

# GREENS LIST

BARRISTERS



## BRETT HARDING

BAR ROLL: 2016 | ADMITTED: 2013

Brett practises in property law. He has particular expertise in commercial and retail leases, sale of land, caveats, equitable proprietary remedies, mortgages, banking and finance, and land acquisition and compensation.

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## EXPERTISE

**Banking & Finance** | **Commercial Law** | **Corporations Law & Securities Law** | **Property Law** | **Public Law & Administrative Law** | **Wills & Estates Law**

## PROFILE

Brett practises in property law. He has particular expertise in commercial and retail leases, sale of land, caveats, equitable proprietary remedies, mortgages, banking and finance, and land acquisition and compensation.

Brett is also a Lecturer in Property Law in the Master of Laws (Juris Doctor) at Monash University.

He is currently writing a new textbook, *Law of Caveats*, with Robert Hay KC to be published by Thomson Reuters.

Before coming to the Bar, Brett was the Associate to the Honourable Justices Emerton and Macaulay of the Supreme Court of Victoria (now President and Judge of the Court of Appeal respectively), a legal researcher to the Judges of the Supreme Court, and a lawyer at Maddocks.

## Practice

Brett has advised on, and appeared in, the following matters:

- urgent interlocutory injunction applications in respect of retail and commercial leases;
- removal of caveat applications under s 90(3) of the *Transfer of Land Act 1958* (Vic);
- enforcement of mortgages and guarantees over land;

- mortgagee sales under s 77 of the *Transfer of Land Act*;
- equitable priority disputes over land;
- contracts for the sale of land and section 32 statements;
- constructive trust claims over land;
- fraudulent land transfers;
- claims under the *Retail Leases Act 2003* (Vic) (including maintenance obligations, options to renew, surrender of lease, COVID rent relief, rent and outgoings recovery);
- applications for recovery of possession of land under order 53 of the *Supreme Court (General Civil Procedure) Rules 2015*;
- compulsory acquisition of land under the *Land Acquisition and Compensation Act 1986* (Vic);
- sale and division of property proceedings under the *Property Law Act 1958* (Vic);
- adverse possession claims;
- judicial review; and
- appeals from VCAT.

He has also advised and appeared for the Victorian Legal Services Commissioner in respect of disciplinary action against legal practitioners where issues of property law arise.

Brett's recent appearances include:

- *Hall v Banfield* [\[2024\] VSC 166](#) (application for summary judgment - lease rectification)
- *Victorian Legal Services Commissioner v Fong* [\[2024\] VCAT 103](#) (acted for the Commissioner - disciplinary proceeding against lawyer - lodging and maintaining improper caveats)
- *The Monaco Au Pty Ltd v Bondella Pty Ltd (No 2)* [\[2024\] VCAT 18](#) (retail lease dispute - interlocutory injunction - relief against forfeiture - 'damage' under s 57 of the *Retail Leases Act*)
- *Ieremidis v Kyvelidis* [\[2023\] VCAT 1411](#) (co-ownership dispute - application for summary dismissal)
- *Merrion (5) Pty Ltd v Cafe Property Pty Ltd* [2023] VCC 2169 (alleged building contract - summary judgment and security for costs application)
- *Colony Constructions Pty Ltd v Zain Homes Pty Ltd* [\[2023\] VSC 529](#) (caveat removal)
- *The Monaco Au Pty Ltd v Bondella Pty Ltd* [\[2023\] VCAT 632](#) (retail lease dispute - interlocutory injunction)
- *Vincent Cold Storage Pty Ltd v Centuria Property Funds No 2 Limited* [\[2022\] VSC 766](#) (commercial lease dispute - interlocutory injunction - relief against forfeiture)
- West Gate Tunnel acquisition (acted for residential claimants - led by Sam Hay KC)
- *Robin Hood Dev Pty Ltd v Apadana Dev Pty Ltd* [\[2022\] VCC 1925](#) (joint venture dispute)
- *Eastcombe Pty Ltd v Fagersta Steels Pty Ltd* [\[2022\] VCAT 780](#) (whether lease under the *Retail Leases Act 2003* (Vic))
- *Victorian Legal Services Commissioner v Howman* [2022] VCAT 542 (acted for the Commissioner - disciplinary proceeding against lawyer - charging improper estate commission)
- *Victorian Legal Services Commissioner v Souki* [\[2022\] VCAT 663](#) (acted for the Commissioner - disciplinary proceeding against lawyer - lodging and maintaining improper caveat)
- *Baroud Nominees Pty Ltd v Mereland Technology Pty Ltd* [\[2022\] VCAT 516](#) (market rent review on

renewal of lease)

