjudications;• litigation exceeding £120m concerning responsibility for late delivery, alleged defects, entitlements to compensation events;• three QC expert determinations concerning liability and costs; and• mediation of alignment, disallowed cost and handover.
London Underground Limited 2009 – 2010	Solicitor seconded into the Project Manager, working with signalling experts, a QC, several junior barristers and project delivery team: <ul style="list-style-type: none">• numerous adjudications with signalling contractor concerning testing, liability for change and disallowed cost; and• extremely complex signalling dispute worth more than £330m arising from a PPP contract for upgrade and maintenance of three tube lines.
Channel Tunnel Rail Link 2005 – 2006	In house with the Project Manager on the largest infrastructure project in the history of the UK: <ul style="list-style-type: none">• administration of a contract of > £3b for design and build of high-speed rail infrastructure/refurbishment of heritage listed buildings;• <i>Costain Ltd & Ors v Bechtel Ltd & Anor</i> [2005] EWHC 1018 – the first substantive UK case concerning the New Engineering Contract (NEC);• an £8m arbitration under the ICE Arbitration Procedure (London) regarding waterproofing design/workmanship; and• several adjudications run by a multi-disciplinary team.
West Coast Main Line 2001 – 2004	Preparation of Alstom Transport's £180m Defence and Counter-claim to a High Court action by Virgin. Complex issues concerning infrastructure condition, compatibility, signalling and testing/commissioning.

University

1998	BA / LLB (Hons) James Cook University (JCU)
1997	Third place, written component of International Jessup Moot Competition; Second place, JCU Moot Competition
1996	Winner, JCU Moot Competition; President of JCU Law Students Society

Memberships and community involvement

Queensland Bar Association	North Queensland Bar Association
Women Lawyers Association of Queensland	Society of Construction Law Australia
Volunteer at Law Right (previously QPILCH)	President, Rowes Bay Kindergarten
Sky Foundation & Townsville Women's Centre	

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