

ANTHONY LO SURDO SC
12 WENTWORTH SELBORNE CHAMBERS, SYDNEY
LONSDALE CHAMBERS, MELBOURNE



Appointed Senior Counsel: 6 October 2011

Admissions

Barrister: 9 August 1996

Solicitor: 3 July 1987

Jurisdictions

Throughout Australia, Internationally

Qualifications

Bachelor of Arts (University of Sydney, 1985)

Bachelor of Laws (University of Sydney, 1987)

Master of Laws (University of Sydney, 1996)

Acc. M. LEADR (1993)

National Accredited Mediator (2008)

Arbitrator (2010)

Expert Determiner (2010)

Adv. M. LEADR (2013)

Arbitrator and Mediator, Court of Arbitration for Sport (CAS) (2016)

Fellow, Australian Centre for International Commercial Arbitration (ACICA) (2016)

Fellow, Resolution Institute (2016)

International Mediation Institute, Certified Mediator (2017)

Singapore International Mediation Institute, Certified Mediator (2017)

Arbitrator and Mediator, Asian International Arbitration Centre (AIAC) (2018)

Arbitrator, Thailand Arbitration Centre (2019)

Arbitrator, Sport Resolutions (UK) (2019)

Anthony Lo Surdo SC

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Practice Areas

Administrative law	Equity
Alternative dispute resolution (including mediation & arbitration)	Insurance
Banking, finance & securities law	Insolvency
Commercial (including contract law)	Partnerships
Consumer protection	Professional indemnity
Corporations law	Product liability
	Property
	Representative proceedings
	Sports law

Biographical Summary

Anthony has a broad practice both at trial and appellate level spanning diverse areas including commercial, equity, corporations, insurance law, professional indemnity, property and sports law. He has a particular interest in banking and insolvency in respect of which he has written extensively and has been named in “*Doyle’s Guide to the Australian Legal Profession*” in 2011 and again in 2015, 2016, 2017 and 2018 as one of Australia’s leading insolvency and restructuring barristers.

Anthony is accredited as an advanced mediator, arbitrator and expert determiner. He is regularly retained as a mediator in complex multi-party disputes. He has also been ranked by “*Doyle’s Guide to the Australian Legal Profession*” as a leading mediator in New South Wales, 2018. He is also often appointed as an arbitrator in commercial matters especially involving sport both domestically and internationally.

Advisory and Advocacy

Anthony has advised and/or has appeared for:

- The ACT Government.
- Applicants and Group Members in class actions including arising out of the collapse of Storm Financial Pty Ltd (in liq) and Westpoint Corporation (in liq).
- ASIC in relation to breaches of continuous disclosure provisions, breaches of market manipulation requirements, misleading and deceptive conduct and unconscionable conduct, and disciplinary proceeding involving insolvency practitioners.

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- Banks and other financial institutions in relation to the enforcement of security interests and banker/customer disputes.
- Creditors of insolvent companies and individuals.
- Directors in relation to breach of directors' duties and insolvent trading claims.
- Insolvency administrators (voluntary administrators, receivers, trustees in bankruptcy and liquidators).
- Insurers in relation to indemnity issues generally, professional indemnity (including advising and appearing in defence of surveyors, architects, valuers, brokers, town planners, builders and lawyers) and product liability.
- Lessors (including major shopping centre proprietors) and lessees in relation to disputes which have arisen between them (including proceedings for possession and for relief against forfeiture).
- Vendors and purchasers of land, builders and developers.
- Corporations and individuals in relation to contractual disputes (including share sale agreements and agreements for the sale of interests in other personal property).
- Professional Sportspersons, Clubs and Associations including for Triathlon Australia in 2012 in an arbitration hearing which concerned an appeal by World Champion Emma Snowsill against her non-inclusion in the Australian Olympic Team, for athletes charged with breaches of the world anti-doping regulations and for Kurtley Beale in a code of conduct hearing brought by the Australian Rugby Union (ARU) in the ARU Code of Conduct Tribunal.

Mediation, Arbitration and Dispute Resolution

Mediation

Anthony is accredited as an advanced mediator by Resolution Institute (formerly LEADR). He is also accredited the New South Wales Bar Association under the National Mediator Accreditation

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System Standards (NMAS). He has also been ranked by “*Doyle’s Guide to the Australian Legal Profession*” as a leading mediator in New South Wales, 2018.

