



TROY PEISLEY

troy@troypeisley.com.au

(Tel) 61-2-9929 9333

Level 31, Aurora Place

88 Phillip Street, Sydney NSW 2000 Australia



MEMBER OF
THE LAW SOCIETY
OF NEW SOUTH WALES



**Chartered
Accountant**

DISPUTE RESOLUTION

Arbitrator, Expert Determiner and Mediator

INTRODUCTION:

Troy Peisley specialises in Arbitration, Expert Determination and Mediation. He draws on over twenty years of experience as a Lawyer and a Chartered Accountant.

Troy has provided dispute resolution services to clients in the following industries: Building and Construction, Banking and Finance, Commodities, Entertainment, Energy and Environment, Franchising, Government, Health, Infrastructure, Import and Export, Information Technology, Insurance, Manufacturing, Resources, Telecommunications, Transport and Utilities.

Some of the organisations Troy has assisted include: the Law Society of NSW, Macquarie Bank, Vero Insurance, Middletons, Rigby Cooke, the Institute of Chartered Accountants, Nine Film & Television, Arnold Bloch Leibler, GIO Insurance, Tress Cox Lawyers, NZI Insurance, Ernst & Young, AAMI, IBM, Monsanto, Australian Federal Police, Allianz and many others.

CHRONOLOGY OF PRACTICE:

- Accountant, since 1988
- Lawyer, since 1996
- Forensic Accountant, since 2000
- Mediator, since 2001
- Expert Determiner, since 2004
- Arbitrator, since 2009

QUALIFICATIONS:

Education

- Bachelor of Business, University of Technology, Sydney
- Diploma of Law, NSW Barrister and Solicitors Admission Board
- Graduate Diploma in Legal Practice, NSW College of Law
- Graduate Diploma of Chartered Accounting, ICAA
- Graduate Certificate in Forensic Studies, Monash University
- Masters of Law, University of NSW (Finish July 2011)
- Candidate Commercial Litigation Specialist, Law Society of NSW, 2011
- Candidate Ph.D, University of NSW, 2011 (Commencing July 2011)

Professional Membership

- Member, Law Society of New South Wales
- Solicitor, Supreme Court of New South Wales
- Fellow, Institute of Chartered Accountants in Australia
- Nationally Accredited Mediator, NMAS

Panel Membership

- Fellow Arbitrator, Australian Centre for International Commercial Arbitration
- Member, Chartered Institute of Arbitrators
- Member, Law Society NSW Mediators' Panel
- Member, Law Society NSW Arbitrators' Panel
- Member, LEADR Association of Dispute Resolvers

Special Interest Groups

- Fellow, Commercial Law Association
- Member, Forensic Accounting Special Interest Group, ICAA
- Member, Business Valuation Special Interest Group, ICAA

Pro Bono

- Honorary Solicitor, RSL Life Care, Narrabeen, since 2002

PAPERS AND ARTICLES:

