

## **Philip Bambagiotti FCIArb FAIADR FTI**

**Barrister at Law** (NSW Australia, England & Wales, UK)  
*Arbitration Counsel, Arbitrator  
Mediation Counsel, Mediator,  
Specialist Dispute Negotiator, Independent Negotiator  
Dispute Management, Advice, & Solutions*

**Adjunct Professor of Law,**  
*University of Notre Dame Australia, Sydney.*



**Chambers:**       **10<sup>th</sup> Floor, St James Hall Chambers**  
169 Phillip Street, Sydney NSW 2000

DX:           270 SYDNEY  
Fax:          +61 (0) 2 9235 1042

Tel:          +61 (0) 2 9224 1580  
Mobile:      +61 (0) 412 202 888

Email: [bambagiotti@stjames.net.au](mailto:bambagiotti@stjames.net.au)

Clerk:       Grace Kenny  
PA:          Alex Duncan

**Landmark Chambers**  
180 Fleet Street, London, EC4A 2HG

Fax:          (+44) 20 7421 6060

Tel:          (+44) 20 7430 1221  
Cell:         +61 412 202 888

Email:       pbambagiotti@landmarkchambers.co.uk

Clerks:      Richard Bolton, Michael Gooch

**Academic:**    B Ec (Macq), LLB (UNSW), G Dip Leg Prac (UTS)  
Adjunct Professor of Law, University of Notre Dame, Sydney

**Appointment:**    UIA Regional Secretary – Region XVII (Oceania)

**Admission:**    Barrister at the *NSW Bar*: called: 14 February 1997  
(as a solicitor – from 26 June 1992)

Barrister at the *Bar of England & Wales*: called, 25 July 2018

Registered foreign lawyer:  
*Singapore International Commercial Court (SICC)*

Arbitrator on the Asian International Arbitration Centre (**AIAC**) (formerly the  
KLRCA) Arbitration Panel, Kuala Lumpur, Malaysia

Arbitrator with Thailand Arbitration Center (**THAC**)

Philip is included in the Hong Kong Government's **Civil List** of external  
counsel.

He has been, up to March 2018, a registered legal practitioner with the *Dubai International Financial Centre Court (DIFC Court)*. He has allowed his registration to lapse, but it can be reinstated at very short notice, should the same be required. He has, and maintains, an active interest in arbitration activity in the UAE.

**APEC** He holds an **APEC travel card**, entitling him to entry to take instructions and appear in arbitrations in those Asia-Pacific countries that are part of the business travel scheme.

**Areas of Practice:**

Specialist advocate – in courts (trials & appeals), arbitration, adjudication, tribunals, inquiries (statutory and private), as well as mediation, negotiation, and alternative dispute resolution processes.

Commercial law, Building & Construction law, Insurance law, Planning & Development law, Property and Strata law, Professional Negligence claims, Equity, Transport law, Arbitration, International Arbitration, Mediation & Structured Negotiation, Security of Payments claims, Adjudication, and Judicial Review.

He appears as advocate in courts, arbitrations, and inquiries, as well as in mediations and negotiations. He also accepts appointment as arbitrator, mediator, and neutral evaluator.

Apart from traditional advocacy, in courts, tribunals, inquiries, and contested applications and disputes, he is experienced in strategic and tactical planning and dispute resolution. Clients often consult him early in the life of a potential dispute for long term planning and dispute management, as well as with respect to planning commercial transactions and developments.

**Experience as a Solicitor:**

Solicitor - practicing primarily in commercial / construction law with Messrs Dunhill Madden Butler (1993 - 1995) and with Messrs Gadens Ridgeway (1995 - 1996) (appointed Senior Associate in mid 1996).

**Speaking & Associated Activities (Aust & International):**

Frequently speaks on topics such as:

Building & Construction Issues (including contract drafting, dispute management, professional liability, The *Home Building Act 1989*, Security of Payments adjudication & judicial review, and Property law (including Strata law);

He has most recently spoken on:

- the Implications, Issues, and Responses to the Aluminium Cladding fires and the consequent changes to the statutory regulation of building work (Sydney, 2018);
- the 'ipso facto' amendments to Australian Corporations law – relating to insolvency issues.

