

MARK DARIAN-SMITH

BARRISTER

13 Wentworth Chambers

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Mark enjoyed a successful career as a Partner at King & Wood Mallesons in various locations throughout Australia following his admission as a solicitor in 1984. He was called to the Bar in 2019 and specialises in commercial law, equity and trusts, banking and financial services, building and construction law, real property, trade practices and competition. Mark also brings a wealth of knowledge and experience to disputes in a diverse range of commercial sectors having successfully conducted large-scale litigation at trial and appellate level on behalf of a wide variety of national and international clients during his legal career.

Mark is briefed by law firms located throughout Australia in relation to New South Wales matters, and frequently appears in the Supreme Court of New South Wales (and in particular, has a burgeoning practice in the Equity Division). He also appears in the Federal Court of Australia and in inferior courts, as well as tribunals, including the New South Wales Civil and Administrative Tribunal (NCAT). Commended for his strategic input, strong leadership and interpersonal skills, Mark provides considerable value when advising on contentious issues arising from disputes, having amassed these skills from his decades of experience as a litigation partner in a top tier international law firm.

Mark also maintains an international commercial arbitration practice, which demonstrates the depth and breadth of his experience in dispute resolution and his appreciation for the wide spectrum in which disputes can be resolved. He is a Fellow of the Chartered Institute of Arbitrators (CIArb) and of the Australian Centre for International Commercial Arbitration (ACICA). Complementing his practice as a barrister, Mark is fully qualified to sit as an arbitrator in domestic and international disputes.

Mark holds a Bachelor of Civil Law from the University of Oxford and a Bachelor of Laws with Honours and Bachelor of Arts with Honours from the University of Melbourne. Notably, he was awarded the Sir Robert Menzies Memorial Scholarship for Law in recognition of his academic excellence. Throughout his legal career, Mark has frequently delivered seminar presentations and published case notes and articles on topical matters, most recently appearing in an audio interview for Television Education Network and publishing case notes on the enforcement of international arbitration awards in the Lexis Nexis ADR Law newsletter.

ADMISSIONS

- 2019 Called to the Bar of New South Wales
- 1984 Admitted as a Solicitor in Victoria (and subsequently in NSW, ACT, QLD, SA, NT and WA)

PROFESSIONAL QUALIFICATIONS

- 1986 Bachelor of Civil Law: University of Oxford
 - 1982 Bachelor of Laws (Honours) and Bachelor of Arts (Honours): University of Melbourne
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ACCOLADES

- Sir Robert Menzies Memorial Scholarship for Law - 1984

PRINCIPAL AREAS OF PRACTICE

- Commercial Law
- Equity & Trusts
- Banking & Financial Services
- Building & Construction Law
- Trade Practices & Competition
- Real Property

PROFESSIONAL EXPERIENCE

- 2019 - present Barrister, 13 Wentworth Chambers
- 2011 - 2016 Partner, King & Wood Mallesons: Perth
- 2009 - 2011 Partner, Mallesons Stephen Jaques: Sydney
- 2003 - 2004 National Managing Partner (Performance & Quality), Mallesons Stephen Jaques
- 2003 National Practice Team Leader (Dispute Resolution), Mallesons Stephen Jaques
- 1998 - 2003 Partner in Charge, Mallesons Stephen Jaques: Brisbane
- 1998 - 2009 Partner, Mallesons Stephen Jaques: Brisbane
- 1991 - 1997 Partner, Mallesons Stephen Jaques: Melbourne
- 1987 - 1990 Solicitor, Mallesons Stephen Jaques (Commercial Disputes Group): Melbourne

PROFESSIONAL MEMBERSHIPS

- Fellow Chartered Institute of Arbitrators (CI Arb)
- Fellow Australian Centre for International Commercial Arbitration (ACICA)
- Member New South Wales Bar Association
- Former Member New South Wales Bar Association ADR Committee (2019 - 2020)
- Member INSEAD Alumni

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SELECT CASES (AS A BARRISTER)

- Appeared led by T Brennan SC in Supreme Court Common Law List matter for Tallevine Pty Ltd against Ford Motor Company concerning civil contempt: *Ford Motor Company of Australia Ltd v Tallevine Pty Ltd (atf Thornleigh Trading Trust)* [\[2019\] NSWSC 1914](#).
- Appeared unled for Travis Reddington in franchise dispute with Pro Arc, opposing an interlocutory injunction: *Pro Arc International Pty Ltd t/as World Gym Australia v Reddington* [\[2020\] NSWSC 1274](#).
- Appeared led by C Wood SC in a range of Supreme Court Equity General List, Commercial List and Real Property List applications and trials.
- Appeared led by M Windsor SC in confidential NCAT proceedings against Office Children's Guardian.
- Acting and appearing unled in a range of matters pending trial in Supreme Court Commercial List and Real Property List.

SELECT CASES (AS A SOLICITOR)

Throughout his extensive practice as a partner at Mallesons Stephen Jaques, Mark was often instructed in major litigation. A selection of those cases is provided below.

- Successfully ran, as responsible partner, a major negligence and breach of contract case for BHP Coal against the OEM concerning the collapse of the bucket wheel excavator at Goonyella Riverside Mine, Qld: *BHP Coal Pty Ltd & Ors v O&K Orenstein & Koppel AG & Ors* [\[2008\] QSC 141](#).
- Successfully ran an appeal in Supreme Court of Western Australia – Court of Appeal for Xstrata Nickel concerning the construction of a royalty contract and rectification: *Technomin Australia Pty Ltd v Xstrata Nickel Australasia Operations Pty Ltd* [\[2014\] WASCA 164](#).
- Appeared as junior counsel led by B Dharmananda SC for Buru Energy in a successful trial concerning the interpretation of a royalty clause: *Fitzroy River Corporation v Buru Energy Ltd* [\[2015\] WASC 143](#).
- Mark was joint lead partner in a major ICC London international arbitration for OilSearch Ltd against a supermajor.