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<b>Nationality/ Date of Birth</b>	Scotland/ Australia 8-10-1951

### **Educational/Professional Memberships**

Member West Australian Bar Association  
Member Legal Practice Board Western Australia  
Chair Trustees Great Southern Grammar School  
Panel Member SIAC  
Panel Member HKIAC

### **Current Position**

Queens Counsel, Quayside Chambers Perth WA. Arbitrator/ Mediator

### **Professional Experience**

#### **Solicitor Edinburgh Scotland 1972 – 1976**

#### **Barrister Perth 1976 – 1994**

Briefed almost exclusively in commercial cases in the Supreme Courts of Western Australia and Victoria, the Federal Court of Australia and the High Court of Australia. Extensive experience of disputes, including arbitration, in the mining and resources sector.

#### **Queens Counsel (WA) 1994**

#### **Queens Counsel (VIC) 1996**

#### **Judge Federal Court of Australia 2006 – 2018**

Delivered almost 600 judgments spanning the full body of the Court's work, including important judgments in commercial law, company law and trade practices.

#### **Arbitrator/ Mediator 2018 – current**

### **Arbitration Experience**

#### **Independent Bar**

*Commercial law*, most major areas, including contracts, partnerships, joint ventures, trusts, unit trusts – corporations and associations, including derivative suits, oppression and the like – officers' duties, fraud and negligence, professional misconduct, unconscionable conduct, misleading and deceptive conduct, duress – equity and fiduciary duties.

*Joint venture, shareholder and partnership disputes*, including disagreements over profit shares, warranty disputes, damages assessments, fraud claims, force majeure, disputes about penalties, interim remedies, consolidation of related claims, discretionary relief.

*Complex valuations*, including discounted cash flows.

*Interlocutory remedies*, including injunctions, *Anton Pillar* and *Mareva* orders and challenges to and recusal of tribunals.

*Mediation and co-operative dispute resolution*, especially multi-party or otherwise complex mediations.

*Final remedies*, including specific performance, accounting, tracing, account of profits – rescission, restitution and money in lieu – rectification of instruments – imposition of remedial and constructive trusts – equitable compensation and damages, including complex valuation, valuation of loss of opportunities, causation and remoteness.

*Appeals*, to intermediate appellate courts and to the High Court.

## Mining & resources sector expertise

### Illustrative cases

*Adelaide Petroleum v Sellars, de Crespigny & Ors*, a misleading and deceptive conduct case in the gold mining sector litigated in the Federal Court and ultimately in the High Court of Australia.

*DPP v de Crespigny & Ors*: Robert Champion de Crespigny transformed Normandy Mining into the world's then sixth-largest gold mining company. Five years of litigation ensued, involving first a Commonwealth DPP prosecution and then a civil reprise in the Supreme Court of Victoria. At its core, the case involved complex issues of mine asset valuation.

*Hancock Group arbitration*, a large international commercial arbitration for interests associated with the Hancock Group and Mrs Gina Rinehart. This was a significant commercial dispute with Kumba Resources, a South African subsidiary of Anglo-American, concerning a Joint Venture in the West Australian *Hope Downs* iron ore project. Success in the arbitration transformed Hancock Group's (and Mrs Rinehart's) fortunes, enabling Hancock to secure Rio Tinto as its JV partner.

*Placer (Granny Smith) Ltd v Thiess Contractors Ltd*, a major commercial fraud trial, with fraud alleged against Thiess. Proof of the fraud required mastery of detailed technical and accounting evidence regarding a large mining fleet which Thiess leased to Placer. Fraud was established and the outcome ultimately upheld on appeal to the High Court of Australia.

## Work on the Federal Court bench

### Illustrative cases

*Clough Engineering Ltd v Oil & Natural Gas Corporation Ltd* [2007], a case involving an Australian construction company and a large Indian oil and gas producer, together with a number of local banks, where the main issue concerned injunctive relief relating to a Performance Guarantee.

*Australian Securities & Investments Commission v Fortescue Metals Group Ltd [No 5]* [2009], a case involving high-profile allegations of misleading and deceptive conduct arising from the respondents' involvement with three major PRC corporations. There were significant issues as to the proper construction of contracts with the Chinese companies for large-scale infrastructure works (the construction of a port, railway and mine in Western Australia).

*ABN AMRO Bank NV v Bathurst Regional Council* [2014], a complex collateral derivatives case in the Full Federal Court involving the English Bank *ABN Amro*, and US Ratings Agency *Standard & Poors*: a landmark decision in this area.

*Samsung C&T Corporation, in the matter of Samsung C&T Corporation* [2017], a decision as to whether the Federal Court has power under the *Commercial Arbitration Act* to grant leave to issue subpoenas related to a Singapore-seated arbitration.

*Beijing Hua Xin Liu He Investment (Australia) Pty Ltd v Lu* [2017], a dispute between two foreign companies concerning the proper construction of a share agreement.

### Publications

### Languages

English