A wide range of matters arising in Commercial Law, as well as the *Convention for the International Sale of Goods (CISG)*.

In 2015 to 2018, he has delivered papers in Hong Kong on:

- the NEC3 Contract and its use in Hong Kong,
- Adjudication under the proposed Hong Kong Security of Payments regime,
- the Use and Presentation of Evidence in Arbitrations and other Commercial Disputes including BIM,
- Improved Service Delivery in International Arbitration, and
- the Society of Construction Law *Delay & Disruption Protocol*.

Presentation: May 2018: he spoke at the *1<sup>st</sup> International ADR Conference 2018*, Bangkok, Thailand, on the convergence of substantive law systems (common law and civil law and hybrids) in International Arbitration. Bangkok, Thailand.

Presentation: July 2019: Australian Bar Association Convergence Conference, Singapore, Commercial Litigation: '*Case Management: Comparative Insights*' interviewing Dr Michael Hwang SC (internationally renowned arbitrator and formerly Chief Justice DIFC Courts, UAE) Singapore.

He is a Fellow of the *International Dispute Resolution Academy (IDRA)* and has been a delegate for the IDRA course in international arbitration in Shanghai PRC in 2016 and Beijing PRC in 2017, and represents and presents for the IDRA. The IDRA focuses upon teaching arbitration, mediation, and advocacy skills in the PRC Shanghai & Beijing, PRC.

Paper / Presentation: '*Making the Most of Marking Time: Managing Construction Disputes with the SCL Delay & Disruption Protocol*', 19 January 2017 seminar for Deacons Lawyers, Hong Kong,

Paper / Presentation: *Conflicts of Interest & Ethical Obligations – Dealing with Ethical Priorities*: 31 March 2017 TV Education Centre, Sydney,

In October 2017, he was a commentator to the *IDRA International Dispute Resolution Masterclass* in Beijing, PRC, and was a commentator on the issue of Ethics of counsel in International Arbitration in a public presentation in Beijing, PRC.

Paper / Presentation: '*Statutory Adjudication in Hong Kong: Likely Challenges & the Australian Experience*', 18 October 2017 Hong Kong Department of Justice, Hong Kong

Paper / Presentation: '*Improving Service Delivery in International Arbitration*': 19 October 2017, for BLP Hong Kong

Guest international judge - 14<sup>th</sup> CIETAC Cup Moot, November 2016; Beijing PRC,

Guest international judge - 3<sup>rd</sup> Young International Mediation Competition 2017 in Hong Kong.

Assisted with coaching the Notre Dame University's 2018 Viz mediation competition team for the Paris competition.

Guest international judge – 2018 **AIAC** (formerly KLRCA) pre-Viz moot arbitration competition in Kuala Lumpur, Malaysia.

2018, presented at the *KWM-CEDR-IDRA Mediation Roundtable*, Hong Kong on the new Hong Kong apology legislation.  
Hong Kong

Guest international judge - 2<sup>nd</sup> Young International Mediation Competition 2017, Vis East Moot Foundation, Hong Kong;

Guest international judge - 3<sup>rd</sup> Young International Mediation Competition 2018, Vis East Moot Foundation, Hong Kong;

Guest international judge – 1<sup>st</sup> ICC International Commercial Mediation Competition, October 2018.  
Hong Kong,

Guest international judge - 16<sup>th</sup> CIETAC Cup Moot, , November 2018;  
Beijing PRC

Video seminar: *Practical Case Management of Complex Real Property Disputes* (question & answer) with Amy Douglas-Baker, 16 August 2018, Benchmark, Bench TV – CPD Presentation.

Paper / Presentation ‘*Opportunities & Challenges when Belt & Road meets Arbitration under the Model Law?*’ at the 2018 MLAANZ 45<sup>th</sup> National Conference at Hydro-Majestic Hotel Blue Mountains, NSW, October 2018.

