



**JUSTIN
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Counsel and Arbitrator

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ABOUT

*Fellow of the Chartered
Institute of Arbitrators.
Fellow of acica.
Fellow of the Australian
Academy of Law.*

Justin has over 30 years legal experience, as solicitor (1985-1988), counsel (1989 onwards) and Senior Counsel (2000 onwards). He was the founding head of Banco Chambers Sydney (2005-2012) and the 10th Solicitor-General of the Commonwealth of Australia (2012-2016).

He is a Fellow of the Australian Academy of Law, of ACICA and of the Chartered Institute of Arbitrators. He specialises in international law, international arbitration, constitutional law and appellate law; and is available to appear as counsel, act as advisor or sit as arbitrator or expert determiner, particularly in international matters.

**APPEARANCES IN
INTERNATIONAL COURTS AND
TRIBUNALS**

International Court of Justice

As Solicitor-General of the Commonwealth of Australia between 2012 and 2016, Justin advised on numerous international law issues and was joint counsel for Australia in proceedings including:

2014: Timor-Leste v Australia, *Questions relating to the Seizure and Detention of Certain Documents and Data*.

2013: Australia v Japan, *Whaling in the Antarctic*.

Inter-State arbitration

2015: Timor-Leste v Australia, *Arbitration under the Timor Sea Treaty* (PCA case 2015-42).

2013: Timor Leste v Australia, *Arbitration under the Timor Sea Treaty* (PCA case 2013-16).

Inter-State conciliation

2016: Timor-Leste v Australia, *Compulsory Conciliation under the United Nations Convention on the Law of the Sea* (PCA case 2016-10).

Investor-State arbitration

2015: *Phillip Morris Asia Limited v Australia, Arbitration under the Hong Kong-Australia Business Investment Treaty concerning Tobacco Plain Packaging Legislation* (PCA case 2012-12).

**RECENT AND CURRENT
RETAINERS IN THE
INTERNATIONAL AND
AUSTRALIAN ARBITRATION
SPACE**

International

2020: Presiding arbitrator in LCIA arbitration.

2017-2020: Retained as counsel in various ISDS disputes for States and private investors.

2018-2019: Various retainers to give expert evidence before Courts in the United States and Singapore.

2017: Appointed as expert assessor in respect to funding of an ISDS case.

2017, 2020 Member Singapore International Arbitration Academy.

Australia

2019: Counsel in Tribunal hearing in Rugby Australia v Israel Folau.
2018: Arbitrator appointed by Australian Energy Regulator in dispute under Part 23 of National Gas Rules.
2017: Appointed Chair of a Panel of three to inquire and report on certain matters for a major public institution in Australia.
2017: Retained as counsel in an expert determination process over the construction of a major infrastructure project in Australia and as counsel in various commercial arbitrations including in Australian Rugby Union v Western Force.

**RECENT AND FORTHCOMING
APPEARANCES AS COUNSEL IN
APPELLATE MATTERS**

High Court of Australia

2020: *Berry v CCL Secure Pty Ltd v Berry* - assessment of damages under Australian Consumer Law.
2020: *Moore v Scenic Tours* - whether claims for distress and disappointment from loss of expectation are personal injury damages.
2019-2020: *Commonwealth v Helicopter Resources* - application of accusatorial principle to compulsory examination of officers of corporations.
2020: *Mackellar Mining v Urquhart* - principles governing anti-suit injunctions.
2019: *Westpac Banking Corporation v Lenthall* - [2019] HCA 45 - availability of common fund orders in class actions.
2019: *Connective Services Pty Ltd v Sleat Pty Ltd* - [2019] 93 ALJR 1079 - prohibition on financial assistance by corporations.
2018: *Unions NSW v NSW* (2019) 93 ALJR 166 - validity of electoral expenditure laws under implied freedom of political communication.
2018: *ASIC v Lewski* (2018) 93 ALJR 145 - directors' duties and validity of amendment to scheme constitution.
2018: *Parkes Shire Council v South West Helicopters* (2019) 93 ALJR 607 - exclusivity of Warsaw Convention in respect to nervous shock claim.
2018: *Work Health Authority v Outback Ballooning Pty Ltd* (2019) 93 ALJR 212 - inconsistency between Civil Aviation Law of Commonwealth and Territory workplace law. 2018: *Mighty River v Hughes* (2018) 92 ALJR 822 - scope of Deeds of Company Arrangement. 2018: *Amaca Pty Ltd v Latz* (2018) 92 ALJR 579 - assessment of personal injury damages for "lost years".
2018: *Commissioner of Taxation v Thomas* (2018) 264 CLR 382 - treatment of franking credits and principle in Executor Trustee case.
2018: *Re Gallagher* (2018) 263 CLR 460 - appearance for Senator Gallagher on referral of questions under s 44 of Constitution.
2017: *Plaintiff M174 v Minister* (2018) 264 CLR 217 - challenge to "fast track" provisions in Migration Act.
2017: *Re Canavan* (2017) 263 CLR 284 - appearance for Tony Windsor in opposition to Barnaby Joyce on referral of questions under s 44 of Constitution.

