

S.R. Horgan QC

*Owen Dixon Chambers West
Room 2413
525 Lonsdale Street
MELBOURNE VIC 3000*

*Telephone: (03) 9225 8419
Facsimile: (03) 9225 8370
Clerk: Foley's List Pty Ltd
Email: horgan@vicbar.com.au*

PRIVATE & CONFIDENTIAL

Curriculum Vitae

April 2017

A. PARTICULARS

- (a) Samuel Richard Horgan
- (b) *Date of Birth:*
11 April 1963
- (c) *Post Admission Legal education and relevant academic record:*
Bachelor of Science from the University of Melbourne, 1987.
Bachelor of Laws from the University of Melbourne, 1987.
- (d) *Date, month and year of admission in each jurisdiction:*
- | | |
|-------------------------|------------------|
| Victoria | 29 February 1988 |
| High Court of Australia | 9 March 1988 |
| Queensland | 12 March 1990 |
| New South Wales | 6 April 1990 |
| Western Australia | 2 April 2003 |
- (e) *Date of signing the Roll of Counsel:*
26 May 1988
- (f) *Date of appointment as Senior Counsel:*
26 November 2008

B. PRACTICE PARTICULARS

(a) *General commercial matters*

I have appeared at trial and on appeal in many significant commercial disputes including the following matters:

- *Winky Pop Pty Ltd v Mobil Refining Australia* [2016] VSCA 187, Tort – damage to land – nuisance – damages – diminution in property value.
- *Chong & Neale v CC Containers Pty Ltd* [2015] VSCA 137, Tort – conspiracy – evidence – inferences – privilege against self-incrimination.
- *Cornerstone Hardware Brokers (Australia) Pty Ltd v Methven Australia Pty Ltd* [2015] VSCA 128, Contract – variation – proof of loss.
- *Vic Hotel Pty Ltd v DC Payments Australasia Pty Ltd* [2015] VSCA 101, Evidence – waiver of privilege – test for waiver.
- *Robinson v Jones* [2015] VSC 22, Succession wills and probate – informal will – testamentary capacity.
- *Vasco Investment Managers Ltd v Morgan Stanley Australia Limited* [2014] VSC 455, Confidential information – identification of information – restitution – quantum meruit – success fee.
- *CC Containers Pty Ltd v Lee & Ors* [2014] VSC 151
-Tort – conspiracy to defraud – inferences – Equity – secret commission.
- *Wilde v Art Pacific Pty Ltd* [2013] VSCA 250 - default under mortgage – service - doctrine of fair notice.
- *Nicholson v Hilldove Pty Ltd* [2012] VSC 598 - conveyancing – agency – contract.
- *Bacchus Distillery Pty Ltd v BDS Marketing Australia Pty Ltd* [2011] FCA 827, injunction – passing off breach of copyright.
- *Mount Gibson Mining Ltd v Rizhao Steel Ltd* (2011), Arbitration before A.M. Gleeson AC QC arising out of breach of life of mine offtake contracts by Chinese purchasers.
- *Paradise Enterprises Ltd v Kakavas* [2010] VSC 25, foreign law – unconscionable conduct – gaming – public policy.
- *Victorian Bushfire Royal Commission* (2010) – Asset maintenance contractor.
- *Safari Automotive Technology Pty Ltd v Ironman 4 x 4 Pty Ltd* [2009] FCA 1330, Injunction – passing off.
- *Kay Group Holdings Pty Ltd v K & K Plastics Pty Ltd* [2008] VSC 500 commercial arbitration appeal – sale of business.
- *Environmental Systems Pty Ltd v Peerless Holdings Pty Ltd* (2008) 19 VR 358, contract – damages – industrial machinery.
- *Piva v Sportiva Macchina International Pty Ltd* [2006] VSC 321, contract.
- *Challenge Charter Pty Ltd & Anor v Curtain Bros. (Qld) Pty Ltd & Ors* (2004) 9 VR 382, contract.

- ***Foody & Anor v Horewood*** (In the matter of ***Musashi Pty Ltd***) [2003] VSC 347, [2004] VSC 222 and in the Court of Appeal [2007] VSCA 130, Oppression – Director’s duties - valuation.
- ***Murray Goulburn Co-operative Company Ltd v Cobram Laundry Service Pty Ltd*** [2001] VSCA 57, contract.

I advise in relation to a broad range of commercial and regulatory matters. I also act in relation to both private and charitable trusts.