Paper / Presentation: ‘*Lessons from the Aluminium Cladding Cases – Liability? / Responsibility?*’ Legalwise seminar: Building & Construction Law – Liability & Risk Seminar; 6 September 2018

Paper / Presentation: ‘*Categories of Residential Building Work Defects, Cladding Amendments & The Liability of Professionals*’: Resolution Institute, 4 December 2018 (dealing with major/non-major defect dichotomy under the *Home Building Act 1989*, and the statutory response to the aluminium cladding crisis).

Paper / Presentation: ‘*Practical Case Management (of Real Property Disputes) – How to Survive: How to Thrive*’; UNSW Law Continuing Legal Education CLE Seminar, Recent Developments in Real Property Law; 23 October 2018.

Paper / Presentation: ‘*Indemnities & Guarantees: the Tricky Bits Explained*’: 12<sup>th</sup> Annual NSW Property Law Conference, 24 October 2018.

The above is merely a selection of his presentations, speaking engagements, and conference and workshop participation.

He regularly speaks and presents in Australia and in Asia (predominantly in Hong Kong & PRC) on arbitration, mediation advocacy, & building /construction issues, commercial contract issues, and broader commercial issues.

### **Publications:**

*Building Disputes and the Home Building Act 1989 (NSW)* published by Thomson Reuters (2012) (with a 2<sup>nd</sup> edition in preparation).  
This is the leading text on residential building dispute in NSW.

In the foreword, His Honour, Justice David Hammerschlag (Head of the Commercial, Technology & Construction, and Arbitration List of the NSW Supreme Court) described the book as “practical and scholarly at the same time.”

The Home Building section of the *Building Service (NSW)* (a looseleaf service published by Thomson Reuters).

*National Building Service* (a looseleaf service annotating, inter alia, the Building Code of Australia, also published by Thomson Lawbook Co), General editor.

He is a contributing author (Ch 3) to *Construction Law in Australia* (4<sup>th</sup> ed, Bailey, Lawbook Co, Sydney, 2018)

Various papers, including, as co-author with Marcus Jacobs QC and Prof Katerin Cutbush Sabine, “*The U.N. Convention For The International Sale of Goods (CISG) In Australia — To — Date An Elusive Quest For Global Harmonisation?*” (delivered at the 2002 Sydney Congress of the Union Internationale des Avocats, and which was subsequently published internationally (in the United States – *Mealeys International Arbitration Reports (No 17, 2002)* and in China in the *Commercial Arbitration Report* (vol 1, 2005, by CITIC)).

### **Committees**

Chairman, NSW Construction & Infrastructure Law Committee, Law Council of Australia, Business Law Section (and, as such is a Deputy Chairman of the Committee nationally).

Member of the Commercial Litigation Advisory Committee for the NSW College of Law (Masters of Applied Law (Commercial Litigation) Advisory Committee);

Member of the NSW Bar Association ADR Committee (2016, 2017) – including acting on the sub-committee for mediator accreditation for the Bar Association Accredited Mediator Scheme

Past Chairman of the Fair Trading Advisory Council, appointed pursuant to the *Fair Trading Act 1987* (2013-2015).

## Notable Cases and Activities

Many of the cases and matters in which he has been involved have resolved before hearing and on confidential bases, meaning that the details and circumstances cannot be divulged. Commercial confidentiality is preserved with these, where some details are significant.

### ***Building, Engineering, & Construction, Commercial, and Insurance***

His practice focuses on all aspects of, and relating to, Building, Engineering, & Construction law. He also practises in all aspects of Commercial law and Insurance, as well as areas related to these.

He appears as a barrister in courts and tribunals, as well as in arbitrations, mediations, security of payments adjudications, and other alternative dispute resolution procedures in Australia. He appears in arbitrations internationally.

At the NSW Bar, Philip is regarded as one of the foremost practitioners in the specialist area of Building & Construction Law. Apart from his extensive experience in acting for different interests in construction disputes, he authored the leading text on residential building dispute in New South Wales, *Building Disputes and the Home Building Act 1989 (NSW)*, of which a 2<sup>nd</sup> Edition is underway. He is the general editor of the *National Building Service*.