As part of his ongoing commitment to excellence in mediation, in 2017 Anthony attained certification as a mediator by the International Mediation Institute (IMI) and the Singapore International Mediation Institute (SIMI) and in doing so joins a select number of mediators in Australia to achieve that qualification.

In recognition of his specialist knowledge of mediation and sports law, in January 2016, Anthony was appointed by the International Council of Arbitration for Sport (ICAS) as a mediator of the Court of Arbitration for Sport (CAS) and in February 2019 he was appointed to the mediation panel of Sport Resolutions (UK).

Anthony has been a member of the Supreme Court and District Court’s Mediation Panels for several years. He is also a member of the mediation panels of the Australian Centre for International Commercial Arbitration (ACICA), the IMI and the SIMI.

Anthony has acted as mediator in a vast array of matters since he was first accredited in 1993. He has mediated well in excess of 200 complex disputes since 2009. He uses his experience as both senior counsel and as a mediator to quickly identify the issues and to gain an understanding of the position of each party in the mediation so as to assist in facilitating a fair and efficient resolution to a dispute.

Anthony’s work as a mediator includes:

- Banking disputes
- Contractual disputes
- Corporations law disputes including claims arising from insolvency
- Partnership disputes
- Disputes between joint venturers
- Disputes between lenders and valuers involving allegations of negligent property valuation
- Medical negligence
- Claims involving alleged negligence by lawyers
- Claims involving the alleged negligence of town planners
- Claims involving the alleged negligence of accountants
- Claims against investment advisors including financial planners

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- Employment disputes
- Claims involving restraints of trade
- Building disputes
- Claims involving damages for personal injury
- Shareholder disputes
- Succession claims
- Planning disputes
- Building and construction claims
- Property disputes
- Sports disputes

Arbitration

Anthony is an accredited arbitrator.

Having regard to his experience in international arbitration, in June 2016, Anthony was appointed a Fellow of the Australian Centre for International Commercial Arbitration (ACICA) and was also appointed to its panel of arbitrators.

In recognition of his specialist knowledge of arbitration and sports law, in January 2016, Anthony was appointed by the International Council of Arbitration for Sport (ICAS) as an arbitrator of the Court of Arbitration for Sport (CAS) and his name appears on both the general list and the football list. In February 2019, he was also appointed to the International Panel of Arbitrators maintained by Sport Resolutions (UK).

He has been appointed to the arbitration panels of the AIAC, the THAC, the District Court of NSW and the Local Court of NSW.

He has sat as both a sole and panel arbitrator in commercial and disciplinary disputes especially involving sport.

CAS Arbitral Appointments

In January 2018, Anthony presided over a hearing of a CAS Appeal Panel in Lausanne, Switzerland.

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In April 2018, he was appointed to the CAS ad hoc panel for the Commonwealth Games, Gold Coast, Australia.

In May 2018, Anthony was appointed to the CAS ad hoc panel for the Asian Games, Jakarta, Indonesia in August/September 2018.

In September 2018, Anthony was appointed as a sole arbitrator of an appeal to CAS from a determination of a single judge of the FIFA Players' Status Committee which was heard in Shanghai.

In December 2018, Anthony presided over a hearing of a CAS Appeal Panel in a disciplinary matter arising in Asia.

In February 2019, Anthony was appointed by a party in a commercial dispute.

FFA Arbitral Appointments

As a member of the FFA Appeals Committee since 2008, Anthony has determined both disciplinary and non-disciplinary disputes that have arisen between the FFA, Member Federations, Clubs, and Players mostly involving players and coaches of international repute.

As a member of the FFA Dispute Resolution Chamber since 2008, Anthony has determined commercial disputes and appeals that have arisen between the FFA, Member Federations, Clubs, and Players under the FFA Grievance Resolution Regulations, some of which have involved players and coaches of international repute.

As a member of the FFA Disciplinary and Ethics Committee also since 2008, he has determined disciplinary issues arising from on-field incidents involving players and coaches of international repute competing in Australia's Premier National football league (Hyundai A-League).