Intermediate Appellate Courts

2020: *ACCC v Pacific National* (FFC) – s 50 merger case.

2019: *Heinz Company Australia Ltd v Bega Cheese Ltd* (FFC) – assignability of common law trade marks.

2019: *AMP Ltd v Wigmans* (NSWCA) [2019] NSWCA 243 – regulation of overlapping class actions

2019: *Pitcher Partners v Neville's Bus Services* (FFC) [2018] FCA 2098 – principles governing assessment of damages in deceit and Australian Consumer Law.

2019: *Lenthall v Westpac Banking Corporation* (FFC) [2019] 265 FCR 21 – availability of common fund orders in class actions.

2019: *Mackellar Mining & Anor v Urquhart & Ors* (QCA) [2019] QCA 77- anti-suit injunctions. 2018: *Helicopter Resources Pty Ltd v Commonwealth of Australia* (2019) 264 FCR 174- application of accusatorial principle to compulsory examination of officers of corporations.

2018: *Daiwa Can & Anor v Knights Quest Pty Ltd* (VCA)[2018] VSCA 349 – companies/oppression. 2018 *Ulman & Ors v Live Group Pty Ltd* (NSWCA) [2018] NSWCA 338 – contempt of court by religious tribunal.

2018: *Racing NSW v Lewin* (NSWCA) (2018) 97 NSWLR 694 – construction of Racing Rules. 2018: *Karimbla Properties v City of Council of Sydney* (2018) 99 NSWLR 66 – construction of rating statute.

2018: *Mobis Parts Australia Pty Ltd v XL Insurance Company SE* (NSWCA) (2018) ALR 730 – rectification of insurance policy.

2018: *Warrie v Fortescue Metals* [2019] FCAFC 177 – exclusivity of native title established by spiritual sanctions.

2018: *Perera & Ors v Get Swift Pty Ltd* (2018) 363 ALR 394 – stay of overlapping class actions.

2017: *ASIC v Whitebox* (FFC)(2017) 251 FCR 448 – overlap of civil penalties and Criminal Code.

2017: *First Pacific Advisors LLC v Boart Longyear Ltd* (2017) 320 FLR 78 – company scheme of arrangement class composition.

OTHER PROFESSIONAL EXPERIENCE

Over my 35 years of professional practice, I have conducted multiple trials and appeals as counsel, and provided numerous written opinions across most areas of commercial, public and constitutional law.

In the area of insurance, I have advised and appeared in numerous disputes over professional indemnity, directors and officers', property and other policies.

I have extensive experience in corporations, equity, trade practices, intellectual property, competition, aviation and shipping law.

My qualifications in public, constitutional and international law are noted above.

**RECENT AND FORTHCOMING
ADDRESSES, BOOKS AND
PUBLICATIONS**

International law and arbitration

February 2020: Member of Singapore International Arbitration Academy.

November 2019: Presenter ACICA arbitration round table in Australian Arbitration Week.

August 2019: Moderator: Australian Academy of Law/Australian Academy of Sciences Climate Change Hypothetical.

November 2018: Panel discussion on International commercial arbitration at ABA conference.

July 2018: Address to ACICA on 60th anniversary of New York Convention.

November 2017: Singapore International Arbitration Academy, Speaker and Tribunal member.

October 2017: IBA Annual Conference Sydney, Keynote Address to Under 40's Arbitration Workshop.