Building, Engineering, & Construction involves a wide range of types and kinds of projects: from commercial, industrial, and residential buildings with their associated infrastructure, to civil engineering and infrastructure projects and associated and similar kinds of project, including: transport, mining, energy, and similar matters, and including planning, construction/implementation, as well as operational issues.

### ***Planning & Environmental***

Planning & environmental law (advising, challenging & appealing decisions) are an integral part of a construction/property practice, and has always been a feature of his practice.

Apart from commercial and similar kinds of matters for and against local government and planning bodies, he has also been involved in matters such as: dealing with disputes about staged development, where the stages vary from the originally proposed character & elements, industrial redevelopment, remediation & redevelopment of civil infrastructure including waste projects, encroachment and compulsory easement issues, compulsory acquisition disputes, and advise to local councils as to quasi commercial/public projects, and enforcement of planning & environmental laws.

## **SELECTION OF CASES OF NOTE**

1. ***Mick Fabar Constructions P/L v Lingrp P/L*** [2019] NSWSC 158 (26 February 2019) where he defended an appeal from a lower court decision on a building case – involving issues of formation of contract and repudiation.
2. ***Vella v Mir*** [2019] NSWCATAP 28 (31 January 2019) in which he appeared for the builder in a successful appeal in a building case.

This decision is notable for the adoption of the submission that the terms of sec 18F *Home Building Act 1989* are a jurisdictional issue, rather than being properly characterized as a limitation provision. It effectively reverses the way that those issues

are to be dealt with in Statutory Warranty claims (and will apply to proceedings in courts as well as in the tribunal).

3. **Indorato v Ottaviano t/a Transbuild Constructions** [2019] NSWCATAP 115 (20 January 2019) in which appeared for the builder in successfully defending an appeal, on questions of formation of building contracts, and the proper inference to be drawn from payments.
4. **O'Neill v Community Association DP 270158** [2018] NSWCATAP 272 (20 November 2018): he represented the community association in an appeal from a community management association dispute and succeeded, including in an application for indemnity costs (the first indemnity costs award for the costs of an appeal made by the NCAT appeal panel).
5. **The Owners – Strata Plan No 81837 v Multiplex Hurstville & Anor** [2018] NSWSC 1488 (4 October 2018) a separate question involving the question of equitable title to land and whether it accrues by the aggregation of contract rights of use & enjoyment, the meaning of 'successor in title', and whether application for an occupation certificate can be made in trade or commerce for the purposes of trade practices legislation (NSWSC).
6. **The Owners – Strata Plan No 66375 v King** [2018] NSWCA 170 (3 August 2018) dealing with 'developers' for the purposes of sec 3A of the *Home Building Act 1989*, the process of drawing inferences, and 'design defects' for the purposes of the Act (NSWCA).

This case involves a substantial contribution to establishing the breadth of the Statutory Warranty obligations of developers & builders for design fault.

7. **Ku-ring Gai Council v Chan (No 2)** [2018] NSWCA 73 (11 April 2018) that involving the appropriate approach to consideration of offers to settle (*Calderbank* claims and offers of compromise) in the circumstance of contested economic loss claims in negligence involving novel duties of care. (NSWCA)

This case has since been cited in costs arguments for resisting applications for indemnity costs.

8. **Dinov v Allianz Australia Insurance Ltd** [2017] NSWCA 270 (20 October 2017) involving the extent and applicability of the long stop limitation provisions for building claims in sec 109ZK of the *Environmental Planning & Assessment Act 1979*, crystallising the limits of the application of the long-stop limitations. (NSWCA)
9. **Ku-ring-gai Council v Chan** [2017] NSWCA 226 (7 September 2017), being the local council's appeal from *Chan v Acres*, involving a case for a claim in negligence for economic loss arising from allegedly faulty certification of building work. (NSWCA)

This case deals with the question of the extension of duty of care to statutory building certifiers, and is an important case on the application of the principles identifying economic loss in the building/construction context.