- *Blended Mediation: using facilitative and evaluative approaches to commercial disputes*, Sydney, 9 June 2011 (Paper drafted - the Australasian Dispute Resolution Journal (ADRJ) to publish)
- *Impugning Expert Determinations: Nettle's Error Test*, ADRJ (ADRJ will publish this paper in their last journal in 2011)
- *Using and Impugning Expert Determinations*, The University of NSW, LLM Thesis, 2011
- *Evaluative Mediation versus Facilitative Mediation: The disconnect between theory and practice*. University of Technology, LLM Essay, 2011
- *Challenging Arbitral Awards in Australia: Deficiencies in Appointments and Awards*, The University of NSW, LLM Essay, 2010
- *The "whole of government" approach to detecting Tax Avoidance - ATO and AUSTRAC*, The University of NSW, LLM Essay, 2010
- *Accounting for Lawyers - Understanding Financial Statements*, Speech and paper presented to NSW College of Law, Sydney, 29 March 2010
- *Quantifying Damages in Commercial Disputes and Expert Evidence in Commercial Damages*, speech and paper presented to NSW College of Law, Sydney, 5 November 2009
- *Forensic Accounting and Discovery: The Essentials*, speech and paper presented to NSW College of Law, Sydney, 29 October 2008
- *Business Succession Planning*, speech and paper presented to Innovative Technology Network, University of Western Sydney, 21 March 2006
- *Financial Analysis and Quantifying Damages*, speech and paper presented to Lexis Nexis, Singapore, 28 November 2005
- *Damages in Commercial Matters*, Speech and paper presented to NSW College of Law, Sydney, 9 June 2005
- *Unravelling the Mysteries of Financial Statements: Understanding Annual Financial Statements and Reports*, speech and paper presented to NSW College of Law, Sydney, 16 February 2004
- *Financial Analysis and Quantifying Damages*, speech and paper presented to Lexis Nexis, Singapore and Kuala Lumpur, 27 & 28 October 2003
- *Expert Overhaul on the Horizon*, Lawyers Weekly, 20 October 2003.
- *Forensic Accounting for Lawyers*, speech and paper presented to Law Institute of Victoria, Melbourne, 24 March 2002
- *Accountants as Experts*, Charter, Vol 71 (2) March 2000 p66-68

EXPERIENCE:**Arbitration
(Since 2009)**

The following illustrates the dispute resolution processes and the spectrum of commercial disputes that Troy has been involved in during his career:

Troy Peisley's recent Arbitration experience includes:

- Sole arbitrator in a dispute between an international telecommunication company and reseller's entitlements to and quantum of trailing commissions. Place of arbitration: Sydney. Amount in dispute: \$2.5m.
- Acted for claimant in a dispute between a large accounting partnership in Indonesia regarding partnership entitlements: SIAC Rules. Place of arbitration: Singapore. Amount in dispute: \$600k.
- Acted for claimant in a dispute between a clothing manufacturer and senior executive in relation to employee entitlements, remuneration and dismissal. Place of arbitration: Sydney. Amount in dispute: tbq.
- Sole arbitrator in a dispute between a start-up energy resources company entitlement to royalties and the calculation thereof. Place of arbitration: Sydney. Amount in dispute: \$13m.
- Sole arbitrator in a dispute in a joint venture to build and construct residential apartments, calculation of damages for loss of profit – parties agreed to liability. Place of arbitration: Sydney. Amount in dispute: \$2.1m.
- Acted for claimant in a demurrage dispute, in particular the quantum of damages for damage caused to equipment. Place of arbitration: Sydney. Amount in dispute: \$230k.
- Sole arbitrator in a dispute between a freight forwarder and shipping company as to the delay of shipping goods and interpretation of Incoterms. Place of arbitration: Sydney. Amount in dispute: \$470k.

**Expert Determination
(Since 2004)**

Since 2004, Troy Peisley has been appointed by, amongst others, the President of the Law Society of NSW and President of the ICAA, to make expert determinations on accounting and legal issues. Troy's experience as an expert determiner includes:

- Appointed to determine a dispute between a vendor and purchaser under a sale of share agreement, as to the final accounts and entitlements pursuant to a guarantee.
 - Appointed to determine a dispute between medical specialists in a partnership, as to the final accounts and loan obligations under the terms of the partnership agreement.
 - Determined a dispute between a vendor and purchaser under a sale of commercial property agreement, as to the definition and accounting treatment of 'outgoings' and entitlements to rental guarantee bond.
 - Determined a dispute in relation to a joint venture property
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development, as to the reconstruction of financials for the project and determined whether funds misused by builder.