Football NSW Arbitral Appointments

As the Chairman of the Football NSW Appeals Tribunal since 2012, Anthony has determined appeals involving both disciplinary and non-disciplinary disputes that have arisen between FNSW, Members of FNSW, Clubs and Players under the FNSW Grievance and Disciplinary Regulations.

Expert Determiner

Anthony is accredited as an expert determiner.

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Academic

General Editor, *Banking and Finance Law of Australia* (LexisNexis) (2014 -)
 Editorial Panel of the *Insolvency Law Bulletin* (LexisNexis Butterworths) (1992 -)
 Editorial Panel of the *Australian Banking & Finance Law Bulletin* (LexisNexis Butterworths) (1990-2013) (2016-)
 Editorial Panel of the *Australian Civil Liability Bulletin* (LexisNexis Butterworths 2008 -)

Quasi-Judicial Bodies

Court of Arbitration for Sport – Arbitrator and Mediator
 Racing Appeals Tribunal, NSW
 FFA Appeals Committee - Member
 FFA Disciplinary and Ethics Committee – Deputy Chairman
 Appeals Tribunal of Football NSW – Chair
 Appeals Board, AFL NSW/ACT - Member
 National Rugby League (NRL) – Judiciary Counsel

Other

Manly Warringah Football Referees Association
 Vice-President, Football Operations, Mosman Swans Junior Australian Rules Football Club (2011-2013)

Professional Memberships

NSW Bar Association
 Victorian Bar Association
 Queensland Bar Association
 International Mediation Institute
 Resolution Institute
 Australian Centre for International Commercial Arbitration (ACICA)
 Australian and New Zealand Sports Law Association (ANZSLA)
 Chartered Institute of Arbitrators (CIArb)
 Former Member of the NSW Bar Association Bar News, Equal Opportunity, Health, Sport and Recreation and ADR Committees

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Significant Cases – A Selection

- *ASIC v Wily and Hurst* [2019] NSWSC 521
- *Leafs Gully Farm Pty Limited v Mitchell* [2016] NSWCA 92
- *Leafs Gully Farm Pty Limited v Mitchell* [2015] NSWSC 1460
Proceedings involving, in part, the construction of an option deed to purchase land.
- *In the matter of Renovation Boys Pty Ltd (admins apptd)* [2014] NSWSC 340
An application for directions involving title to goods, equitable liens and the entitlement of administrators to levy a charge in relation to the costs of administering stock
- *In the matter of Fishinthenet Investments Pty Ltd and Coastal Waters Seafood* [2014] NSWSC 260
An application for grant of leave by a shareholder to bring proceedings in the name of the company against a director pursuant to s 237 of the *Corporations Act, 2001* (Cth)
- *Carter, in the matter of Spec FS NSW Pty Ltd (in liq) & Ors* [2013] FCA 1027
An application which, in part, considered the standing of directors against whom indemnity is sought under s 588FGA of the *Corps Act, 2001* (Cth) to oppose an application by a liquidator for leave to amend pleadings. The judgment also provides a useful commentary on Rule 8.21 of the *Federal Court Rules 2011*
- [Webuildem Pty Limited v Arab Bank of Australia Limited \[2013\] FCA 37](#)
An application to dismiss proceedings as an abuse of process.
- *Snowsil v Triathlon Australia* (2012)
An appeal by World Champion Emma Snowsill against her non-inclusion in the Australian Olympic Team
- [Nguyen v Australian Securities and Investments Commission \[2012\] AATA 156](#)
An appeal against a decision by ASIC banning a financial planner for 7 years.
- [Napier Constructions Pty Limited v Honey \[2012\] NSWSC 762](#)
Construction of a deed recording the basis upon which a party would assist companies and their receivers in prosecuting proceedings against certain parties.

