

Malcolm Gracie

Professional Career

Malcolm Gracie has practised continuously and exclusively as a barrister since his admission to the New South Wales Bar on 20 December 1988.

Since that time, he has appeared as an advocate in all levels of Federal and State Courts in New South Wales. He currently specialises in advocacy and advisory work in building and construction law, commercial law, equity and trade practices.

Malcolm Gracie's practice is both extensive and varied and is not limited to his main areas of specialty. His experience extends into many areas of practice, which has involved him in particularly noteworthy appearances in the High Court of Australia in cases involving trade practice and industrial law (*Concrete Constructions v Nelson* (1990) 169 CLR 594), principles for the assessment of contractual damages (*Commonwealth of Australia v Amann Aviation* (1992) 174 CLR 64) and the construction of the *Commonwealth Criminal Code (R v RK* (2010) CLR 177).

His appellate work is principally in matters in which he has been briefed to appear at trial and first instance, which mainly involves proceedings in the Federal Court and Supreme Court of New South Wales (eg: *Scott Carver Pty Ltd v SAS Trustee Corporation* [2005] NSWCA 462; *Illawarra Hotel Company v Walton Construction Pty Ltd* [2009] NSWCA 61; [2012] NSWCA 61; [2013] NSWCA 6). Those appearances also include Supreme Court reference hearings, arbitrations (both domestic and international) and on occasions he still appears in the District Court of New South Wales in commercial, insurance and construction matters (eg: *BMW Finance Ltd v Morehuman NSW Pty Ltd* [2011] NSWDC 15; also see *Vero Ltd v APS Pty Ltd* on appeal from the District Court [2013] NSWCA 181).

From time to time, Malcolm is also briefed to appear in the Land and Environment Court of New South Wales on a range of matters in that jurisdiction including development appeals and defended prosecutions (eg: *Director-General Department of Environment, Climate Change and Water v Forestry Commission of NSW* [2011] NSWLEC 102). He also appears in possession matters in the Common Law Division of the Supreme Court (eg: *Accom Finance v Kowalczyk* [2007] NSWSC 726 and (on appeal) [2008] NSWCA 343; *Big Kahuna Pty Ltd v Kitas* [2012] NSWSC 615; [2012] NSWSC 858). He has appeared in the Supreme Courts of the Australian Capital Territory, Queensland and Western Australia.

ADR Experience

Malcolm Gracie is a Chartered Arbitrator and has been a Fellow of the Chartered Institute of Arbitrators (Australian Branch) since 1997. He is a member of the Institute of Arbitrators and Mediators Australia (IAMA) and has been accredited as a Grade 1 Arbitrator by that organisation. He has been appointed to the District Court Panel of Arbitrators since 1998 and conducted many arbitrations as a member of that panel. He is also an approved Arbitrator with the New South Wales Bar Association.

Malcolm is also listed on the New South Wales Bar Association Panels of Mediators and Expert Determiners, as well as being listed on the New South Wales Supreme and District Court Panels of Mediators. He is a NADRAC accredited "Experienced Qualified Mediator" and "Experienced Qualified Mediator Coach" and a Defence Force Registered Mediator.

Malcolm was recently appointed Arbitrator in a dispute by the President of the Law Society of New South Wales and is presently an Arbitrator in a long-standing building and construction dispute. He has also recently been approved by the ACCC and appointed to the national pool of arbitrators under the NBNCo Wholesale Broadband Agreement.

Navy Legal Reserves

Malcolm Gracie is a member of the New South Wales Naval Reserve Legal Panel with the rank of Lieutenant Commander. He specialises in administrative law, including appearing in Commissions of Inquiry. He also has a keen interest in operations law, especially in the area of humanitarian law and the law of armed conflict.

Human Rights

Malcolm's interest in human rights involved several years of service as an Executive Councillor of the Australian Section of the International Commission of Jurists (ICJ), where he chaired the Burma and Sri Lanka sub-committees. He also reported on behalf of the ICJ in relation to High Court proceedings in Vanuatu and was an election observer during the Presidential Elections in Sri Lanka in 1994. He authored an article on the recent ethnic conflict and civil war in the book "*Sri Lanka: 60 Years of Independence and Beyond*" (2009, Berne, Switzerland).

Bar Association Committees

Malcolm Gracie has also served on various Bar Association Committees including the New Barristers Committee, Professional Conduct Committees, the Equal Opportunity Committee and more recently the Alternative Dispute Resolution Committee.

In the latter capacity, Malcolm made several presentations to members of the Bar Association on the provisions of the new *Commercial Arbitration Act 2010 (NSW)* and "Ethics in ADR."

Malcolm has participated in Bar Advocacy Workshops as well as the Bar Reader's programme as part of his tutorship of six readers to the NSW Bar. In 2000, he was elected to the teaching faculty of the Australian Advocacy Institute. He also assists in cross-examination workshops for expert witnesses conducted by IAMA.