

# DAMIAN CLOTHIER QC

YEAR OF CALL: 1995 | YEAR OF SILK: 2011

Damian has a broad ranging commercial practice, with particular emphasis on commercial litigation, arbitration and advisory work in the fields of resources, building and construction, corporations, insurance, insolvency, property and professional negligence.

He is listed as a ranked QC for Dispute Resolution by Chambers & Partners Asia Pacific 2017, 2018 and 2019, and Chambers & Partners Global 2017, 2019. He was selected for inclusion in Best Lawyers in Australia 2017, 2018 and 2019 for Bet-the Company Litigation, Commercial Law and Litigation. He was named the Best Lawyers' 2014-2015 Brisbane Commercial Law 'Lawyer of the Year'. Damian is listed as a 'preeminent', 'leading' or 'recommended' QC by Doyle's Guide 2015-2019 in the areas of Commercial Litigation & Disputes, Construction, and Insolvency & Reconstruction.

Damian is the Chair of the Bar Association of Queensland's Business and Consumer Law Committee, a Member of the Bar Association of Queensland's Professional Conduct Committee and a former Member of the Queensland Law Society's Commercial Litigation Specialist Accreditation Committee.

## AREAS OF PRACTICE

---

Appellate, Arbitration, Banking, Building & Construction, Commercial Equity, Competition & Consumer, Contract, Corporate Insolvency & Bankruptcy, Corporations, Employment & Industrial, Insurance, Intellectual Property, Judicial Review & Administrative, Land Law & Property, Planning & Environment, Professional Negligence, Resources & Energy.

## CASES

---

***Equititrust Limited v Tucker and Others* [2019] QC 51**

March 2019, Contract, Judicial Review & Administrative, Corporations, Corporate Insolvency & Bankruptcy

***Wellington v Huaxin Energy (Aust) Pty Ltd (formerly Cuesta Coal Limited)* [2019] QSC 18**

February 2019, Contract, Resources & Energy, Land Law & Property

***Suncorp-Metway Ltd ABN 66 010 831 722 v Nagatsuma & Anor* [2019] QSC 16**

February 2019, Land Law & Property, Banking

***King & Ors v Australian Securities and Investments Commission* [2018] QCA 352**

LEVEL

TWENTY  
SEVEN

CHAMBERS



LEVEL 27, 239 GEORGE ST  
BRISBANE QLD, 4000

[level27chambers.com.au](http://level27chambers.com.au)

T +61 7 3229 2288

M +61 408 476 339

[dclothier@qldbar.asn.au](mailto:dclothier@qldbar.asn.au)

December 2018, Appellate, Corporations, Judicial Review & Administrative

***Byerwen Coal Pty Ltd v Colinta Holdings Pty Ltd (no.2)*[2018] QCA 350**

December 2018, Resources & Energy, Land Law & Property, Contract

***Aurizon Network Pty Ltd v Queensland Competition Authority & Ors*[2018] QSC 246**

October 2018, Judicial Review & Administrative, Competition & Consumer

***Port Ballidu Pty Ltd v Frews Lawyers*[2018] QCA 110**

June 2018, Competition & Consumer, Corporations

***New Acland Coal Pty Ltd v Smith*[2018] QSC 88**

May 2018, Judicial Review & Administrative, Planning & Environment, Resources & Energy

***King v Gunthorpe*[2018] QSC 1**

January 2018, Contract, Corporations, Professional Negligence

***Australian Conservation Foundation Incorporated v Minister for the Environment and Energy* (2017) 251 FCR 359; [2017] FCAFC 134**

August 2017, Appellate, Judicial Review & Administrative, Resources & Energy

***Burrabungba v Minister for Natural Resources and Mines*[2017] QCA 179**

August 2017, Appellate, Resources & Energy, Judicial Review & Administrative

***Hancock Galilee Pty Ltd v Currie*[2017] QLC 35**

July 2017, Resources & Energy, Planning & Environment

***Whitsunday Residents Against Dumping Ltd v Chief Executive, Department of Environment and Heritage Protection* [2017] QSC 121**