He acted for the Council in defending the application for special leave to the High Court, where that application was dismissed: *Chan v Ku ring Gai Council* [2018] HCA 21. (HCA)

10. 2017: commercial **arbitration** between: *Confidential (an architect) and Confidential (developer)*: regarding a dispute as to the extent of the architect's retainer, allegations of breach of retainer, and reconciliation of claim (conducted by grade 1 arbitrator)

11. **The Owners – Strata Plan No 76841 v Ceerose Pty Ltd** [2017] NSWCA 140 (23 June 2017) which involved the question of the jurisdiction of the Court in limiting the scope for plaintiff recovery on a later amended claim. (NSWCA)
12. **The Owners Strata Plan No 66375 v Suncorp Metway Insurance Ltd (No 2)** [2017] NSWSC 739 which involved the question of agency in the execution of building contracts for the purposes of the *Home Building Act 1989*. (NSWSC)  
  
He appeared in the successful appeal from this decision, see *The Owners – Strata Plan No 66375 v King* above.
13. **Foy v Calliden Insurance** [2017] NSWDC 33 (3 March 2017) per Hatzistergos DCJ involving questions of the true construction of statutory periods of grace in insurance provisions of the *Home Building Act 1989* as well as the constitutional validity of statutory amendments to that Act by reference to the *Insurance Contracts Act 1984* cv *Commonwealth Constitution Act 1900* (NSWDC).
14. **Re Ply (ACT) P/L (in admin) Acton Developments (ACT) P/L v Ply (ACT) P/L (in admin)** in the Supreme Court of the Australian Capital Territory, No: SC522/2016, 3 March 2017 per Walmsley AJ, an application for leave to proceed against a company subject to administration. (ACTSC)
15. **Wesiak v D&R Constructions (Aust) P/L** [2016] NSWCA 353 was an appeal from the NCAT Appeal Panel dealing with the nature and operations of the principles of repudiation of contract, as well as the powers of the tribunal on appeal. (NSWCA)
16. **Chan v Acres (No 3)** [2016] NSWSC 1389 was a consequent costs argument to the Chan v Acres' case, the issue involved successful opposition to claims for indemnity costs, as well as issues involving *Sanderson* and *Bullock* type costs orders. (NSWSC).
17. **Hogan v Trustees of Catholic Aged Care Sydney** [2016] NSWCATAP 188 which was an appeal involving issues of the financial management of a retirement village per *Retirement Villages Act 1999* (NSWCATAP).
18. 2015-2016: **international commercial arbitration** between **Confidential (international professional services provider) and Confidential (a national government)** regarding the provisions of services for substantial infrastructure project in Asia-Pacific.
19. **Gardez Nominees Pty Ltd v NSW Self Insurance Corp'n** [2016] NSWSC 532 (28 April 2016) in which he appeared for a mortgagee in possession seeking the benefit of the Statutory Warranties under the *Home Building Act* and indemnity under Home Warranty Insurance. (NSWSC)  
  
The case, however, turned upon the proprietary nature of unregistered interests in *Torrens Title* land and the nature of 'title'. It is the first such consideration of these issues.
20. **Chan v Acres** [2015] NSWSC 1885 (11 December 2015) in which he appeared for a local council defending a case for a claim in negligence for economic loss arising from allegedly faulty certification of building work. (NSWSC)

This is now one of the significant case on this point in NSW, following as it does the question of the extension of duty of care to statutory building certifiers.

21. **Wang v Kaymet Corporation Pty Ltd** [2015] NSWSC 1459 (6 October 2015) in which he successfully defended a group of developers who rescinded off-the-plan sales contracts. (NSWSC)

The case is of great significance and has aroused a wide range of media response and our success led to an urgent statutory amendment. This is the first modern case dealing with the topical sunset clause issue in off-the-plan contracts.

22. In late 2015, he appeared for the owners' corporation in the **Inquest into the fire and death of Connie Zhang**, which occurred following a prominent and tragic apartment block fire in Sydney. The issue involved the proper construction and application of the building code to the building. This led to recommendations that are likely to lead to statutory reform.