(b) ***Admiralty and Maritime Law***

For more than 25 years I have appeared in the Supreme, County and Federal Courts on behalf of Protection and Indemnity Societies representing ship owners and charterers. I have frequently acted on behalf of defendant shipowners in cargo proceedings in both the Supreme and Federal Courts.

I have particular experience in matters concerning the arrest and the release from arrest of vessels in the Admiralty jurisdiction. I have been involved in some of the leading cases on the movement of vessels whilst under arrest including the “*Martha II*” and the “*Mawashi Al Gasseem*” (both cited below).

I have acted on behalf of the Seafarers Union, the International Transport Workers Union and the various Maritime Unions in relation to issues concerning the rights and entitlements of the crews of ships under arrest. Additionally, I have been involved in administrative challenges to the issue of coastal shipping permits under the ***Navigation Act*** 1912 (Cth).

I was junior counsel for the owner and Master of the ***MV “Tampa”*** during the refugee dispute in 2001.

I have appeared for the arresting party in litigation involving the conflict between an arrest under the ***Admiralty Act*** 1988 (Cth) and a seizure under the authorities under the ***Fisheries Management Act*** 1991 (Cth).

Some of the more important matters in which I have appeared in this area are as follows:-

- ***Chong & Neale v CC Containers Pty Ltd*** [2015] VSCA 137, Tort – conspiracy – container service and storage business – evidence – inferences – privilege against self-incrimination.
- ***Transfield ER Futures Limited v The Ship “Giovanna Iuliano”*** [2012] FCA 548, Admiralty – Arrest – forward freight agreements – set aside arrest.
- ***Jebsens International (Australia) Pty Ltd v Interfert Australia Pty Ltd*** [2012] SASC 50, International arbitration – Shipping and Navigation – Breach of Charterparty – sea carriage document.
- ***Strong Wise Ltd v Esso Australia Resources Pty Ltd (The “APL Sydney”)*** [2010] 2 Lloyd’s Rep 555; (2010) 185 FCR 149 and 237, Admiralty – Limitation of Liability – Convention – multiple claims arising out of ship’s anchor fouling submarine gas pipeline.

- *Qenos Pty Ltd v The Ship “APL Sydney”* (2009) 187 FCR 282, Shipping and Navigation – Limitation of Liability – consequential loss – pure economic loss.
- *BHPB Freight Pty Ltd v Cosco Oceania Chartering Pty Ltd* [2008] FCA 551, anti-suit injunction.
- *ASP Holdings Pty Ltd v Pan Australia Shipping Pty Ltd (“Boomerang I”)* [2006] FCA 1379, arrest of a ship in administration.
- *Scandinavian Bunkering AS v The Bunkers on Board the Ship FV “Taruman”* (2006) 151 FCR 126, Arrest - property.
- *Alcantara v The Ship MV “Mawashi Al Gasseem”* SAD/201 of 2005, the repatriation and payment of the Master and crew of the Ship “Mawashi Al Gasseem”.
- *Den Norske Bank (Luxembourg) SA v The Ship “Martha II”* [2000] FCA 241.
- *Nautilus Australia Ltd v The Ship “Rossel Current”* [1999] QSC 39.
- *Philip Morris Ltd v Bridge Shipping Pty Ltd* (1994) 2 VR 1, Joinder of Parties – time bar.

(c) ***Regulated Industries / Competition***

Since the mid 1990’s I have been regularly engaged on behalf of privatised and regulated energy businesses in relation to regulatory issues and other disputes. I have acted alone and also together with junior counsel advising gas, electricity, telecommunications and inter-connector interests in relation to the regulation of their businesses by various regulatory authorities. This work involves an understanding of various administrative, economic and regulatory issues. In particular, I have advised and appeared on behalf of regulated corporations in relation to gas distribution and electricity distribution price reviews in Victoria, South Australia and Queensland.

I have also acted for the ACCC in telecommunications proceedings before the Australian Competition Tribunal.

In addition to regularly appearing before statutory review bodies I have also appeared in several court cases on appeal or judicial review from regulatory decisions made in this area including:

- *Applications by Public Interest Advocacy Centre Ltd and Ausgrid* [2016] A CompT 1 – Energy and Resources – applications for review of distribution determinations NSW and ACT.
- *SPI Electricity v Australian Energy Regulator* [2014] FCA 1012 – administrative law – ADJR Act review of regulator’s decision on distributor’s approved budget.
- *Appeal by SPI Electricity Pty Ltd* [2013] A CompT 7 – appeal against regulator’s reassessment of Advanced Metering Infrastructure expenditure.

