

markdempsey

SYDNEY

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SINGAPORE

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Mark is one of Australia's leading barristers specialising in major construction, engineering and infrastructure disputes throughout Australia and Asia. Mark is the Chair of the Australian Bar Association's International Committee, and a Board Member of ACICA.

In addition to his pre-eminent status as a specialist barrister in the field of construction, engineering and infrastructure, Mark has extensive experience in advising and appearing in relation to a broad range of complex commercial and equity disputes at trial and appellate level.

A member of 7th Floor Wentworth Selborne Chambers in Sydney and with chambers in Singapore, Mark's clients benefit from his three decades of practice as a barrister, 16 years as Senior Counsel.

Mark regularly advises both major commercial and government clients in all aspects of disputes arising on their projects. He has appeared as counsel in significant matters throughout Australia and in overseas jurisdictions, including Singapore and Fiji.

Complementing his extensive practice in litigation, Mark possesses a wealth of experience in all forms of dispute resolution, including international and commercial arbitration, mediation and expert determination. He has appeared in complex, multi-million-dollar international arbitrations in Singapore and Australia as counsel, and practices as an arbitrator and mediator in Australia, Singapore and Malaysia.

For many years, Mark has received numerous accolades, including as a leading expert in the *Chambers Asia-Pacific Guide*, *Best Lawyers in Australia*, *Who's Who Legal - Australia* and *Doyle's Guide* and is commended for his highly commercial and strategic approach to matters. He is widely regarded as being a leading construction barrister in Australia (*Chambers & Partners Asia-Pacific Guide 2016 - 2020*).

Mark is a Fellow of the Chartered Institute of Arbitrators (FCIArb), a Fellow and panel arbitrator of the Australian Centre for International Commercial Arbitration (ACICA) and a panel arbitrator and mediator of the Asian International Arbitration Centre (AIAC).

He is an accredited mediator under the National Mediator Accreditation System (NMAS) and a member of AUSBIMA, an arbitrator, mediator and expert determiner approved with the NSW Bar Association, and an accredited mediator with the Supreme and District Courts of NSW. Notably, Mark has been appointed to the Panel of Arbitrators approved by the Australian Competition and Consumer Commission (ACCC) for disputes involving NBN Co and by the NSW Government for land access arrangements under the *Mining Act* (NSW).

Links: Mark Dempsey SC at [7 Wentworth Selborne](#) and [NSW Bar Association](#)

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ADMISSIONS AND APPOINTMENTS

- 2004 Appointed as Senior Counsel (SC)
- 1988 Admitted to the Bar of New South Wales
- 1983 Admitted as a Solicitor of the Supreme Court of NSW and ACT

PROFESSIONAL QUALIFICATIONS

- 2020 Senior Fellow Bali International Arbitration and Mediation Centre (BIAMC)
- 2014 Accredited Mediator, National Mediator Accreditation System (NMAS)
- 2013 Fellow, Asian International Arbitration Centre (AIAC formerly, KLRCA)
- 2012 Fellow, Chartered Institute of Arbitrators Australia (FCIArb) - Arbitrator
- 2012 Fellow, Australian Centre for International Commercial Arbitration (ACICA) - Arbitrator
- 1982 Bachelor of Laws (Honours): Australian National University, Canberra
- 1982 Bachelor of Arts: Australian National University, Canberra

PRINCIPAL AREAS OF PRACTICE

- | | |
|---|---|
| ▪ Appellate | ▪ Corporations and Insolvency |
| ▪ Arbitration- International & Commercial | ▪ Banking Law |
| ▪ Commercial Law and Equity | ▪ Insurance Law |
| ▪ Construction and Infrastructure Law | ▪ Professional Liability |
| ▪ Competition and Consumer Law | ▪ Mediation -International and Domestic |

PROFESSIONAL EXPERIENCE

- 1988 – present Barrister and Senior Counsel, 7th Floor Wentworth Selborne Chambers –Sydney, Australia
- 1982 - 1988 Solicitor, Allen Allen & Hemsley (now, Allens Linklaters) – Sydney, Australia Corporate, Finance and Litigation Departments