Further, the *Zhang* inquest has led to now current Supreme Court proceedings, in which he is briefed. (NSWSC)

23. **De Armas v Peters** [2015] NSWSC 1050, in which he appeared for the plaintiff insurer on an appeal involving the application of extended *res judicata* principles and the nature of subrogated interests in choses in action. This was the first consideration of that particular aspect of those principles at superior court level. (NSWSC)

24. In 2014 and 2015, he appeared in the latter of a series of cases involving the capacity of the statutory owners' corporation to bring proceedings for building defects. These included: **The Owners - Strata Plan No 70798 v Bakkante Constructions Pty Ltd** (2014) 88 NSWLR 513, [2014] NSWCA 410 as well as a number of others. (NSWCA)

25. He appeared for the respondents in the leading Australian case on tort claims for economic loss in relation to latent defects in buildings: **Brookfield Multiplex v The Owners – Strata Plan No 61288** (2014) 254 CLR 185, [2014] HCA 36 (8 October 2014). This case has re-defined the way that such negligence cases are decided. (HCA)

26. He appeared for the Building Insurers Guarantee Corporation in **The Owners - Strata Plan No 61162 v Lipman; The Owners - Strata Plan No 61162 v Building Insurers' Guarantee Corporation**, a claim against a statutory insurer for defects in an apartment building. (NSWSC)

This decision then led to the significant decision on costs: **The Owners - Strata Plan No. 61162 v Lipman The Owners Strata Plan No 61162 v Building Insurer's Guarantee Corporation** [2014] NSWSC 622 (23 May 2014) providing an overwhelming success for the client. (NSWSC)

27. In 2012, he appeared in a substantial **commercial arbitration**, between (Confidential (a major institutional property owner)) v (Confidential (a building company)).

The matter involved the construction of a defective façade and awning to a feature building in Sydney. The case involved complex technical evidence as to the construction of a structural glass awning including the properties of the glass.

28. In 2011, he was briefed by a government to advise and to develop strategy in respect of a large scale **re-insurance** dispute it was having with the liquidators of a major now insolvent insurer. The sums involved were substantial, and the issues of a complex technical nature (for reinsurance). This matter settled.

29. **The Owners – Strata Plan No 75903 v Dix** (2011) 80 NSWLR 186, [2011] NSWSC 245 (5 April 2011). That case was brought against a principal private certifier (PCA)

pursuant to Part 4 of the *Environmental Planning & Assessment Act 1979* and, in the determination of a separate question, was the leading case on the construction of the multi-storey exemption in the *Home Building Regulations*. ((NSWSC)

This case led to a statutory amendment of the legislation with respect to multi-storey buildings.

30. **Casuarina Rec Club Pty Limited v The Owners - Strata Plan 77971** (2011) 80 NSWLR 711, [2011] NSWCA 159 (24 June 2011) in which the scope of the powers of strata corporations as provided in by-laws was explored and significantly expanded. (NSWCA)
31. In 2011, he appeared in **The Owners – Strata Plan No 65842 (Eastside Apartments) v VW Stronach P/L and the Building Insurers Guarantee Corporation** (CTTT (Newcastle), No HB 08/49882). That case involved a complex construction of transitional provisions in the statutory indemnity provisions for insolvent insurers in the *Home Building Act*. (NSW CTTT)
32. In **Associated Translators and Linguists Pty Limited and Commissioner of Taxation** (2010) 78 ATR 937, [2010] AATA 260 (14 April 2010), he appeared, for the Commissioner, in a substantial hearing involving a contest a to the Superannuation Guarantee charge. (AAT)
33. In 2010, in **The Owners – Strata Plan No 61759 v Vero Insurance Ltd (In the Supreme Court of NSW (Technology & Construction List – No: 55033/07)**. The case was a substantial strata building defects insurance claim, which settled at the mediation. (NSWSC)
34. **Allianz v Waterbrook** [2009] NSWCA 224 (10 August 2009) which is important authority on causation and the structuring of the operation of the Statutory Warranties and the Home Warranty Insurance in the *Home Building Act 1989*. This case largely re-directed the development of the Court's approach to subsequent purchaser liability as to this Act. (NSWCA)
35. In **The Owners SP 69352 v Vero Insurance Ltd (Home Building) [2009] NSWCTTT 396 (22 July 2009)**, he appeared in a leading case as to the true construction of Home Warranty Insurance policies in relation to owners corporations. That case ultimately went on appeal to the Court of Appeal, and represents one of the major authorities on the question. (NSWCTTT)
36. He appeared in **Vero Insurance v Tran** [2008] NSWCA 358 (15 December 2008) addressing issues of the construction of settlements made in mediations. He also appeared at first instance in **Vero Insurance v Tran** (2008) 15 ANZ Ins Cas 61-759. (NSWCA)
37. He appeared as amicus in the Court of Appeal in **Ilvari Pty Ltd trading as Craftsman Homes Northern Rivers v Moss & Ors** (2009) 74 NSWLR 710, [2009] NSWCA 207 (17 August 2009), before Campbell and Young JJA and Handley AJA. The case dealt with principles of res judicata arising from earlier tribunal proceedings. (NSWCA)