June 2017, Judicial Review & Administrative, Resources & Energy

***Port Ballidu Pty Ltd v Frews Lawyers*[2017] QSC 19**

February 2017, Commercial Equity

***Australian Securities and Investments Commission v Drake (no2)*[2016] FCA 1552**

December 2016, Commercial Equity, Corporations

***Burrabungba v Minister for Natural Resources and Mines*(2016) 222 LGERA 13; [2016] QSC 273**

November 2016, Judicial Review & Administrative, Resources & Energy

***Land Services of Coast and Country Inc v Chief Executive, Department of Environment and Heritage Protection* (2016) 222 LGERA 122; [2016] QSC 272**

November 2016, Judicial Review & Administrative, Resources & Energy

***Annie Street JV Pty Ltd v MCC Pty Ltd & Ors*[2016] QSC 268**

November 2016, Building & Construction, Judicial Review & Administrative

***Coast & Country of Queensland Inc v Smith*[2016] QCA 242**

September 2016, Appellate, Judicial Review & Administrative, Planning & Environment, Resources & Energy

***Callide Power Management Pty Ltd v Callide Coalfields (Sales) Pty Ltd; CS Energy Ltd v Callide Coalfields (Sales) Pty Ltd (No5)* [2016] QSC 199**

August 2016, Contract, Resources & Energy

***Australian Conservation Foundation Incorporated v Minister for Environment*[2016] FCA 1042**

August 2016, Judicial Review & Administrative, Resources & Energy

***RCR O'Donnell Griffin Pty Ltd v Forge Group Power Ltd (Receivers & Managers Appointed) (in liq)*[2016] QCA 214**

August 2016, Appellate, Building & Construction, Contract, Resources & Energy

***Pointon & Ors v Oaks Hotels & Resorts Limited & Ors*[2016] QSC 152**

July 2016, Contract

***Lee v Abedian* [2017] 1 Qd R 549; [2016] QSC 92**

April 2016, Professional Negligence

***Comgroup Supplies Pty Ltd v Products for Industry Pty Ltd*[2016] QCA 88**

April 2016, Appellate, Commercial Equity

***Bradshaw v Griffiths* [2016] QCA 20**

February 2016, Appellate, Land Law & Property

***Callide Power Management Pty Ltd v Callide Coalfields (Sales) Pty Ltd (No 3)*[2015] QSC 295**

October 2015, Contract, Resources & Energy

***Coast and Country Association of Queensland Inc v Smith*[2015] QSC 260**

September 2015, Judicial Review & Administrative, Resources & Energy

***LPD Holdings (Aust) Pty Ltd v Russells (a firm)*[2015] QCA 122**

June 2015, Appellate, Contract

***RCR O'Donnell Griffin Pty Ltd v Forge Group Power Pty Ltd*[2015] QSC 186**

June 2015, Building & Construction, Contract

***Witherspoon v Hutson* [2015] QCA 109**

June 2015, Banking, Land Law & Property, Appellate

***BDO Group Holdings (Qld) Limited & Anor v Sully*[2015] QSC 166**

June 2015, Competition & Consumer, Contract, Employment & Industrial

***Samimi v Queensland Building & Construction Commission*[2015] QCA 106**

June 2015, Building & Construction, Insurance, Appellate

***Endocoal Limited v Glencore Coal Queensland Pty Ltd and Department of Environment and Heritage Protection* [2014] QLC 54**

December 2014, Planning & Environment, Resources & Energy

***Londy v Van Nieuwburg* [2014] QSC 290**

December 2014, Commercial Equity

***Canehire Pty Ltd v Themis Holdings Pty Ltd* [2014] QCA 296**

November 2014, Commercial Equity, Appellate

***J M Kelly (Project Builders) Pty Ltd v Toga Development No. 31 Pty Ltd (No 6)* [2014] QSC 262**

October 2014, Building & Construction, Contract

***Caltex Refineries (Qld) Pty Ltd v Allstate Access (Australia) Pty Ltd* [2014] QSC 223**

September 2014, Building & Construction, Judicial Review & Administrative, Contract