- Determined the fair market value of copyright an investment fund held in a suite of television series and film projects, and the extent to which various distribution rights had been exploited in foreign markets.
 - Determined a dispute in relation to a joint venture property development, as to the value of units in a property development trust.
 - Determined a dispute between the directors and management, as to the value of business for the purpose of management buy-out.
 - Determined an internal dispute in a large not for profit organisation between the board and members, as to the register of members entitled to vote at AGM as well as scrutinizing votes and validity of members resolutions at AGM.
 - Determined a dispute between the directors and venture capital fund, as to the fair value of shares and entitlement to remove directors for beach pursuant to terms of venture capital funding agreement.
 - Appointed to determine a dispute between a strata owners corporation and caretaker, as to the fair market remuneration of caretaker.
 - Determined a dispute between shareholders in a software development company, as to the fair value of shares pursuant to a put option under a shareholders agreement.
 - Determined a dispute between beneficiaries, as to apportionment of liability for land tax pursuant to the terms of a trust deed.
 - Determined a dispute between the directors and management, as to the value of intellectual property and shares for the purpose of management buy-out.
 - Determined a dispute between the vendors and purchasers of a furniture manufacturing business, as to the fair value of shares pursuant to an option agreement as well as the calculation CGT liability and concessions.
 - Determined a dispute dealing with the assignment of copyright in a R&D company and the apportionment of R&D concessions.
 - Determined a dispute between a legal publishing company and authors, as the value of copyright in published works.
 - Determined a dispute between investors and a production company, as to "good root of title" in copyright of a film.
 - Determined a dispute between a manufacturer and professional surfer, as to royalties and entitlements to performance incentives under the terms of a sponsorship agreement.
 - Determined a dispute between a film producer and distributor and
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**Mediation
(Since 2001)**

professional sportsperson, as to royalty entitlements.

- Determined a dispute between a franchisor and franchisee, as to fair value of franchise business for purpose of takeover as a result of breach of franchise agreement.
- Appointed to determine a dispute between a company and one of its directors, as to whether the director derived any personal benefits without obtaining the informed consent of the board and quantified the monetary value of those benefits.
- Appointed to determine the credit worthiness of investor in a property development.

Troy Peisley is experienced in both facilitative and evaluative models of mediation. Since 2001, Troy has mediated over 30 commercial disputes and some of these include:

- Mediator appointed in a dispute between directors of surfboard manufacturer involving claims of breaches of directors duties, with undisclosed supply agreement and repudiation of loan agreement. Amount in dispute: \$1.5m.
- Mediator appointed in a dispute between South African Software Developer and Australian Distributor as to exclusivity of distribution and software support. Amount in dispute: \$3m.
- Mediator appointed in a dispute between International Software Company and Preferred Software Support Supplier involving performance requirements under a service agreement. Amount in dispute: \$1.7m.
- Mediator appointed in a dispute between parties involving respective entitlements to commission on sale of steel by exporter to Chinese distributor. Amount in dispute: \$500k.
- Mediator appointed in a dispute involving parties entitlement to profits from partnership. Amount in dispute: \$450k.
- Mediator appointed in a dispute between UK and Australian Insolvency practices involving the permitted use and infringement of a trade mark pursuant to a licence agreement. Amount in dispute: \$1.6m.
- Mediator appointed in a dispute between directors of a beef abattoir involving alleged breach of director's duties regarding undisclosed supply contracts. Parties resolved to transfer shares and set of balance in loan agreement. Amount in dispute: \$175k.
- Mediator appointed in a dispute between writer and film producer involving entitlements to copyright royalties in a film. Upon resolution of the dispute drafted a Deed of Release. Amount in dispute: \$1.4m.
- Mediator appointed in a dispute between lessor and lessee involving exclusivity of use of car parking spaces. Amount in dispute: \$150k.

**Forensic Accounting
(Since 2000)**

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- Mediator appointed in a dispute between directors and shareholders of a real estate agency involving shareholder entitlements and apportionment of rent roll to parties upon buy out of shareholder.
 - Mediator appointed in a dispute between a trustee and beneficiaries involving claims breach fiduciary duties, alleging conflict of interest in using trust funds for investment without proper consent. Amount in dispute: \$1.5m.
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- Since 2000, Troy Peisley has provided expert evidence to the Supreme Courts of New South Wales, Queensland and Victoria, the Federal Court of Australia and District Court of NSW. Troy has performed about 80 forensic accounting assignments, including:
 - ⇒ Share and businesses valuations in oppression matters
 - ⇒ Asset Valuation – Intellectual Property
 - ⇒ Loss of profit reports in contractual and trade practices disputes
 - ⇒ Economic loss reports in negligence matters e.g. property damage and personal injury matters
 - ⇒ Account of profit reports in intellectual property disputes
 - ⇒ Business interruption reports in insurance claims
 - ⇒ Fraud Investigations, Proceeds of Crime