38. In 2005 to 2008, he acted for Vero Insurance in ***The Owners – Strata Plan No 61694 (the Grandview Apartments)***, at the time, amongst the largest Home Warranty claims ever made in Australia. This case was primarily a building defects case, but involved issues of trusts, director's duties, and conspiracy. (NSWSC)
39. ***The Owners Strata Plan 56587 v TMG Developments Pty Limited [2007] NSWSC 1364 (29 November 2007)*** This is a leading judgement in relation to the definition of beneficiary in Home Warranty insurance policies and the clarification as to the availability of the defence of circularity of action (which was live at the time). (NSWSC)
40. He has appeared in a number of taxation matters in the AAT, such as ***Cachlios and Commissioner of Taxation [2006] AATA 676; (2006) 64 ATR 1060; 2006 ATC 2370 (3 August 2006)*** involving a defence to a challenge as to tax assessments, and ***Tenvoc Properties Pty Ltd and Commissioner of Taxation [2006] AATA 529; (2006) 63 ATR 1108; 2006 ATC 2241 (20 June 2006)*** which the goods & services tax (GST) margin scheme. (AAT)
41. In ***Walter Rau Neusser Oel und Fett AG v Cross Pacific Trading Ltd [2005] FCA 1102 (15 August 2005)***. This was an important case involving, inter alia, the question of stays of statutory proceedings by virtue of the *International Arbitration Act 1974 (Cth)*. This case was the precursor to the change in the law in ***Comandate Marine Corp v Pan Australia Shipping Pty Ltd [2006] FCAFC 192 (20 December 2006)***. (FCA)
42. From 2002 to 2004, he appeared in an extensive series of cases involving ***Tridon Australia P/L ats - ACD Tridon Inc*** which were conducted in the Supreme Court of NSW (Corporations List), the Federal Court, the Court of Appeal, in reference to Andrew Rogers QC from the Supreme Court and in a commercial arbitration before Rogers QC. (NSWSC, NSWCA, FCA)  
  
This case involved a substantial shareholder dispute, disputes as to the rights of nominee directors and access to documents, trademarks, the *Convention for the International Sale of Goods (CISG)*, corporate structuring and re-structuring in Australia and Canada, and the like.
43. ***Chapman v Taylor & Ors; Vero Insurance Ltd v Taylor & Ors (2005) Aust Contract R 90-205, [2004] NSWCA 456 (13 December 2004)*** was a significant case as to the law of frustration of contract, and the nature of an appeal to the Court per section 67 of the *Consumer Trader & Tenancy Tribunal Act 2001*. He had devised the principal strategy at the first instance trial, which succeeded then and on the appeal. (NSW CTTT, NSWSC, NSWCA)

#### **Other Matters**

44. ***Beechwood Homes Management Strategy***

Philip's experience and skill in residential building matters and in insurance matters led to him being briefed in late 2008. He was chosen as part of the small task force engaged by the insurer to provide advice and set up the management strategy for the collapse of Beechwood Homes, a very substantial domestic builder in NSW, and potentially the source of very many claims. He was the only barrister invited to work with the task force. The strategy implemented is now the blueprint for resolution of such collapses, and has been employed since.

