







# Duncan Miller SC

## CONTACT DETAILS

### SINGAPORE

 miller@maxwell42.com  
 +61 4 1137 3183  
 28 Maxwell Road, #04-02, Singapore 069115

### AUSTRALIA

 miller@7thfloor.com.au  
 +61 2 9233 8799  
 Level 7, 180 Philip Street, Sydney New South Wales 2000

## PROFILE

Duncan has over 30 years of experience in dispute resolution with a broad practice which ranges from general commercial disputes to specialist areas such as construction, environmental, engineering, oil & gas, infrastructure, mining, and insurance disputes. He practices as a counsel, expert determiner, court-appointed referee, arbitrator, and mediator, both in Australia and across the region.

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 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 Australian Centre for International Commercial Arbitration (ACICA) and Resolution Institute rules. He often mediates construction and other commercial disputes.

Duncan has been consistently ranked as a leading lawyer in his field by Legal 500 (2022 – Tier 1), Chambers Asia Pacific (2022 – Band 1), Best Lawyers in Australia (2018 & 2021 – Lawyer of the Year), Who's Who Legal – Global and Australia (2021 – Thought Leader), and Doyle's Guide (2021 – 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 calls him “excellent and one of the country's leaders” while another reports that “his name pops up all the time on major matters.”

## AREA OF PRACTICE

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

## QUALIFICATIONS & ADMISSIONS

2011	<b>Appointed Senior Counsel</b>
1996	<b>Barrister</b>
1988 - 1995	<b>Solicitor</b>
	<b>Master of Laws (LL.M.) (Hons)</b> University of Technology Sydney
	<b>Bachelor of Laws (LL.B.)</b> University of Sydney

## RECENT AND ONGOING SIGNIFICANT ARBITRATIONS

Duncan has appeared in complex domestic and international commercial arbitrations. These disputes have concerned 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.

### Counsel appointments include being:

- Counsel for the EPC contractor in a multi-billion-dollar dispute against the principal in relation to the onshore LNG processing facilities. 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. (2019-2022)
- 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. (2022 and ongoing)
- 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. (2022 and ongoing)
- 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 the largest solar power farm development in NSW. (2020 and ongoing)

- Counsel for respondent Australian state government against contractor in connection with a state capital city primary hospital greenfield development. Arbitration conducted under the ACICA rules. (2019 and ongoing)
- Counsel for head contractor in downstream related (SIAC) arbitration against LNG processing train module manufacturer. (2019 / 2020)
- Counsel for head contractor (ICC arbitration) concerning technical ammonia plant EPC contract. Disruption, delay and contractual counts. (2019)
- Counsel for claimant-contractor (ICC arbitration) concerning 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 (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

- **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)
- **Transport for NSW\* ats Hunt & Anor** (state government instrumentality): respondent in class action proceedings (claiming in excess of AU\$300m) brought by business owners along the alignment of the new Sydney Light Rail Project (listed for final hearing late 2022): public nuisance claims arising from allegations as to negligence in selection of project delivery model and design and programming of the rail and utility works.
- **Primero Group Limited\* v Wärtsilä Australia Pty Ltd** (ongoing Supreme Court dispute 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** (planning: 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 library and apartment 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)
- Expert determination as expert (2022) resolving development contributions dispute under the terms of a Planning Agreement between developer and state instrumentality
- Expert determination resolving disputes between contractor and state developer over mixed leisure / residential development (prolongation, disruption and variation claims)
- Court appointed Referee to report on variation, delay and prolongation claims – multi-storey residential development