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- [*In the matter of Webuildem Pty Limited* \[2012\] NSWSC 708](#)
An interlocutory application to stay the operation of orders by which proceedings were settled by consent on the first day of a hearing involving, in part, a consideration of the authority of counsel to bind a party.
- [*Vertical Australia Pty Ltd v Air Company Vertical-T LLC* \[2012\] NSWSC 719](#)
An application for an order for the payment out of moneys in an interpleader action and security for costs in a related proceeding.
- [*Prosperity Advisers Pty Limited v Secure Enterprises Pty Ltd* \[2012\] NSWCA 192](#)
An appeal involving a consideration of damages for the loss of a chance of acquiring a policy with a particular deductibles provision.
- [*Westpac Banking Corporation v Munk* \[2012\] NSWSC 504](#)
An application for summary judgment where the defendant claimed that the Bank had engaged in conduct which amounted to the breach of a collateral contract and which gave rise to a promissory estoppel.
- [*Nguyen v Australian Securities and Investments Commission* \[2012\] AATA 156](#)
An appeal against a decision by ASIC banning a financial planner for 7 years.
- [*Klusman v Australian Securities and Investments Commission* \[2011\] AATA 150](#)
An appeal against a decision of ASIC banning a stock broker for 7 years.
- [*In the matter of Hunter Bulk Materials Pty Limited* \[2011\] NSWSC 2011](#)
Application for access to confidential affidavits filed pursuant to s 596C(1) of the *Corporations Act*.
- [*Prosperity Advisers Pty Limited v Secure Enterprises Pty Limited* \[2011\] NSWSC 35](#)
Defence of a claim in negligence and for misleading and deceptive conduct against an insurance broker.
- [*Cityview Corporation Limited v Australian Securities and Investments Commission* \[2010\] AATA 503](#)
An appeal against a decision by ASIC concerning the disclosure requirements of the *Corporations Act*.

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- [*Reliance Developments \(NSW\) Pty Ltd v Lumley General Insurance Limited* \[2008\] NSWSC 172](#)
The construction of a performance (deposit) bond and, in particular, whether strict compliance is required.
- [*A Little Company Limited v Peters* \[2007\] NSWSC 833](#)
The Court considered the operation of the principles of economic duress and whether it operated to vitiate a party's obligations under a share sale agreement and guarantee.
- [*Goyal v Chandra* 68 NSWLR 313; \[2006\] NSWSC 239](#)
A consideration of the circumstances in which a Court will restrain by injunction the severance of a joint tenancy pursuant to section 97 of the *Real Property Act, 1900*.
- [*Grossman v E Katz Manufacturing Jewellers \(ACT\) Pty Ltd and Ors* \(2004\) 52 ACSR 198; \[2004\] NSWSC 1224](#)
Application by a provisional liquidator of a company which administered a trust fund for directions as to his entitlement to satisfy his costs and expenses relating to the administration of that trust fund from the fund itself.
- [*Sutherland Re: French Caledonia Travel Service Pty Ltd \(in liq\)* \(2004\) 59 NSWLR 361; NSWSC 1008](#)
Proceedings in which the Court considered the manner in which a liquidator, acting as a trustee, is required to distribute a fund which consists of a mix of beneficiaries' funds, and which is insufficient to meet each of the claims on that fund.
- [*Dean-Willcocks v Yeshiva Properties No. 1 Pty Ltd \(prov liq apptd\) & Ors* \(2004\) 48 ACSR 525.](#)
An application by a provisional liquidator who made application to the Court pursuant to sections 436B(21) and 448C(1) of the *Corporations Act 2001* to appoint himself and his partner as administrators of the companies of which he and his partner were provisional liquidators.
- [*Southern Cross Interiors Pty Limited v Deputy Commissioner of Taxation* \(2001\) 39 ACSR 305; \(2001\) 19 ACLC 1513; \(2001\) 53 NSWLR 213; and \[2001\] NSWSC 621](#)
Preference proceedings in which the Court considered what constitutes an inability to pay debts

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as and when they fall due, the construction of deeds of release and the circumstances in which a director may avail himself of the defence prescribed by section 588 FGB(5) of the *Corporations Act 2001*.

- [Anderson Group v Davies and Others \(2001\) 53 NSWLR 401 & \(2001\) 19 ACLC 1112; \[2001\] NSWSC 356](#)

The appointment of a receiver to a partnership. The Court considered whether the winding up of a corporate partner constituted "bankruptcy" for the purposes of the *Partnership Act*.

- *In the matter of Ricon Constructions Pty Limited (in liquidation) and the Corporation Law* (1997) 43 NSWLR 174

The decision examines the operation of sections 447A and 1322 of the *Corporations Law* especially as those sections apply to an application by a liquidator to extend the period within which a second meeting of creditors is to be held, where the application was brought after the time for convening the meeting had passed.