### *Law Reform*

45. Also in 2011, he was retained to advise and develop a strategy for legislative reform to address some urgent problems emerging for insurers from the insurance scheme in the *Home Building Act 1989*. He has since been involved in several law reform submissions for different parties relating to building legislation and litigation.
46. He was the only barrister invited to participate in that process, which led to the Insurance Council of Australia recommendations for legislative reform. And whilst the proposals were not adopted in full, many recommendations were. This resulted in certain of the large Home Warranty Insurers being able to rationalise and restructure their operations accordingly.
47. He is regularly briefed to advise, insurers, major developers/builders, owners corporations, as well as the government in relation to disputes, but also in respect of legislative development and reform. This included being retained to advise a government (the terms and identity of which he is required to maintain as confidential) in relation to a large re-insurance dispute involving millions of dollars.
48. The NSW Government's published response (January 2019) to the Shergold Report on the Building Defects that emerged in the 'Opal Towers' in December 2018, includes a range of issues and matters that correspond with those that he has proposed over the past 6 or so, years.
49. Those proposals are expected to be enacted as amendments to the *Home Building Act 1989*, the *Environmental Planning & Assessment Act 1979*, and associated and related legislation. When enacted, these will represent a major development in the regulation of the built environment in NSW.

### *Pro-Bono*

50. He has a very substantial pro-bono practice, often retained by Salvos Legal (the humanitarian law arm of the Salvation Army), as well as the NSW Bar Association Pro-Bono programme and the Federal Court's Pro-Bono Reference Scheme. This has included acting in a range of matters such as immigration law, social security law, and social housing matters.

### **Current Projects/Activities**

He is currently:

preparing the **2<sup>nd</sup> edition of *Building Disputes & the Home Building Act 1989***, as well as

working on books and papers regarding:

- **Economic loss tort** in Australia and internationally (builders' and building professionals' liability in negligence for latent defects in buildings) – which is a substantial root & branch analysis including application of behavioural economics to tort law analyses,
- **Security of payments** & adjudication in Hong Kong,
- Reconciliation of the common law and civil law features of the **CISG** as applied in different international systems and arbitration;

- **Cross-cultural challenges** to international negotiating, mediating, arbitrating, and litigating;
- Exploration of the **theory of Convergence** in the Comparative use of Common law and of Civilian Law principles in International Arbitrations – and how these can be reconciled with the different systems.
- Practical aspects of the new **UAE Arbitration Law**, and the associated new DIFC arbitration rules and statutes.
- **New approaches to coaching** for international mediation & negotiation.
- The **aluminium cladding and building defect crisis** in Australia and internationally, and professional liability and obligations thereto.
- Arbitration aspects and issues arising from the **Chinese Belt & Road initiative**.

### **Professional Associations:**

Union Internationale des Avocats (**UIA**) - (Regional Secretary (Oceania)  
(re-appointed 2019; and so member of the UIA Governing Board), ,  
Fellow, Chartered Institute of Arbitrators (**FCI Arb**)  
Fellow, Asian Institute of Alternative Dispute Resolution (**FAIADR**)  
Fellow, Tax Institute (Australia) (**FTI**)  
Fellow: International Dispute Resolution Academy (**IDRA**),  
Asian International Arbitration Center, panel arbitrator (**AIAC**)  
Thailand Arbitration Center, panel arbitrator (**THAC**)  
Australian Bar Association (**ABA**) – Futures Committee  
Society of Construction Law, Australia (**SoCLA**),  
Society of Construction Law, Hong Kong (**SCL HK**)  
Australian Construction Law Discussion Group (**ACLDG**),  
Australian Insurance Law Association (**AILA**),  
Maritime Law Association of Australia & New Zealand (**MLAANZ**)  
Australian Centre for International Commercial Arbitration (Associate)(**ACICA**)  
International Bar Association (**IBA**)  
International Chamber of Commerce (Australia) (**ICC**),  
NSW Bar Association (**NSWBA**)

**Middle Temple Inn**, London, UK.

### **NSW College of Law:**

Advisory Committee for the Masters of Applied Law (Commercial Litigation)

**Law Council of Australia –**

Business Law Section (Construction & Infrastructure Law Committee, NSW), currently Chairman of the NSW committee and so is a deputy chair of the committee nationally.