







Duncan Miller SC

CONTACT DETAILS

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PROFILE

Duncan has over 35 years of experience in dispute resolution with a broad practice which ranges from general commercial disputes to specialist areas such as insurance, construction, environmental, engineering, oil & gas, infrastructure (hospital, ports and roads), and mining disputes. He practices as a counsel, expert determiner, court-appointed referee, and mediator, both in Australia and across the region.

Duncan is an accredited arbitrator on the Dubai International Arbitration Centre (DIAC) and Australian Centre for International Commercial Arbitration (ACICA) panels.

Qualified in Australia, Duncan has extensive experience in advising and also appearing at both trial and appellate level across the country. He is regularly briefed to advise various stakeholders (such as main contractors, government and State government agencies) on how to manage, minimise, avoid, and resolve disputes on their projects. He acts for both contractors and principals concerning on and off-shore LNG facilities, mines and mining infrastructure, ports and port facilities, wind and solar farms, major greenfield hospital developments, and significant rail and road projects.

He has appeared in numerous international arbitrations under the DIAC, International Chamber of Commerce (ICC) and Singapore International Arbitration Centre (SIAC) rules. He also regularly appears in construction-related domestic (Model Law) arbitrations in Australia conducted under the ACICA and Resolution Institute rules, and often acts as a mediator in commercial, construction and insurance disputes. In recent years he has spoken at judicial conferences and national conferences in Australia and the UAE on subjects ranging from arbitration and construction law, and developments in global ESG regulations and their likely impact on the international enforceability of court and arbitral decisions.

Duncan has been consistently ranked as a leading lawyer in his field by Legal 500 (2025 – Tier 1), Chambers Asia Pacific (2025 – Band 1), Best Lawyers in Australia (2018, 2021 and 2024 – Lawyer of the Year, 2025), Who's Who Legal – Global and Australia (2025 – Thought Leader), and Doyle's Guide (2021 and 2025 – Market Leader).

Legal 500 describes him as *"a fearless advocate and a very practical and common-sense litigator with a leading construction law practice who is in high demand across Australia. He is efficient and prepared to roll his sleeves up as and when required."* Chambers & Partners Global and Asia-Pacific identifies Duncan as *"a recognised leader in construction litigation and arbitration."* One source describes him

as, “*excellent and one of the country's leaders*” while another reports that “*his name pops up all the time on major matters.*”

AREAS OF PRACTICE

- Construction and Infrastructure Law
- Commercial Law
- Insurance Law
- Mining Law
- Engineering Law
- Oil & Gas Law
- Environmental and Planning Law

QUALIFICATIONS & ADMISSIONS

2011	Senior Counsel
1996	Barrister
1988 - 1995	Solicitor (and lecturer in law)
	Master of Laws (LL.M.) (Hons) University of Technology Sydney
	Bachelor of Laws (LL.B.) University of Sydney

RECENT AND ONGOING SIGNIFICANT ARBITRATION AND COURT MATTERS

Duncan appears in complex domestic and international commercial arbitrations and court disputes. These routinely concern motorways, heavy rail and light rail rolling stock procurement and track infrastructure construction, tunnels (rail, road and utilities), mine planning and mining infrastructure, fibre-optic undersea telecommunication cable projects, airports, wind and solar farm developments, infrastructure supply disputes, and major CBD commercial, residential and mixed-use developments. He also has a broad commercial disputes and common law practice that primarily involves professional negligence claims, property and insolvency matters.

Arbitration matters:

- Arbitrator – renewable energy EPC dispute. Australian domestic commercial arbitration. Appointment late 2025.
- Counsel for global engineering firm in dispute with designer and consortium partner for the development and provision of a regional battery storage facility. ICC arbitration. (2025 appointment)
- Counsel for state government in capital city fish market redevelopment. Project costs circa AUD\$ 1 billion. Dispute quantum in excess of \$AUD 200 million. (2025 appointment)
- Counsel for contracting JV party metro rail tunnelling project. Contractual disputes concerning presence of (and risks as regards) building impediments along the tunnel alignment. (2025 appointment).
- Counsel for urban road tunnel (private public partnership suite of contracts) concession holder in upstream and downstream disputes. Tunnelling subsidence issues. (2025 appointment).
- Counsel for Australian state government – freeway tunnelling collapse. Forecast delay of in excess of 2 years. Quantum; AUD\$ hundreds of millions. (2025 appointment).
- Counsel for international rail rolling stock designer / manufacturer – upstream arbitration dispute with state government over delays to rolling stock delivery rollout, and separate downstream

dispute with depot D&C contractor. Downstream arbitration concerns allegations of misleading conduct inducing contract and subsequent works performance/programming disputes. (Downstream arbitration heard in May 2025 (decision reserved). Upstream arbitration listed for hearing in 2026.)