- [The Commissioner of Australian Federal Police & Anor v Propend Pty Limited \(1997\) 141 ALR 545](#)

In this matter, the High Court established that legal professional privilege can extend to copy documents even though the originals may not attract the privilege.

- *Westpac Banking Corporation v Kingsland* (1991) 26 NSWLR 700

Proceedings in which the Court considered the duty of care owed by a bank to Guarantors.

- *In re Qintex Limited (No 1) and (No 2)* (1990) 8 ACLC 811

An application on behalf of a creditor to appoint a provisional liquidator to Qintex Limited.

Recent Publications

Co-author of "*In-Brief*" a digest of recent commercial cases appearing monthly in the Australian Banking & Finance Law Bulletin (LexisNexis) (March 2004-December 2012)

Author of "*New Books*" a review appearing monthly in the Australian Banking & Finance Law Bulletin (LexisNexis)(April 2004-)

Co-author of "*In-Brief*" a digest of recent insolvency cases appearing monthly in the Insolvency Law Bulletin (LexisNexis) (December 2004-December 2013)

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“The costs of failing to attend a Court-ordered mediation”, NSW Law Society Journal, June 2017

“The Scope of Advocates’ Immunity Affirmed” (with Lucy Robb Vujcic), NSW Law Society Journal, May 2017

“Latest from the High Court on Performance Bonds”, NSW Law Society Journal, April 2017

“The Contractual Effect of the Code of Banking Practice”

NSW Law Society Journal, September 2016

Financial Services Newsletter, LexisNexis, September 2016

“Exercising Powers of Advancement under a Trust”, NSW Law Society Journal, June 2016

“Court recognises indirect or market-based causation in shareholder claims” (with Gregory Sirtes SC and Robert White), NSW Law Society Journal, June 2016

“Fischer v Nemeske Pty Ltd [2016] HCA 11”, Australian Banking and Finance Law Bulletin, LexisNexis, May 2016

“Should contracts of insurance be construed in favour of insurers when in doubt?” Australian Civil Liability Bulletin, LexisNexis, May 2016

“Insurers’ Liability to Third Parties: CGU Insurance Limited v Blakeley & Ors, NSW Law Society Journal, April 2016 and Insolvency Law Bulletin, April 2016

“Civil Penalties: Everything Old is New Again” (with Conor Bannan), NSW Law Society Journal, March 2016

“Litigation Funding Revisited”, NSW Law Society Journal, November 2015

“Don’t let your claim for damages perish”, NSW Law Society Journal, October 2015

“Perisher Blue Pty Ltd v Nair-Smith” Australian Civil Liability, September 2015

Reining in ICAC’s Powers: Are non-public officials off limits?” (with Dr Aruna Sathanapally), NSW Law Society Journal, May 2015

“Ethical Obligations of parties to a mediation” Australian Civil Liability, May 2015

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“Grant Samuel Corporate Finance v Fletcher” Insolvency Law Bulletin, April 2015
“Confidentiality, privacy and privilege in a mediation” Australian Civil Liability, April 2015

“Agency, Fraud and Defeasibility: When can a registered interest in land be rendered defeasible?”
(with Jocelyn Williams), NSW Law Society Journal, March 2015

“Process and models of mediation, preparation for mediation and choice of mediator” Australian Civil Liability, March 2015

“Liquidator’s Liens: the principle in Universal Distributing considered”
Insolvency Law Bulletin, LexisNexis, June 2014 (2014. Vol 15 No 3)

“Disclaimed Leases: Tenant Risk and Liquidation” (with Peter Agardy),
NSW Law Society Journal, March 2014

“Recent Developments in NSW – Offers of Compromise and Calderbank Offers”,
Australian Construction Law Newsletter #153 November/December 2013

“Mistaken discovery of privileged documents: Expense Reductions Analysts Group Pty Ltd v Armstrong Strategic Management and Marketing Pty Ltd”
Australian Civil Liability, LexisNexis, November 2013 (2013. Vol 10 No 7 – 10)

“Offers of Compromise: Whitney v Dream Developments”
Australian Civil Liability, LexisNexis, September 2013 (2013. Vol 10 No 4)
Australian Construction Law Newsletter, November/December 2013

