

Declan Byrne

Solicitor 2010

Barrister 2016

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Declan Byrne specialises in complex disputes concerning construction and infrastructure projects and large-scale residential developments.

Declan has particular expertise in disputes involving the *Building and Construction Industry Security of Payment Act 1999* (NSW), having appeared in a number of the leading cases, and the *Design and Building Practitioners Act 2020* (NSW). He also has experience with intricate strata-law matters.

Declan regularly appears unled for a diverse range of clients including owners corporations, builders, subcontractors, consultants and developers (as well as the insurers, administrators and liquidators of same) in both the NSW courts and in arbitrations (both international and domestic). He also has an increasing interstate practice.

Declan has long-standing ties to the construction industry. Prior to coming to the Bar, Declan spent 3 years working for an ASX-listed engineering practice, Cardno Ltd. He then spent 6 years in the construction litigation teams at Herbert Geer (now Thomson Geer)

and later HWL Ebsworth. During that time, he had an extended secondment to the tier one builder, John Holland.

Declan is a headnote editor for the *Building and Construction Law Journal*.

QUALIFICATIONS

- Bachelors of Arts and Laws from the University of Queensland (2009)
 - Masters of Construction Law from the University of Melbourne (2016)
 - Awarded the Corrs Chambers Westgarth Prize for Remedies in the Construction Context.
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Specialisations

- Building and Construction
- Arbitration (Domestic & International)
- Property / Strata Law
- Insurance
- Commercial and Equity

Professional Recognition

Declan has been listed in Doyle's Guide under the following categories:

- Construction & Infrastructure Junior Counsel (Australia) - Leading 2022, 2024; Recommended 2020, 2021, 2023
- Construction & Infrastructure Junior Counsel (NSW) - Leading 2021, 2022, 2023, 2024; Recommended 2018, 2019 and 2020; Emerging 2017

Declan has also been recognised in the Best Lawyers Australia in the Ones to watch 2025 category for Construction / Infrastructure Law

Notable Cases

SECURITY OF PAYMENT

Forte Sydney Carlingford Pty Ltd v Li. Declan acted for a landowner resisting an appeal against an injunction preventing a developer from pursuing a repetitious adjudication under the security of payment legislation (led by F Hicks SC): [2024] FCAFC 9.

Taylor Construction Group Pty Ltd v Adcon Structural Group Pty Ltd. Declan acted for a head contractor on a successful application to permanently restrain a subcontractor from referring a payment claim to adjudication (unled against senior and junior counsel): [2023] NSWSC 723.

McNab Building Services Pty Ltd v Demex Pty Ltd. Declan acted for a plaintiff in proceedings seeking to set aside a determination under the *Building and Construction Industry Security of Payment Act 1999* (unled): [2022] NSWSC 1442; and on appeal (led by F Hicks SC): [2023] NSWCA 261.

Equa Building Services Pty Ltd v A&H Floors 2 Doors Australia Pty Ltd. Declan acted for a plaintiff in proceedings seeking to set aside a determination under the *Building and Construction Industry Security of Payment Act 1999* (unled): [2022] NSWSC 152.

Chess Engineering Pty Ltd v Acciona Infrastructure Australia Pty Ltd. Declan acted for a subcontractor in proceedings brought by the head contractor to set aside a determination under the *Building and Construction Industry Security of Payment Act 1999* (NSW) (led by IG Roberts SC): [2020] NSWSC 1423; [2020] NSWSC 1788.

TFM Epping Land Pty Ltd v Decon Australia Pty Ltd. Declan successfully defended a builder when a developer appealed a summary judgment for a statutory debt under the security of payment legislation. The decision resolved conflicting authorities on whether a failure to

provide a supporting statement invalidated a payment claim: [2020] NSWCA 93 (led by IG Roberts SC). He also successfully resisted the developer's application for a stay of execution of the judgment due to insolvency (also led by IG Roberts SC): [2020] NSWSC 659; [2020] NSWCA 118.

BUILDING AND CONSTRUCTION

Owners SP89866 v Zouki. Declan acted for an owners corporation seeking the continuation of a freezing order stopping the developer from having recourse to the proceeds from the sale of the last lot in the development and an injunction preventing the purchaser from dealing with the lot (unled): [2024] NSWSC 696.

Owners SP85494 v PBS Building (NSW) Pty Ltd. Declan acted for an owners corporation seeking to amend its claim shortly before expiry of the 10-year long stop (unled): [2024] NSWSC 381.

Owners SP90018 v Parkview Constructions Pty Ltd. Declan acted for a plaintiff seeking to amend its *Home Building Act 1989* claim following expiry of a limitation period (led by G Sirtes SC). This decision is an important restatement of the applicability of the 'Onerati Principle' to these claims: [2022] NSWSC 1123.

GC Group Company Pty Ltd v Bingo Holdings. Declan acted for a civil contractor in proceedings against a supplier of recycled aggregate. He was successful in striking out proportionate liability proceedings and resisting a subsequent application for leave to amend (led by F Corsaro SC): [2020] NSWSC 598; [2020] NSWSC 1360; [2021] NSWSC 252; [2021] NSWCA 184.

Owners SP85338 v Maygood. Declan acted for an owners corporation in NCAT proceedings against a developer for breach of statutory warranties under the *Home Building Act 1989* (unled against senior and junior counsel). He also successfully resisted an appeal by the developer: [2020] NSWCATAP 237.

PROPERTY LAW

Elkhouri & Perpetual v / ats Owners SP6534. In February 2024, Declan acted for an owners corporation in proceedings brought by and against the estate of the penthouse owner and its mortgagee in possession. The claims and cross-claims were heard concurrently for 8-days in the Supreme Court. The case concerned outstanding strata levies, challenges to the validity of exclusive use rights and amounts payable for defective works pursuant to by-laws and involved multiple interlocutory applications (Declan led A Sivanathan): [2024] NSWSC 173; [2024] NSWSC 358.

352 Bourke Street Pty Ltd v Rhall. Declan acted for a developer in Supreme Court proceedings concerning an application for permission to rescind off the plan sales contracts under s66ZL of the *Conveyancing Act 1919* (led by IG Roberts SC).

Spoto ats Ma. Declan acted for vendors in Supreme Court proceedings who resisted a claim from subsequent purchasers seeking recovery of their forfeited deposit (led by S Goodman SC).

INSOLVENCY

In the matter of 431 Asquith Pty Ltd. Declan acted for a developer who set aside a creditor's statutory demand based upon a judgment obtained by registering an adjudication certificate (unled): [2023].

In the matter of Macarthur Projects Pty Ltd. Declan acted for a superintendent seeking to resist an application to set aside a creditor's statutory demand based upon a judgment obtained by registering an adjudication certificate (unled against senior counsel): [2021] NSWSC 1705.

Skyworks NSW Pty Ltd v QY & Lynn Pty Ltd. Declan acted for a developer in Supreme Court proceedings that included interlocutory applications for a separate question and a freezing order: [2017] NSWSC 343 (led by IG Roberts SC).

Presentations

- Design & Building Practitioners Act Paper
- Litigation Essentials: Subpoenas
- The 2018 Amendments to the Security of Payments Act 1999

Publications

- The Design & Building Practitioners Act 2020 (NSW) - the regulations and how to plead a claim
- Trespass on Neighbouring Land: Why it is always better to seek permission (and what to do when it's not given)
- Security of Payments - 2018 amendments
- Litigation essentials: subpoenas