



## James B Waters BE (Hons), JD (Melb)

Barrister, former Professional Engineer

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James is a specialist in large, complex litigation and is regularly briefed in technical, engineering, and construction disputes, insurance matters and class actions.

James advises and appears in bet-the-farm litigation and arbitration for commercial parties (both contractors and principals), achieving the very best results. He is approachable, diligent and deploys strategic nous to gain advantage for his clients over the real issues in dispute.

Prior to the Bar, James was an Associate at Allens in the construction disputes and commercial litigation teams. His practice included advising construction and engineering clients on complex construction and technical disputes and the administration of major projects.

Prior to his legal career, James worked as a mechatronics engineer in construction, industrial and consulting environments. As an engineer, James was involved in the construction of a major arterial transport link and consulted in relation to the design, installation and commissioning of a diverse range of bespoke robotics in various industrial settings.

### Professional Experience

#### May 2016 – present: Barrister at Law

James's recent matters have included:

- **Lacrosse apartments litigation** (led by Tim Margetts QC) for the fire engineer (currently before VSCA), on appeal from *Owners Corporation No 1 of BS613436T v LU Simon Builders Pty Ltd* [2019] VCAT 286
- **Renewable energy proceedings by the Australian Energy Regulator** in relation to the South Australian Black System Event 2018, for the AER, ongoing. Settlement approval of one proceeding: *Australian Energy Regulator v Snowtown Wind Farm Stage 2 Pty Ltd* [2020] FCA 1845 (White J) (led by Dr Ruth Higgins SC, Tom Clarke)
- **Renewable energy construction disputes** Victorian Supreme Court, acting for contractor in ongoing dispute with wind turbine manufacturer (led by Tim Margetts QC); acting for crane contractor in ongoing disputes
- **Insurance proceedings concerning damage to large industrial plant** Federal Court, ongoing (led by Gerard Dalton QC)
- **Construction arbitration under ACICA rules** Resolved. Acting for professional adviser in \$90m social infrastructure dispute (led by Tim Margetts QC)
- **Successful defence of subrogated recovery concerning large hay barn fire** *Mahony v Logan* [2019] VCC 1586 (led by Gerard Dalton QC)
- **Contamination of beverage products** Resolved (led by Gerard Dalton QC)
- **Domestic building disputes** *Klau v Elliot* [2020] VCAT 1422; Slab heave matters (resolved); developer and builder disputes (resolved); *F Bouhoussein Pty Ltd v Mackie Pty Ltd* [2019] VCAT 1470; defects disputes (resolved)
- **Successfully resisted challenge to jurisdiction of domestic arbitral tribunal** *Lin Tiger Plastering Pty Ltd v Platinum Construction (Vic) Pty Ltd* [2018] 57 VR 576 (Croft J) (unled).
- **Successful defence of claim against solicitors** *Finch v Arnold Thomas and Becker Pty Ltd* [2018] VCC 54 (led by Aileen Ryan QC (as Her Honour then was), and then unled).
- **Disciplinary proceedings against building practitioners:** builder, fire engineer, building surveyor
- **Building Appeals Board proceedings:** building surveyor; protection works; approval of aluminium composite panels
- **Building and construction matters –** Security of Payment claims, various commercial / industrial and domestic building disputes in the County Court and VCAT relating to defects,

	<p>quality, delays, costs; various standard form contracts, including AS2124, AS4000-series, HIA, MBC4</p> <ul style="list-style-type: none"> <li>• <b>Domestic Arbitration</b> representing the owner of a large industrial parts business in dispute following an assets sale (and associated Supreme Court action); dispute involving the software and control systems on large agricultural machinery for a US-based manufacturer.</li> </ul>
	<p><b>February 2013 – February 2016: Allens – Associate</b></p> <ul style="list-style-type: none"> <li>• <b>Offshore LNG</b> – acting for the owners of a \$34b LNG project in relation to disputes with the pipeline contractor.</li> <li>• <b>Great Southern</b> – acting for the Bendigo and Adelaide Bank in the class action.</li> <li>• <b>Legislated construction progress payment claims</b> – acting for the principal / owner of a \$2.6b coal export terminal in relation to SOPA claims.</li> <li>• <b>Desalination plant</b> – acting for London underwriters in relation to claims in excess of \$280 million made by a contractor for the design and construction of a large desalination plant.</li> <li>• <b>Australian hardware chain good faith dispute</b> – developer-tenant dispute for an Australia-wide hardware chain.</li> <li>• <b>Operators of economic and social infrastructure PPP</b> – advising national Public Private Partnerships in relation to contract variations, the supply of utilities and contract administration.</li> <li>• <b>Water treatment plant</b> – advising superintendent as to rights to make contractual deductions under an AS4902 design and construct contract and providing strategic advice as to the merits and quantum of the contractor's claims.</li> <li>• <b>Advising a major Australian biomedical company</b> – to achieve mediated settlement in relation to a commercially-sensitive product liability dispute in the Federal Court of Australia.</li> <li>• <b>Various pro bono matters</b> – including instructing at tribunal hearings, advising a homeless client in relation to a dispute with a Victorian Government Department and drafting a policy for aboriginal support organisations in response to a Royal Commission investigation.</li> </ul>
Previous Experience (Legal)	<p><b>2010 – 2012: Allens – Business Development Paralegal</b>, Financial Services &amp; Projects</p> <p><b>2010 - 2012 Seasonal Clerkships</b> Allens Arthur Robinson, Corrs Chambers Westgarth and Blake Dawson (now Ashurst)</p>
Previous Experience (Engineering)	<p><b>2007 – 2009: kanDO Innovation – Research Engineer</b></p> <p>kanDO Innovation is an engineering consultancy that specialises in designing automated and robotic solutions for technology-aware industry.</p> <p><b>2006 – 2007: Fletcher Construction – Site Engineer</b></p> <p>The Fletcher Construction Company is New Zealand's peak construction company and is the largest listed construction corporation on the NZX. James was involved in the construction of a large-scale infrastructure project delivering a major arterial route to Auckland's public transport network.</p> <p><b>2005 RPM International Tool &amp; Die Ltd</b> Injection moulds and press tools</p> <p><b>2004 Product Development Solutions Ltd</b> Sales of 3D CAD / CAM software</p>
Education	<p><b>2010 – 2012 The University of Melbourne:</b> Juris Doctor</p> <p><b>2001 – 2005 The University of Auckland:</b> BE (Hons) (Mechatronics)</p> <p><b>2001:</b> The Senior College of New Zealand, <b>1995 – 2000:</b> The Kristin School (New Zealand)</p>
Personal Interests	<ul style="list-style-type: none"> <li>• <b>Yachting</b> restoring a 30' wooden daysailer, a Tumblaren called <i>Vahine</i>. Racing Tornado and F18 high performance catamarans.</li> <li>• <b>Other interests</b> when spare time permits, James pursues his other passions of restoring cars from the 1970s, attaining currency on his pilot's licence and enjoying time with his young family</li> </ul>
Referees	Available on request