August 2017: Australian Academy of Law Conference, Sydney: *"Can Australian Lawyers of the future afford not to be internationalist?"*

July: Centre for Comparative Constitutional law conference, Melbourne: *"Demystifying Proportionality in Australian Constitutional Law"*.

July 2017: CIArb Australia lunch Melbourne: *"International Arbitration - What can Australia learn from current developments overseas?"*.

May 2017: Keynote address, Global Pound Alternative Dispute Resolution Conference, Sydney.

October 2016: *"The increasing internalisation of Australian Law"*, Australian Academy of Law Annual Patron's Lecture (published in (2017) 28 PLR 25-40).

August 2016: *"Australia's recent involvement in International Dispute Resolution: Tobacco Plain Packaging and beyond"*, address to NSW Supreme Court Annual Judges' conference.

July 2016: *"Australia's enmeshment in International Law Dispute Resolution: Implications for sovereignty"*, Annual Michael Kirby Lecture in International Law, Australian National University (published in *The Australian Year Book of International Law 2016*).

June 2016: *"The internationalisation of Australian Law"*, launch of International Negotiation and Dispute Resolution series hosted by NSW Young Lawyers (published in *The Arbitrator and Mediator*, December 2016 28-35).

May 2016: *"Australia's Interests in Investor-State Dispute Settlement under the UNCITRAL framework"*, address to the Second Annual UNCITRAL Seminar, Canberra.

April 2015: *"International Law and the Australian Constitution"*, Annual Sir Maurice Byers address to NSW Bar Association (published in (2015) 40 Australian Bar Review 149).

Comparative law

May 2017: Sydney PEN Free Voices Lecture, Sydney Writers Festival, *"Freedom of Expression, United States and Australian perspectives"*, published in Sydney PEN November 2017.

"Held on Trust" Griffith Review 57 Perils of Populism.

February 2017: Address to Singapore Academy of Law, *"Evolving Judicial Attitudes to Executive Power: The United Kingdom, Singapore and Australia"*.

March 2016: *"Recent Developments in Administrative Law in the United States and Australia"*, address to Australian Government Solicitor Law Conference, Canberra.

Constitutional law

2018: *"The Rule of Law and the Crown"* in Hinton and Williams (eds), The Crown, University of Adelaide Press, co-author with Ms C Winnett.

2018: *"Economic Union"* in Saunders and Stone (eds), Oxford Handbook of the Australian Constitution.

February 2018: *"The High Court on Constitutional Law: the 2017 Term"*, Keynote Address to 2018 Gilbert +Tobin Constitutional Law Conference.

January 2018: *"The Modern Executive in Australia - Rule Taker or Rule Maker?"* - Address to Annual Conference of Federal and Supreme Court Judges.

2017: *"Chapter II of the Constitution"*, joint chapter with Anna Mitchelmore in Williams (ed), Key Issues in Public Law, Federation Press.

May 2017: Annual Blackburn Lecture, ACT Law Society, *"Law, Morality and the Public Trust"*.

Books

Rediscovering Rhetoric - Law, Language and the Practice of Persuasion (Federation Press, 2008, co-edited with Dr R Higgins).

Constituting Law - Legal Argument and Social Values (Federation Press 2011, co-edited with Dr R Higgins).

Historical Foundations of Australian Law - Volume I: Institutions, Concepts and Personalities; Volume II: Commercial Common Law (Federation Press 2013, co-edited with Dr J Watson, Dr R Higgins and Dr E Peden).

**QUALIFICATIONS AND
EDUCATION**

2017: Fellow of ACICA.

2016: Fellow of the Chartered Institute of Arbitrators.

2012-2016: Solicitor-General of Commonwealth of Australia.

2005: Founding Head Banco Chambers, Sydney.

2000: Appointed Senior Counsel, NSW Bar.

2000: Editor of NSW Bar News.

1993, 2000-2002, 2007, 2008, 2012: Member Council of NSW Bar Association.

1989: Called to NSW Bar.

1985: Admitted as a Solicitor.

1985: BCL (Oxon).

1983: LLB (Sydney) First Class Honours and University Medal. First in year.

1981: BA (Sydney). Majoring in ancient and modern history.

1978: Higher School Certificate, NSW. First in State.