- *Application by United Energy Distribution Pty Ltd* [2012] A CompT 1, [2012] A CompT 8, Competition Tribunal – appeal against regulator’s assessment of revenue allowance for electricity distributor.
- *Application by SPI Electricity Pty Ltd* [2012] A CompT 11 – Competition Tribunal – Advanced Metering Infrastructure – commercial standards – prudence of expenditure.
- *Application by DBNGP (WA) Transmission Pty Ltd* – ACT 2 of 2012, terms of access to the Bunbury to Dampier Natural Gas Pipeline.
- *Application by Chime Communications Pty Ltd* [2008] A CompT 4 – Telecommunications Access Regime – declared services.
- *Envestra v District Court of South Australia* [2007] SASC 177, judicial review of tribunal decision.
- *Pacific Hydro Ltd v Office of the Renewable Energy Regulator* (2006) 150 FCR 124, renewable energy credits.
- *XStrata Queensland Ltd v Santos Limited* [2005] QSC 323.
- *Yallourn Electricity Ltd v Enron Australia Pty Ltd (in liq)* [2005] NSWCA 326, futures contracts – ISDA – electricity swaps.
- *Sims and Another v TXU Electricity Ltd* [2005] NSWCA 12, futures contracts – ISDA – electricity swaps.
- *Murraylink Transmission Co Pty Ltd v National Electricity Market Management Co Ltd* [2003] VSC 265, Interconnector – judicial review of tribunal decision.
- *TXU Electricity Ltd v Office of the Regulator-General* (2001) 3 VR 93.
- *TXU Electricity Ltd v Office of the Regulator-General* [2001] VSC 153, assessment of regulated income.

(d) ***Property Law***

One particular area of interest in which I have maintained a practice is the area of Property Law.

I have appeared in many matters in relation to the proper interpretation of the *Subdivision Act* 1988 (Victoria) and its interaction with the *Transfer of Land Act* 1958. In particular, I have been involved in a number of cases involving the extent of lot owners’ rights in respect of Body Corporate land.

I am also frequently briefed in matters involving caveats, restrictive covenants, easements, adverse possession of land, leases and contracts of sale.

Some of the more important cases in which I have appeared are as follows:

- *Impact Funds Management Pty Ltd v Roy Morgan Research Ltd* [2016] VSC 221, Leases and tenancies – construction – repudiation – relief against forfeiture.
- *Prowse v Johnstone* [2015] VSC 621, Real Property – Restrictive covenant - validity

- *Carbon Black Lab Pty Ltd v Launer* [2015] VSCA 126, Caveat – interest as purchaser – notice of default and rescission.
- *Freilich v Wharton* [2013] VSC 533, restrictive covenant – application to modify.
- *Suhr v Michelmore* [2013] VSC 284, restrictive covenant – application to modify – construction.
- *A. Woodley Osteopathic Services Pty Ltd v TAC* (2013) 46 VR 28, tort – escape of horse from property – existence of duty – breach.
- *Grant v Preece* [2012] VSC 55, Restrictive Covenant – application to modify – obsolescence – substantial injury – estoppels.
- *Fraser v Di Paolo* [2008] VSC 117 – removal or modification of restrictive covenant.
- *East Melbourne Group Inc v Minister for Planning & Anor* [2008] VSCA 217 – planning appeal – administrative review.
- *Break Fast Investments Pty Ltd v PCH Melbourne Pty Ltd* (2007) 20 VR 311 – airspace encroachment.
- *Bevilacqua v Merakovsky* [2005] VSC 235 – removal or modification of restrictive covenant.
- *Biki v Chessells* [2004] VSCA 70 – ancillary easement rights.
- *Gordon v Body Corporate Strata Plan 3023 & Anor* [2004] VSC 359.
- *Walker & Sopov v Registrar of Titles* (2001) 8 VR 618.

C. OTHER RELEVANT INFORMATION

I have been a Member of the Victoria Bar for 29 years. I have had three readers: Tim Grace, Carl Möller and Ben Murphy.

I am married to Christine with two sons, Alex (twenty) and Matthew (sixteen).

For the last eighteen years I have sat on the Judicial Panel and Appeals Committee for the Victorian Rugby Union. I advise Life Saving Victoria in matters involving Crown leaseholds for Surf Life Saving Clubs and sit on the Life Saving Victoria Club Lease Committee.

I assist each year with the Bar Readers' Course.