- Counsel for Australian state government – dispute concerning development of principal state teaching hospital (at the time the most expensive hospital development globally). Allegations of collusion, conspiracy and mala fides in public office. Delay and extension of time claims approaching AUD\$1 billion. (Matter heard over 5 months in the first half of 2024. Hearing concluded July 2024 – decision presently reserved)
- Counsel for the principal-developer in a dispute involving circa AED250 million arising from the development of a signature hotel / resort complex in Dubai. DIAC arbitration. Time / disruption and contract claims (Decision handed down in August 2025).
- Counsel for the EPC contractor in a multi-billion-dollar dispute against the principal in relation to the onshore LNG processing facilities (construction costs circa AUD40 billion and claims in excess of AUD\$3.5 billion). SIAC arbitration. Competing time-related claims including for extensions of time and release from liquidated damages liability, disruption claims, variation claims, pipe, spool and vessel coating degradation claims, and misleading and unconscionable conduct claims. (2019-2023)
- Counsel for EPC contractor international consortium (public-private partnership form of contract) with design, build, finance and maintain obligations for a new regional rail fleet. (ICC arbitration) Claims concerning design interference giving rise to entitlements for time-related relief and additional costs. (2023)
- Counsel for state government agency respondent (ACICA arbitration) in arbitration proceedings brought by international joint venture consortium concerning suitability of major (linking freeway) road tunnel works to withstand degradation from groundwater contamination. (2023)
- Counsel for the principal – two ICC arbitrations (issues concerning delay / EOT arguments, variations, frustration, unconscionable conduct, and misleading & deceptive conduct claims, and in the second concerning the alleged frustration of performance testing regime) in connection with a solar power farm development in NSW (2020 - 2022)
- Counsel for head contractor in downstream related SIAC arbitration against LNG processing train module manufacturer. (2019 / 2020)
- Counsel for head contractor in ICC arbitration concerning technical ammonia plant EPC contract. Disruption, delay and contractual counts (2019)
- Counsel for claimant-contractor in ICC arbitration for contractual, variation, delay / extension of time claims in respect of an undersea fibre optic telecommunication cable project connecting various offshore LNG processing hubs to mainland infrastructure. (2017-2018)
- Counsel for engineering contractor in ICC arbitration concerning the fabrication, supply and erection of piping network at a terrestrial LNG processing hub. (2017)
- Counsel for owner / developer of major petroleum storage facility in dispute with EPC contractor (ACICA arbitration) – restitution, delay/time and contractual counts. (2016/2017)

RECENT AND ONGOING CASES, COURT REFERENCES AND EXPERT DETERMINATIONS

- *Owners Strata Plan 87881 v Frasers Broadway Pty Ltd* [2025] NSWSC 1073; [2025] NSWSC 1289 – strike out / bare declaratory orders sought and multiplicity of proceedings / abuse of process.
- *Gemi 169 Pty Ltd & Ors v F&L Violi Pty Ltd, David Legal* & Ors* [2025] NSWSC 975– mortgage guarantee enforcement proceedings / defensive allegations of solicitor fraud and conspiracy in drawing the mortgage papers. Claim in excess of AUD\$100m. (Judgment reserved)

- *Aqualand North Sydney Lavender Development Ltd* v OC Strata Plan 102081* [2025] NSWCA 143 - Asset freezing order appeal.
- *Buildcorp Group Pty Ltd v SP 125* (NSW Supreme Court) - Contractual construction question – scope issues under D&C contract.
- *Skyline Landscape Services Pty Limited v G.M.R. Schembri Pty Ltd trading as Parklea Sand & Soil** [2025] NSWSC 492 (May 2025). Stay application of civil proceedings in light of environmental criminal prosecution proceedings against underlying companies (and their directors) involved in works contaminating lands.
- *G&S Engineering Services Pty Ltd (DRA Engineering) v MACH Energy Australia Pty Ltd* (No.3)* [2020] NSWSC 1721 (and related judgments up to and including (No.17) [2024] NSWSC 1094 on 31 August 2024). Allegations of misleading and deceptive conduct and misrepresentations in negotiations to re-baseline delayed EPC (engineer, procure and construct) contract for mining processing plant on largest open cut thermal coal mine in New South Wales. Complex counterfactual mine planning, operation and price modelling and calculations. Matter heard second half of 2024. Resolved one month into 4-month trial. (Australian Stock Exchange announcement of resolution: <https://www.listcorp.com/asx/dra/dra-global-limited/news/dra-mach-energy-dispute-deed-of-settlement-and-release-3081938.html>)
- *East Rockingham RRF Project Co Pty Ltd as Trustee for the East Rockingham RRF Project Trust v Acciona Construction Australia Pty Ltd** [2024] FCA 759 (12 July 2024) – and other decisions. Project for the development, construction and operation of a thermal waste to energy treatment plant. Insolvent trading allegations as regards central Project Co entity. Restraints of calls on performance bonds against background of alleged insolvency / summary disposition / admissibility of commercially confidential negotiation evidence and application of common law and *Evidence Act (Cth)* principles.
- *Hunt Leather Pty Ltd v Transport for NSW** [2023] NSWSC 840 – Class Action / private and public nuisance claims brought by hundreds of businesses along the alignment of Sydney Light Rail construction against state government transport instrumentality responsible for planning and construction. First claims in Australia for public nuisance arising from works along the alignment. Claims approaching AUD\$1 billion.
- *The Owners, Strata Plan No 97315 v Icon Co (NSW) Pty Ltd* [2023] NSWSC 363 – court appointed referee's report / court adoption of report.
- *Skyton Holdings No 5 Pty Ltd v Strathfield Municipal Council* [2023] NSWLEC 61 – planning and environment / de facto officer doctrine.
- *WCX M4-M5 Link AT Pty Ltd in its personal capacity and its capacity as trustee of the WCX M4-M5 Link Asset Trust* v Acciona Infrastructure Projects Australia Pty Ltd & 2 Ors* [2022] NSWSC 375; (No.2) [2022] NSWSC 505 (ongoing court, expert and arbitration proceedings re environmental impact issues – Sydney tunnel and freeway project)
- *JKC Australia Pty Ltd* v AkzoNobel NV & Anor* (ongoing Australian Federal Court proceedings: statutory misleading conduct claims and associated insurance claims)
- *Primero Group Limited* v Wärtsilä Australia Pty Ltd* (ongoing SA Supreme Court dispute – hearing Scheduled for August 2023 - delay, disruption and misleading conduct claims concerning an engineering and erection contract for major regional gas fuel power station)
- *Sydney International Container Terminals Pty Ltd* v Laing O'Rourke Australia Construction Pty Ltd* (ongoing Supreme Court proceedings - contractual and statutory claims concerning container terminal (port) redevelopment)
- *John Holland Pty Ltd* v Minister for Works* [2021] WASC 312 (and ongoing – contractual claims exceeding \$200m in connection with D&C development of major hospital)