***Callide Power Management P/L v Callide Coalfields (Sales) P/L* [2014] QSC 205**

August 2014, Contract, Resources & Energy

***Markan v Bar Association of Queensland (No 3)* [2014] QSC 225**

July 2014, Judicial Review & Administrative

***LM Investment Management Ltd (in liq) (recs and mgrs apptd) as responsible entity of the LM First Mortgage Income Fund v Bruce* [2014] QCA 136**

June 2014, Corporations, Appellate, Corporate Insolvency & Bankruptcy

***Glencore Coal Queensland Pty Ltd v Keys* [2014] QLAC 2**

May 2014, Resources & Energy, Planning & Environment

***Hancock Coal Pty Ltd v Kelly and Ors and Department of Environment and Heritage Protection (No. 4)* [2014] QLC 12**

October 2013, Resources & Energy, Planning & Environment

***Clout v Andi-Co Australia Pty Ltd & Ors* [2013] QSC 278**

October 2013, Corporations, Corporate Insolvency & Bankruptcy

***Modi and Clements v SDW Projects Pty Ltd and Ors* [2013] QCA 221**

August 2013, Land Law & Property, Professional Negligence, Appellate

***Xstrata Coal Qld Pty Ltd & Ors v Keys & Anor; Xstrata Coal Qld Pty Ltd & Ors v Sky Grove Pty Ltd; Xstrata Coal Qld Pty Ltd & Ors v Erbacher; Xstrata Coal Qld Pty Ltd & Ors v Edmonds & Anor* [2013] QLC 34**

June 2013, Planning & Environment, Land Law & Property, Resources & Energy

***Shaft Drillers International LLC v Australian Shaft Drilling P/L* [2013] QSC 79**

March 2013

***Australian Securities and Investments Commission v. Managed Investments Limited & Ors No.4 [2013] QSC 15***

January 2013, Corporations, Corporate Insolvency & Bankruptcy

***Buckby v Wharton [2012] QSC 416***

December 2012, Land Law & Property, Corporate Insolvency & Bankruptcy, Banking

***Anderson v ASIC [2012] QCA 301***

December 2012, Corporations, Appellate, Corporate Insolvency & Bankruptcy

***Bradshaw v Bar Association of Queensland [2012] QCA 322***

November 2012, Judicial Review & Administrative, Appellate

***Gough v South Sky Investments Pty Ltd [2012] QCA 161***

June 2012, Contract, Appellate, Land Law & Property

***Sucrogen Australia Pty Ltd v. Westpac Banking Corporation & Anor [2011] QSC 393***

December 2011, Land Law & Property, Banking

***Cassels & Anor v Brisbane City Council [2009] QSC 124***

May 2009, Land Law & Property, Judicial Review & Administrative

***Octaviar Ltd, Re; Re Octaviar Administration P/L [2009] QSC 37***

March 2009, Corporations, Corporate Insolvency & Bankruptcy

***Westfield Management Ltd v Brisbane Airport Corporation Ltd [2005] FCA 32***

February 2005, Land Law & Property, Judicial Review & Administrative

## **EXPERIENCE**

---

Successfully represented GVK Hancock Coal in a contentious judicial review proceeding in the Supreme Court concerning an environmental challenge to an alternative decision that gave a conditional green light to the Alpha Coal mine project. The decision is reserved. The proposed Alpha coal mine in the Galilee Basin, in Central Queensland, is a joint venture between Indian conglomerate GVK and Hancock Prospecting Pty Ltd.

Successfully represented Forge Group Power Pty Ltd (in liq) in a proceeding to restrain it and its receivers from calling on bank guarantees under a construction contract in the amount of approximately \$5m. The proceeding involved the interpretation of liquidated damages and security provisions of a construction contract based upon a standard form contract in common usage in Australia and the power of appointment of a superintendent following the discharge of the contract by novation. It is a leading decision on the meaning of the provisions relevant provisions and a principal's post-discharge rights.