Troy's experience as an forensic accountant includes:

- Supreme Court of NSW: Appointed by plaintiff's insurers to provide expert opinion as to economic loss suffered by a large city club as a result of builder's negligence.
 - Supreme Court of NSW: Appointed by plaintiff to perform a financial investigation on issues of liability and quantum and to provide expert opinion as to business valuation and loss of chance suffered by mobile phone dealer with a chain of retail stores.
 - Supreme Court of NSW: Appointed by plaintiff to provide expert opinion as to loss of profit suffered by distributor where international manufacturer allegedly ceased supply of products in breach of agreement.
 - Supreme Court of NSW: Appointed by plaintiff to provide expert opinion as to fair value of telemarketing business.
 - Supreme Court of NSW: Appointed by plaintiff to provide expert opinion as to alleged excessive charges by lessor and to quantify the loss of profit suffered by restaurant business.
 - Supreme Court of NSW: Appointed by plaintiff to provide expert opinion as to loss of profit suffered by native flower grower whose business destroyed by fire.
 - Supreme Court of NSW: Appointed by plaintiff to provide expert opinion as to loss of profit and loss of opportunity suffered by large smash repairers business as a result of fire.
 - Federal Court of Australia: Appointed by plaintiff to provide expert opinion as to business valuation as a result of alleged misrepresentation under sale of business agreement.
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- Supreme Court of NSW: Appointed by defendant insurers to identify inconsistent accounting treatment in financials and provide expert opinion as to alleged loss of profit claimed by logistics company.
- Supreme Court of NSW: Appointed by plaintiff to investigate and quantify contributions of parties under a joint venture property development agreement and alleged siphoning of commission by agent under management agreement.
- Supreme Court of NSW: Appointed by defendant to provide expert opinion involving alleged insolvent trading, identifying timing and amount of loan repayments, payments to directors and distributions to shareholders.
- Supreme Court of NSW: Appointed by plaintiff to provide expert opinion as to valuation of minority shareholding in property development company.
- Supreme Court of NSW: Appointed by defendant to identify inconsistent accounting treatment in financials and provide expert opinion as to alleged loss of profit suffered by law firm.
- Supreme Court of NSW: Appointed by plaintiff to provide expert opinion as to loss of profit and account of profit involving alleged trade mark infringement.
- Supreme Court of Victoria: Appointed by plaintiff to provide expert opinion as to loss of profit and account of profit involving alleged patent infringement and breach of service agreement.
- Supreme Court of Queensland: Appointed by defendant to provide expert opinion in response to liquidators claim of receipt of preferential payments during relation back period.
- District Court of NSW: Appointed by plaintiff to provide expert opinion as to loss of value and loss of profit suffered where property damaged and providedore unable to trade.
- District Court of NSW: Appointed to provide single expert opinion as to valuation of shares in smash repair business.
- District Court of NSW: Appointed by defendant insurers to identify inconsistent accounting treatment in financials and provide expert opinion as to alleged loss of profit claimed by transportation company.
- District Court of NSW: Appointed by plaintiff to provide expert opinion as to loss of value and loss of profit suffered where lessor allegedly unlawfully terminated retail lease.
- Industrial Relations Commission of NSW: Appointed by defendant to prepare loss of profit report in reply to alleged breach of shareholder agreement for car dealership.
- Administrative Decisions Tribunal - Retail Leases Division of NSW: Appointed by plaintiff to provide expert opinion as to loss of value

**Legal Services
(Since 1996)**

and loss of profit suffered where lessor allegedly unlawfully terminated commercial lease.

- Matter settled before proceedings commenced: Appointed by claimant to quantify economic loss under terms of an Industrial Special Risks Policy for retailer of cameras and photographic equipment as a result of flooding.
- Matter settled before proceedings commenced: Appointed by potential plaintiff to provide expert opinion as to the accounting treatment for distribution of partnership profit of major law firm in Australia.