- *Vella v Nergl Developments Pty Ltd** [2020] NSWSC 1405 (equity proceedings: specific performance of mediated settlement / construction of and modifications of easements)
- *Waverley Council* v Samadi* [2020] NSWLEC 67; (No.2) [2020] NSWLEC 162 (allegations of dishonesty in planning application process: enforcement proceedings re breach of development control orders)
- *Newland Developers Pty Ltd v Tweed Shire Council** [2020] NSWLEC 1107 (planning appeal: refusal of development proposal for regional school project)
- *Payce Communities Pty Ltd* v Canterbury-Bankstown Council* [2021] 331; NSWSC [2022] NSWCA 74 (contractual disputes – mixed use public utility and residential development)
- *Icon Co (NSW) Pty Ltd* v Australia Avenue Developments Pty Ltd* [2020] NSWSC 178 (injunction proceedings to restrain calling on performance bond. Part of larger class action seeking diminution in value damages brought consequent upon structural failures in multi storey residential development - Opal Tower project)
- *Jasminco Resources Pty Limited v Goulburn Mulwaree Council** [2019] NSWLEC 1218 (planning appeal – extractive industries / regional quarry)
- *G&S Engineering Services Pty Ltd v MACH Energy Australia Pty Ltd** [2019] NSWSC 407; (No.3) [2020] NSWSC 1721 (and ongoing) (application to restrain call on performance bonds, misleading and deceptive conduct and unconscionable conduct claims arising from tender and re-tender process connected with design and construct contract for coal handling and process equipment)
- *Built Environs WA Pty Ltd v Perth Airport Pty Ltd* (No's 2 – 5)* [2019] WASC 76, [2019] WASC 399, [2020] WASC 382, [2021] WASC 237 (and ongoing – contractual and statutory claims concerning airport terminal redevelopment)
- *University of Sydney v Multiplex Constructions Pty Ltd & ors* (ongoing dispute arising from the design and affixing of combustible cladding – being one of a number of such disputes that I have advised on, or mediated in the last five years)
- *NRW Contracting Pty Ltd* v Cliffs Asia Pacific Iron Ore Pty Ltd* [2020] WACA 107 (appeal; mining services contract, construction of pay and indemnity provisions)
- *Downer EDI Rail Pty Ltd v John Holland Pty Ltd and KBR Engineering Pty Ltd* (No.4)* [2018] NSWSC 326 (negligent design claim – urban rail handling yard)
- *CSR Limited* v Adecco (Australia) Pty Limited* [2017] NSWCA 121 (appeal – insurance, contract/implied contract)
- *Young v Hones, Hemmings* & Ors* [2014] NSWCA 337 and (No.2) 338 (reach of advocates immunity, alleged negligent legal advice on settlement)
- *Environment Protection Authority v Du Pont (Australia) Ltd** [2013] NSWLEC 98; [2013] NSWLEC 99 (environmental prosecution. Land pollution – stack emissions of herbicide residue)
- *Allianz Australia Ltd* v Sim: WorkCover Authority (NSW) v Sim* [2012] NSWCA 68 (torts / asbestos test case. Causation for divisible disease claim: increase in risk and factual causation)
- *Dasreef Pty Ltd* v Hawchar* (2011) 243 CLR 588; [2011] HCA 21 (expert evidence – admissibility criteria)
- *Wallaby Grip Limited v QBE Insurance (Australia) Limited** (2010) 240 CLR 444; [2010] HCA 9 (insurance, statutory workers' compensation policy, missing policy documents, onus of proof of reach of indemnity)
- Various expert determination and court appointed referee roles for planning, construction and infrastructure disputes over many years.