

SPOTLIGHT ON BRAD STRAHORN, PARTNER, DISPUTE RESOLUTION, SYDNEY

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Legal Briefings

Brad Strahorn is a construction and infrastructure disputes specialist, based in our Sydney office. He advises on all aspects of the resolution of project disputes. Here he gives us an insight into his career as a construction lawyer, his time in our Tokyo office and the trends his team is currently seeing in the Australian market.

WHAT SPARKED YOUR INTEREST IN A CAREER IN LAW?

I had an interest in law from an early age, but on reflection, I'm not sure why. There are no other lawyers in my family and I had little exposure to the profession in my years growing up. Despite that, I was curious enough to take legal studies as an elective subject in my years of senior school. My teacher was the nephew of the former Australian High Court Justice Frank Kitto, and while his interest in history meant that he rejected the idea of a career as a lawyer for himself, he was passionate about the law and his enthusiasm was contagious. I ended up taking the subject prize at the end of senior school and my interest grew from there.

I suppose I was attracted to the analytical nature of the work and the heavy focus on problem solving. I was also attracted to the way that law has the ability to impact every aspect of commercial life. The context in which we play our role as lawyers - and I say that as a construction and infrastructure disputes lawyer - is diverse, always challenging and deeply interesting.

HOW DID YOU END UP AS A CONSTRUCTION AND INFRASTRUCTURE DISPUTES LAWYER?

My first rotation as a trainee was as a property lawyer. At that time trainee rotations lasted for a year and, to be honest, it was the longest year of my life. If nothing else, though, I learned that I did not want to be a transactional lawyer. My next rotation was in the Disputes practice, and 15 years later, I am still here. While I initially acted on a wide range of commercial disputes, over time my focus shifted to construction and infrastructure disputes.

As a result, when the opportunity arose to join the Brisbane office of legacy Freehills in the construction disputes team in 2008, I took it. It was a busy time to be in construction disputes in Queensland with a mining boom in full swing, and a number of enormous infrastructure projects that were at that time in delivery.

"There is currently in excess of A\$40 billion of infrastructure projects at various stages of procurement in Sydney, and as a result of that, our clients are very active on projects in this region" [Brad Strahorn](#)

YOU HAVE MOVED AROUND IN YOUR CAREER, WHAT HAVE BEEN THE DRIVERS FOR THOSE MOVES?

As the merger between legacy Herbert Smith and legacy Freehills was completing, I was invited to do a secondment in the construction and infrastructure disputes group of the Tokyo office. I jumped at the opportunity. The firm has an incredibly strong disputes practice in Tokyo. As a result, the office is commonly asked to advise on large disputes of strategic significance to Japanese clients. My expectations were well and truly met and I found the experience incredibly rewarding.

Following my return to Australia the next year, I was asked to move to Sydney to further grow the construction and infrastructure disputes practice. It was an easy decision to make. There is currently in excess of A\$40 billion of infrastructure projects at various stages of procurement in Sydney, and as a result of that, our clients are very active on projects in this region.

In terms of drivers, I have tried to make the most of opportunities that present themselves to me, and I've been very fortunate to have been presented with some good ones over the course of my career.

WHAT TRENDS ARE YOU SEEING IN THE CONSTRUCTION & INFRASTRUCTURE MARKET AT THE MOMENT IN AUSTRALIA?

There are a few trends that are beginning to surface and to play out in interesting ways. The first is the volume of foreign contractors participating in the local market on projects, not only in partnership with local contractors, but in partnership with each other. While this presents the usual challenges that any foreign market player would face in engaging in procurement in a relatively unfamiliar jurisdiction, the challenges are acute without the assistance of a local operator, made all the more complex by the fact that Australia's federal structure means that foreign contractors cannot adopt a one size fits all strategy to projects around the country.

A particular issue that we commonly see concerns the operation of security of payment processes, and the wide application of these processes to construction work in each jurisdiction of Australia. In general terms, the sub-contract market is sophisticated and well heeled in their ability to administer subcontracts in an aggressive way, and players know how to take advantage of security of payment processes.

In addition to this, the influx of foreign contractors has obviously added to the competitive pressures in the market, and by extension, the risks that contractors (generally) are prepared to take on in bidding for projects. Once again, that places pressure on the need to administer contracts in an efficient way and to innovate in design development and in project delivery.

The second trend I see concerns the challenges involved in responding to the shift in projects from mining infrastructure towards what are now predominantly transport projects. There is a skill shortage in key areas which has obvious implications for project delivery assumptions made in the course of project bids. It is also a different proposition to deliver projects for a government owner/key stakeholder (as is the case with many transport projects), rather than a private owner procuring mining infrastructure. There's certainly a consistent overlap, but the issues are not the same. Transport projects typically involve much greater public scrutiny, a broader stakeholder constituency that needs to be consulted in project delivery, and a complex political context. There is an adjustment involved in understanding the implications of these issues for project delivery.

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To me, these types of issues – particularly when considered against the scale of modern infrastructure projects, and the fact that the pressures of project delivery leave little margin for error – serve to emphasise that an understanding of context, and current trends, is critical to the success of what we do in terms of advising our client. We never forget that.

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