- *Avant-Garde Logistics Solutions Pty Ltd v Five Fish Super Pty Ltd* [\[2021\] VSC 669](#) (appeal from VCAT - commercial lease)
- *Five Fish Super Pty Ltd v Avant-Garde Logistics Solutions Pty Ltd* [\[2021\] VCAT 1143](#) (commercial lease - possession - issue estoppel)
- *Five Fish Super Pty Ltd v Avant-Garde Logistics Solutions Pty Ltd* [\[2021\] VCAT 842](#) (commercial lease - injunction - relief against forfeiture - validity of notice under s 146 of the *Property Law Act 1958* (Vic))
- *Roberts Gray Pty Ltd v Brunner* [\[2021\] VSC 76](#) (equitable priority disputes over land - subrogation of mortgage - amendment of caveats)
- *Karting Madness Pty Ltd v Daniel Terrence Pty Ltd* (Building and Property) [\[2021\] VCAT 159](#) (rent relief under COVID-19 legislation - accrued rights under different versions of the Regulations)
- *Super Jacobs Pty Ltd v Faalogo* [\[2019\] VSC 778](#) (caveat removal - mere equities - allegation of fraud - recovery of land)
- *Victorian Legal Services Commissioner v Efron* (Legal Practice) [\[2019\] VCAT 1798](#) (acted for the Commissioner - disciplinary proceeding against lawyer)
- *Yu v Lu* [\[2019\] VSC 576](#) (want of prosecution)
- *Chantelle Enterprises Aust Pty Ltd v Sangster-Greenwood* [\[2019\] VCAT 961](#) (whether lease under the *Retail Leases Act 2003* (Vic) was surrendered or abandoned)
- *Vishniakov v Lay* [\[2019\] VSC 403](#) (appointment of a litigation guardian)
- *Karan v Nicholas* [\[2019\] VSC 35](#) (caveat removal - constructive trust over land)
- *Pollard v Pollard* [\[2019\] VSC 21](#) (option to purchase land)
- *William Buck (Vic) Pty Ltd v Motta Holdings Pty Ltd* [\[2018\] VCAT 15](#) (occupancy costs under the *Retail Leases Act* - led by Sam Hopper)
- *Leonard Joel Pty Ltd v Australian Technical Approvals Pty Ltd* [\[2017\] VCAT 1781](#) (options to renew under s 28 of the *Retail Leases Act* - led by Robert Hay QC)
- *Versus (Aus) Pty Ltd v ANH Nominees Pty Ltd* [\[2017\] VCAT 859](#) (landlord's maintenance and repair obligations under s 52 of the *Retail Leases Act* - led by Robert Hay QC)
- *McHutchison v Asli* [\[2017\] VSC 258](#) (defective section 32 statement)

## **Publications**

- Brett Harding, 'Under the Indefeasibility Umbrella: The Covenant to Pay and the 'All-moneys' Mortgage' (2011) 19 *Australian Property Law Journal* 231.
- Brett Harding, 'The Mortgagee's Power of Sale: The Duty Post MBF Investments Pty Ltd v Nolan' (2012) 21 *Australian Property Law Journal* 77.
- Brett Harding, 'Indefeasibility and the Forged All-Moneys Mortgage' (2015) 4.3 *Property Law Review* 223.
- Brett Harding, 'Another Case of the Forged 'All-Moneys' Mortgage' (2015) 89(4) *Australian Law Journal* 289.
- Brett Harding, 'Verification of Identity: As simple as it seems?' (2017) 6.3 *Property Law Review* 195.
- Robert Hay QC and Brett Harding, 'The Use and Abuse of Caveats' (2018) 27 *Australian Property Law Journal* 1.

- Brett Harding, 'Notices of Action: The new de facto caveats clogging up Victoria's land titles' (2018) 92 *Australian Law Journal* 864.
- Brett Harding, 'Too Little Too Late: When to a claim a constructive trust over land' (2019) 27 *Australian Property Law Journal* 101.
- Robert Hay QC and Brett Harding, 'The 'Serious Business' of Lawyers Lodging and Maintaining Caveats Over Land' (2019) 28 *Australian Property Law Journal* 1.
- Brett Harding, 'If Only Caveats Could Speak' (2020) 94 *Australian Law Journal* 489.
- Brett Harding, 'Questionable Caveats: Ethical considerations for practitioners' (2023) 5 *Law Institute Journal* 22.

Brett has also presented a range of CPD seminars for Greens List on property law issues. Recordings of these seminars are available through the [Greens List CPD Online Library](#).


Brett graduated with a Bachelor of Laws (First Class Honours) from Monash University.

## Memberships & Committees

[Victorian Bar](#)

[Commercial Bar Association](#)

To get in touch with Brett Harding | or for more information please contact the Clerk on:

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