

DAVID HIGGS SC

Overview

David was admitted as a solicitor in 1973 and commenced practice as a barrister on 1 January 1977. He was appointed Senior Counsel in 1995 and has appeared as lead counsel in a wide variety of matters, at first instance and on appeal, in the Supreme Courts of NSW, the ACT, Victoria, Queensland, Tasmania and Western Australia as well as in the Federal Court and the High Court of Australia. He is also an NMAS-accredited mediator with extensive experience.

David's practice now is that of an Alternative Dispute Resolution practitioner who acts as a mediator, arbitrator, facilitator of expert conclaves, educator, and advisor on the management of disputes.

Over the course of his professional life David has participated in many hundreds of mediations as a representative for a party and as a mediator. He has also delivered post graduate lectures about the conduct of mediations and hearings to post graduate students – about once a year at the University of Melbourne from about 2017 to 2019, and likewise to postgraduate students enrolled in the University of Sydney's postgraduate Commercial Law course at Cambridge University. In 2008, as part of the Chinese Ministry of Justice's program to train court officials and lawyers, at the invitation of Associate Professor Lee, David sat on a panel, primarily composed of judges from Boston, USA, to judge an intervarsity mediation moot competition held over two weeks at Peking University in Beijing in which students from the major Law Schools in China participated.¹

Practice Areas include

- **Medical, Legal Practitioner and other Professional negligence** — numerous cases appearing for both patients and insurers in NSW, Queensland, the ACT and WA. Cases include *Wallace v Kam* (2013) 250 CLR 375; *Chappel v Hart* (1998) 195 CLR 232; *Polsen v Harrison* [2024] NSWCA 224; *Dhupar v Lee* [2022] NSWCA 15; *Nouri v Australian Capital Territory* [2019] ACTCA 21; *Stephens v Paradise Ultrasound Specialists Pty Ltd and Anor* [2019] QSC 134; *South Western Sydney Area Health Service v Sorbello* [2017] NSWCA 201; *Waller v James* (2015) 90 NSWLR 634; *Richards v Kadian* (2005) 64 NSWLR 204; *CES and Another v Superclinics (Australia) Pty Limited and Others* (1995) 38 NSWLR 47.
- **Sexual and other forms of abuse** — acting for victims and institutions, and in 2020–2022, mediating and advising the State of Western Australia about claims by UK orphans transported to WA under a scheme agreed between the governments of the UK and the Commonwealth of Australia.
- **Insurance, including life policy claims** — cases include *Collins v Insurance Australia Ltd* [2022] NSWCA 135 (revisiting and revising the scope of cover under the *Motor Accidents Compensation Act 1999* (NSW)); *Commercial Union Assurance Company of Australia Ltd v Ferrcom Pty Ltd and Another* (1993) 176 CLR 332 (s. 56 of the *Insurance Contracts Act 1984* (Cth)).
- **Commercial arbitration** — briefed by Western Australia in 2020 to advise and appear in a commercial arbitration *Palmer and Mineralogy v The State of Western Australia (No 3)* in respect of WA's breach of a State Agreement, causation, damages and the valuation of mining leases — being matters now in the public domain following the State introducing legislation depriving Mr Palmer's companies from advancing those claims.
- **Public interest immunity, parliamentary privilege, common interest and legal professional privilege** — *Palmer v McGowan (No 5)* [2022] FCA 893 (for Western Australia and the Speaker of

¹ At the time, Associate Professor Lee was a Fellow of Harvard Law School's Program on Negotiation as well as Stanford Law School's Gould Center for Conflict Resolution.

the House of Representatives — protection of public interest immunity; parliamentary privilege, and legal professional privilege); *Farrow Mortgage Services Pty Ltd (In Liq) v Webb* (1996) 39 NSWLR 601 (common interest privilege; insolvency).

- **Liquidator recoveries against company directors** — *Farrow Mortgage Services Pty Ltd (In Liq) v Webb* (1996) 39 NSWLR 601.
- **Contract (interpretation, implied terms, false and misleading conduct)** — *Jireh International Pty Ltd t/as Gloria Jean's Coffee v Western Exports Services Inc* [2011] NSWCA 137 (construction commercial contract; implied term); *Leighton Contractors Pty Ltd v Public Transport Authority of Western Australia (No 6)* [2008] WASC 193 (contract — construction of a rise and fall clause); *Donald Financial Enterprises Pty Ltd v APIR Systems Ltd* [2008] FCA 1112 (*Trade Practices Act 1974* (Cth) — (false and misleading conduct by omission with regards the sale of shares); and on appeal *APIR Systems Ltd v Donald Financial Enterprises Pty Ltd* [2009] FCAFC 45.
- **Banking** — appearing for and against banks; cases including *Waller v Hargraves Secured Investments Ltd* (2012) 245 CLR 311 (overturning previous authority regarding the interpretation and application of the *Farm Debt Mediation Act 1994* (NSW); invalid third-party voluntary guarantee litigation and undue influence cases; and numerous foreign currency loan case).
- **Australian Consumer Law guarantee claims** — including in proceedings in respect of claims against cruise ship operators based on the purpose, result and care and skill guarantees as provided for in ss 60 and 61 of the ACL that settled in July 2024.
- **Partnership Disputes** — most recently in proceedings that settled in August 2023.
- **Administrative Law** — *Boyce v Allianz Australia Insurance Ltd* (2018) 96 NSWLR 356 (administrative law with regards procedural unfairness of a medical assessment by the Review Panel under the *Motor Accidents Compensation Act 1999* (NSW); *Polo Enterprises Australia Pty Ltd v Shire of Broome* [2015] WASCA 201 (administrative law, procedural fairness and statutory interpretation; and *NAKG v Minister for Immigration & Multicultural & Indigenous Affairs* [2002] FCA 1600 (administrative law; statutory interpretation).
- **Workplace and injury claims** — *AEA Constructions Pty Ltd v Wharekawa* [2019] NSWCA 176)
- **Deceased Estate claims** — *Estate of Nitopi (No 2)* [2021] NSWSC 748 (advising and appearing for a main beneficiary who was released from the proceedings days before the hearing commenced.
- **Intentional torts & civil claims for false arrest, imprisonment and assault** — *Abed v State of NSW v Abed* [2014] NSWCA 419.
- **Public Liability claims**

Some Professional Appointments

1985–2000 & 2011	Member of the Board of Twelfth Floor Chambers
2001 & 2002	Head of Chambers
2002–2003	Member of the Committee in respect of protocols for voluntary disclosure of conduct of hospitals to patients suffering injury
2002–2005	Member of the Legal Aid Review Committee
2006–2010	Member of a Professional Conduct Committee of the NSW Bar Association

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