Since 1996, Troy Peisley has been acted for parties in commercial disputes. Troy's experience in commercial litigation includes:

- Supreme Court of NSW: Acted for expert determiner in successfully appealing a decision from lower court where judgment set aside on basis of denial of procedural fairness, and error of law regarding unjust enrichment and restitution.
 - Supreme Court of NSW: Acted for plaintiff shareholders' in relation to derivative action against 3rd parties for breach of contract and fiduciary duties, common law and statutory duties under the Corporations Law. Also action against company for oppression against shareholders.
 - Supreme Court of NSW: Acted for builder in defending action by liquidator seeking access to business records and successfully set aside statutory demand on basis of existence of a genuine dispute as to existence of debt.
 - District Court of NSW: Acting for plaintiff in property development where induced to invest based on an oral guarantee. Obtained orders for Preliminary Discovery from potential defendant and 3rd parties.
 - District Court of NSW: Acted for a builder in defending an action by a property developer involving alleged defects in building works.
 - District Court of NSW: Acted for plaintiff pilot in a claim against international flying training organisation involving alleged breach of contract and misrepresentation under Trade Practices Act.
 - District Court of NSW: Acted for a network and software support company in defending an action brought by a magazine publisher involving alleged breach of warranty to supply services with reasonable care and skill.
 - District Court of NSW: Acted for plaintiff in relation to negligence action against property owners where personal injury sustained when leased premises burnt down.
 - Local Court of NSW: Acting for importer/exporter of saddlery goods in action in negligence against accountant involving alleged failure to wind up superannuation fund.
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**Accounting Services
(Since 1988)**

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- Local Court of NSW: Acted for car hire company against insurers in relation to demurrage claims where damages were awarded for material and consequential loss.
 - Federal Magistrates Court: Acted for debtor in staying judgment and setting aside Bankruptcy Notices.
 - Residential Tenancies Tribunal of ACT: Acted for claimant in relation to lease where lessor found to have breached lease by withholding bond and levying unauthorised charges.
 - Federal Court of Australia: Acted for client in relation to conciliation of differences under terms of franchise agreement and code of conduct.
 - Supreme Court of NSW: Acted for client in relation to voidable transaction for monies received by creditor during relation back period.
 - Supreme Court of NSW: Acted for potential plaintiff in relation to alleged breach of supply agreement to export fertilizers to Hungary.
 - District Court of NSW: Acted for defendant builder in relation to Security of Payment claim by supplier of G&Ss where supplier breached terms of contract.
 - Supreme Court of NSW: Acted for client in relation to pre-acquisition investigation and due diligence of potential JV Party.
 - Other legal services provided:
 - ⇒ Drafting – terms of trade agreements and guarantees, employment agreements, sale of share and business agreements, commercial and retail leases, loan agreements (fixed and floating charges), joint venture agreements, service agreement, confidentiality agreement and franchise agreement
 - ⇒ Insolvency – winding up applications, disputes involving voidable transactions, deeds of administration and bankruptcy
 - ⇒ Other – building and construction, banking, insurance, corporations, tax fraud, franchising, trade practices, employment, succession
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- Since 1988, Troy Peisley has provided the following accounting services and advice in relation to:
 - ⇒ Preparation of interim and end of year Financial Statements
 - ⇒ Preparation of management reports e.g. cash flow forecasts and budgets
 - ⇒ Income Tax, Capital Gains Tax, Fringe Benefits Tax and Goods and Services Tax advice and preparation of Tax Returns
 - ⇒ Business structures: trusts (discretionary, fixed and hybrid) and companies.
 - ⇒ Employee remuneration packages including bonuses and commission structures
 - ⇒ Raising debt and equity finance
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- ⇒ Accounting software systems
 - ⇒ Statutory audits
 - ⇒ Tender proposals
 - ⇒ Due Diligence Reviews
 - ⇒ Business Plans and Succession Plans
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