

(David) Scott Ellis

Present positions

Barrister, arbitrator, mediator, statutory adjudicator at Francis Burt Chambers.

Western Australian Electricity Review Board (WA)

Acting Commissioner, Corruption and Crime Commission (WA)

Senior Sessional Member, State Administrative Tribunal (WA)

Member, National Sports Tribunal (Comm)



Prior employment

Legal practice at Freehills:

- Consultant, 1 January 2004 to October 2005 and private ADR consultancy
- Partner, 1 July 1990 – 31 December 2003
- Solicitor at Muir Williams Nicholson (which became Freehills) 1983 – 1990
- Articled Clerk - 1983

Education

Bachelor of Jurisprudence (UWA), 1982

Bachelor of Laws (UWA), 1983

Master of Laws (UWA), 1994

Professional Certificate in Arbitration, General & Advanced (University of Adelaide), 2003

Diploma in International Commercial Arbitration (Queen Mary College, University of London) 2007

Professional qualifications

Practitioner of the Supreme Court of Western Australia (1983)

Chartered Arbitrator, Chartered Institute of Arbitrators (UK/Aust)

Grade 1 Arbitrator, Resolution Institute

Registered adjudicator under the *Construction Contracts (Former Provisions) Act 2004*, (WA) *Construction Contracts (Security of Payments) Act, 2004* (NT) and the *Building and Construction Industry (Security of Payment) Act 2021*

Mediator accredited to NMAS standards

Professional standing

Fellow, Chartered Institute of Arbitrators

Fellow, Australian Centre for International Commercial Arbitration

Fellow, Resolution Institute (RI)

Chair, Law Society of Western Australia ADR Committee

Member, Law Society of WA and Law Council of Australia Joint Committee on Construction and Infrastructure

Member, WA Bar Association

Founding Member, Society of Construction Law Australia

Relevant Experience

I practise as an arbitrator, expert determiner, mediator and statutory decision maker dealing with infrastructure and commercial disputes.

Western Australian Electricity Review Board (WA)

I have acted as the presiding member of the Board since 2010.

The Board deals with the operation of the *Electricity Industry (Wholesale Electricity Market) Regulations 2004* and reviews of decisions of the Economic Regulation Authority. The Board was formerly known as the Energy Review Board and dealt with gas access issues as well as electricity related matters.

As presiding member, I have been made the following decisions:

- *Independent Market Operator v Alinta Sales Pty Ltd* (No 3 of 2008)
- *BHP Billiton Nickel West Pty Ltd v Southern Cross Pipelines and Others* and *Southern Cross Pipelines and Others v BHP Billiton Nickel West Pty Ltd* (Nos 1 & 2 of 2010)
- *Independent Market Operator v Vinalco Energy Pty Ltd* (No 1 of 2016)
- *Davidson v Economic Regulation Authority* (Nos 1 — 7 of 2017)
- *Economic Regulation Authority v Electricity Generation and Retail Corporation* (No 1 of 2019)

BHP v Southern Cross considered a gas pipeline access arrangement. *ERA v Electricity Generation and Retail Corporation* considered the pricing of gas-powered electricity sold into the WA electricity market.

Arbitration/Expert Determination

I am a prominent arbitrator in WA.

I was named Australasian Arbitrator of the Year in 2019 and identified by Doyle's Guide as one of Australia's leading arbitration barristers in 2022. I am a member of the International Chamber of Commerce Commission on Arbitration and ADR.

I have been appointed as sole arbitrator in more than 80 ad hoc arbitrations, including international disputes. The amount in dispute ranged up to about \$5 million. I have conducted contested hearings in relation to final and interlocutory relief.

I am a member of the panels of arbitrators of:

- Economic Regulation Authority (WA):

- Part 23 of the *National Gas Rules*
- *Railways (Access) Code 2000*
- *Pilbara Network Rules and Access Code*
- Essential Services Commission of South Australia
- Australian Communication and Media Authority (New Media Bargaining Code)
- Australian Centre for International Commercial Arbitration
- Asian International Arbitration Centre
- World Intellectual Property Organisation
- Japan Commercial Arbitration Association
- Law Society of Western Australia
- Resolution Institute

I am the Generation Arbitrator appointed by the Economic Regulation Authority

I have also:

- been appointed as an expert determiner in a range of commercial disputes, including corporate disputes, valuations and construction disputes
- been a member of sporting disciplinary tribunals
- dealt with domain name disputes under the auDRP process

Anti-dumping Review Board

I was a member of the Commonwealth Anti-dumping Review Board (ADRP) from 2015 until 2022. The ADRP reviews decisions of the Minister and the Anti-Dumping Commissioner under Part XVB of the *Customs Act, 1901* relating to the imposition of anti-dumping and countervailing duties of goods exported to Australia. The Part implements Australia's obligations under the *General Agreement on Tariffs and Trade, 1994*. Decisions involved consideration of the impact of imports on the Australian industry for various goods, which has included the impact of international gas prices.

Mediation

I have acted as mediator in more than 110 commercial disputes, including, by agreement of the parties, disputes that were before the Supreme Court. The disputes range from employment and disciplinary matters to construction disputes worth approximately \$20 million.

I have conducted mediations as a sessional member of the State Administrative Tribunal, mainly in planning and valuation matters.

I am a member of the panel of mediators maintained by the:

- Government of the Northern Territory in respect of access by resources companies to land
- Queensland Competition Authority
- Law Society of Western Australia
- Australian Commercial Disputes Centre
- Asian International Arbitration Centre

I have also facilitated conferrals between expert witnesses in complex technical disputes.

Statutory Adjudication

I have acted as adjudicator in more than 75 adjudications under the *Construction Contracts Act, 2004* (NT) and *Construction Contracts (Security of Payments) Act, 2004* (NT) with amounts in dispute ranging from \$5,000 to \$50 million. I was nominated as an adjudicator in the contracts for the Gorgon gas project.

Acting Commissioner, Corruption and Crime Commission

I was appointed Acting Commissioner of the WA Corruption and Crime Commission on 1 July 2016. The position of Commissioner of the CCC was vacant from April 2020 until 28 June 2021. A large part of my time in that period was devoted to performing those duties.

The work as Acting Commissioner involved:

- presiding over private and public examinations
- preparing reports to Parliament and to public sector authorities
- considering allegations of serious misconduct in the public sector
- the exercise of powers under the *Criminal Property Confiscation Act, 2000*

Other

I am a senior sessional member of the State Administrative Tribunal. I was first appointed 2010. This work focussed on commercial and building disputes, with some vocational regulation.

I was a Director of the Government Employees Superannuation Board from 2011 to 2019.

I was a member of the Superannuation Complaints Tribunal from 2005 to 2011.

Contact details

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