“Beware of Personal Costs Orders”
NSW Law Society Journal, June 2012

Recent Presentations

“Outside of the Retainer: A Professional Indemnity Update” AILA Twilight Seminar Series, 10 July 2019

“Gender in Sports Arbitration”; *“Protection of Athletes against harassment, abuse and violence: an Australian Perspective”*, Japan Sports Law Association Annual Symposium, Kyoto, Japan, 15 December 2018

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“Emergency Arbitration in South East Asia”, 6th Annual International Arbitration and Regulatory Summit, Jakarta, Indonesia, 7 December 2018

“Ethical Obligations in litigation”, City of Sydney Law Society, 4 October 2018

“Arbitration of Sports Disputes”, (Chair) New South Wales Bar Association ADR Conference, 11 August 2018

“Avoiding wasted opportunity’: suggestions for implementing effective strategies to take parties towards settlement”, Resolution Institute, Newcastle, 10 August 2018

“Whistleblower Reforms”, Law Society of NSW, Chair, 23 July 2018

“Resolving Litigation”, ASIC, 3 May 2018

“Ethical Duties of Legal Practitioners in the Resolution of Disputes”, 23 March 2018, Newcastle Law Society

“North Coast Law Society Annual Conference”, 24 February 2018, Chair

“Corporate Insolvency Seminar”, UNSW, Sydney, 25 October 2017, Chair

“An introduction to International Arbitration”, Tonga, 19 & 20 September 2017

“First Annual Sports Law Conference”, TEN, Melbourne, 19 May 2017, Chair

“Dispute Resolution in Sport”, TEN, Melbourne, 19 May 2017

“North Coast Law Society Annual Conference”, 25 February 2017, Chair (Day 2)

“Alternative Dispute Resolution – Refining Skills for Early Resolution”, TEN, Armidale, 12 February 2017, Sydney, 22 March 2017; NSW Bar Association, 13 March 2017

“International Arbitration in the Asia Pacific – Australia’s contribution to Regional Jurisprudence”, Maxwell Chambers, Singapore, 8 December 2016

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“Managing International Arbitration with a South East Asian Dimension: A Masterclass for Arbitration Users”, Singapore, 7 December 2016, Chair (a conference co-presented by 12 Wentworth Selborne Chambers, the ICC, Stephenson Harwood and Latham & Watkins)

“Discovery in the Federal Court under the National Court Framework”, Chair, ASIC, 13 October 2016

“Bird & Bird, Dispute Resolution in the Asia Pacific – Navigating international arbitration and litigation”, 24 May 2016

“Mediating to Succeed”, Far North Coast Law Society Annual Conference, 20 February 2016

“How to prepare effective pleadings”, ACCC, 8 September 2015

“Alternate Dispute Resolution in Sports” NSW Bar Association, 31 March 2015

“A Morning of Evidence with the 12th Floor – Privilege”

The NSW State Legal Conference, 27 August 2014

“Legal Professional/Client Legal Privilege”

The Law Society of NSW, 15 July 2014

“Emergency Arbitration Procedures”

Arbitrating Disputes in South East Asia: A Masterclass for In-House Counsel and Business Representatives, Singapore, 2 June 2014

“When to Mediate?”

The NSW State Legal Conference, 31 March 2014

“A Morning of Dispute Resolution with the 12th Floor”, Chair

The NSW State Legal Conference, 31 March 2014

“The Practical Implications of the New Disclosure Rules in the Equity Division”

A paper presented in-house to law firms in Sydney and Melbourne, August/September 2013 and to the NSW State Legal Conference, 26 March 2014

“Best Practice in International Commercial Mediation: Drafting an effective mediation clause: The new ICC model clauses for mediation”

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Clerk (Melb): Brett Bowker/Luke Hales (03) 9225 7222

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ICC Mediation Rules Launch Conference – Singapore, 17 March 2014

“Mediation: Aspects of Practice”

A paper presented in-house to two major Australian banks, August and November 2012

“Preparation of written evidence, affidavits, and notices of intended oral evidence”

Australian Securities & Investments Commission, 27 June 2012

Personal Interests

- Reading
- Walking
- Football (Soccer) (including as a qualified NSW Referee (FFA 3))
- Rugby League and AFL

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