Represented three of a number coal miners as users of one of Australia's largest export coal ports in an arbitration to determine the fees payable under user agreements. The subject matter of the arbitration involved (amongst other things) the interpretation of the user agreements and the examination of economic and regulatory

practice in relation to the setting of user fees. The dispute was ultimately compromised.

## RECOMMENDATIONS

---

**Chambers & Partners Asia Pacific** – Selected as a leading QC for Dispute Resolution

- 2019 “*very insightful in his case preparation and identification of issues*” and “*an outstanding advocate.*”
- 2018 “*outstanding analytical and advocacy skills, including a devastatingly effective cross-examination capability*”
- 2017 “*an exceptional advocate with a remarkable skill for articulating a case with the content and style that best convinces the judge and gives the client the best chance of success*”

**Chambers & Partners Global 2017, 2018 and 2019**– Selected as a leading QC for Dispute Resolution

**Australian Financial Review’s Best Lawyers Best Lawyers 2017-2020**– Listed for Alternative Dispute Resolution, Bet-the Company Litigation, Commercial Law, Insolvency and Reorganisation Law, Litigation, Oil & Gas Law. In 2014-2015, Damian was named Brisbane Commercial Law ‘Lawyer of the Year’.

**Doyle’s Guide to the Australian Legal Profession 2015-2018**– Listed for Commercial Litigation & Disputes (‘Preeminent’ in Queensland and ‘recommended’ in Australia 2017 ).

**Doyle’s Guide to the Australian Legal Profession 2015, 2017 and 2019**– Nominated as a ‘recommended’ QC for Construction & Infrastructure (Queensland).

**Doyle’s Guide to the Australian Legal Profession 2015-2018**– Nominated as a ‘preeminent’ QC for Insolvency & Reconstruction (Queensland 2016, 2017 and 2018) and a ‘recommended’ QC for Insolvency & Reconstruction (Australia 2015, 2016, 2017).

**Doyle’s Guide to the Australian Legal Profession 2016**– Nominated as a ‘recommended’ QC for Insurance (Queensland).

## APPOINTMENTS

---

Chair of the Bar Association of Queensland’s Business and Consumer Law Committee

Member of the Bar Association of Queensland’s Professional Conduct Committee

Member of the Bar Association of Queensland’s Queen’s Counsel Consultation Group

Member of the Queensland Law Society’s Commercial Litigation Specialist Accreditation Committee

## MEMBER

---

Member of the Bar Association of Queensland

Sometime Instructor, Leading Evidence and Cross-Examination, Bar Practice Course

## CAREER

---

**2013** Appointed Queen's Counsel

**2011** Appointed Senior Counsel

**1996-present** Practising Barrister

**1996** Admitted, Barrister of the High Court of Australia

**1995** Admitted, Barrister of the Supreme Court of Queensland

**1994-1995** Associate to the Honourable Mr Justice Lee, Supreme Court of Queensland

**1991-1995** Part-Time Tutor, Queensland University of Technology

**1993** Research Assistant, the Honourable Mr Justice Spender and the Honourable Mr Justice Drummond, Federal Court of Australia

**1993** Admitted, Solicitor of the Supreme Court of Queensland

**1992** Associate to the Honourable JM Macrossan, Chief Justice of Queensland

**1991** Article Clerk, Corrs Chambers Westgarth, Solicitors

## EDUCATION

---

LLB (QUT) (1st Class Hons)

## AWARDS

---

**1992** Inaugural recipient of the TE Cain Moot Trophy

**1990** Queensland Law Society Prize (awarded to the graduating Bachelor of Laws student with the highest

aggregate marks in the subjects of Commercial Law, Conveyancing & Drafting, Company Law and Partnership and Taxation Law)

**1990** Power & Power Company Law and Partnership Prize

**1990** Clarke & Kann Taxation Law Prize

**1990** Law Book Co Pty Ltd Professional Conduct Prize

**1989** Butterworths Pty Ltd Equity Prize

## **PUBLICATIONS**

---

### **Objections to Resource Projects in the Land Court**

March 2015, Planning & Environment

*Liability limited by a scheme approved under professional standards legislation*