RECENT ACCOLADES

- 2021 *Best Lawyers in Australia*: in each of Construction/Infrastructure Law, International Arbitration and Litigation;
- 2020 *Chambers & Partners Asia-Pacific Guide*: Construction & Infrastructure: The Bar – Australia –Band 1: "very considered" "his maturity and experience of litigation come through," "an excellent advocate and a pleasure to work with" "as comfortable down in the technical detail as he is up high advising on strategy" and "notable for his delicacy and diplomacy".
- 2020 *Doyles Guide* "Preeminent" – *Australian Construction & Infrastructure Senior Counsel*
- 2019 *Chambers & Partners Asia-Pacific Guide*: Construction & Infrastructure: The Bar – Australia –Band 1: "an excellent advocate and a pleasure to work with" "notable for his delicacy and diplomacy."
- 2020 *Best Lawyers in Australia*: in each of Construction/Infrastructure Law, International Arbitration and Litigation.
- 2019 *Who's Who Legal – Australia*: Construction
- 2019 *Best Lawyers in Australia*: in each of Construction/Infrastructure Law, International Arbitration and Litigation;
- 2019 *Doyles Guide*: "Leading" Construction and Infrastructure Senior Counsel - Australia;

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"Pre-eminent" – NSW;

- 2019 *Chambers & Partners Asia-Pacific Guide: Construction & Infrastructure: The Bar – Australia – Band 1: "Mark Dempsey SC is widely regarded as a leading figure at the Construction Bar, regularly acting in litigation and international arbitration regarding major construction, engineering and infrastructure disputes. A source notes he is "very good, extremely civil, courteous and very able".*
- 2018 *Chambers & Partners Asia-Pacific Guide: Construction & Infrastructure - The Bar: Band 1*
- 2017 *Doyles Guide: "Pre-eminent" Construction and Infrastructure Senior Counsel - NSW;*
- 2017 *Chambers & Partners Asia-Pacific Guide: "Highly recommended as a leading practitioner for complex construction disputes";*
- 2017 *Best Lawyers in Australia: in both Construction Law and Litigation*
- 2016 *Doyles Guide: "Leading" Construction Barrister in Australia and New South Wales*
- 2016 *Chambers & Partners Asia-Pacific Guide: "Highly recommended as a leading practitioner for complex construction disputes"*

CLIENTS

Include Commonwealth and State agencies (including Transport for NSW), major international and national infrastructure, mining, construction and engineering, manufacturing and trading companies, banks and major cultural, sporting and charitable institutions.

PROFESSIONAL APPOINTMENTS, MEMBERSHIPS AND ASSOCIATIONS

- Director Australian Centre for International Commercial Arbitration (ACICA) – 2019-
- Chair of the International Committee of the Australian Bar Association (ABA) – 2019-
- Fellow of the Chartered Institute of Arbitrators Australia (FCI Arb) – 2012 -
- Fellow of the Australian Centre for International Commercial Arbitration (ACICA) 2012-
- Panel Arbitrator & Mediator of the Asian International Arbitration Centre (AIAC)
- Senior Fellow Bali International Arbitration and Mediation Centre (BIAMC)
- International Council for Commercial Arbitration (ICCA)
- Society of Construction Law (Australia and UK) (SoCL)
- Australian Bar Association
- New South Wales Bar Association, ACT Bar Association, Victorian Bar Association
- International Bar Association
- LAWASIA

SELECT CASES (* appearing for)

- *The Illawarra Community Housing Trust Limited v MP Park Lane Pty Ltd* [2020] NSWSC 751 – the Court decided that while orthodox canons of construction apply to dispute resolution clauses, such clauses are to be construed liberally to give a coherent business purpose through an assumption that parties are unlikely to have intended to have multiple avenues for dispute determination.*
- *White Constructions Pty Ltd* v PBS Holdings Pty Ltd [2019] NSWSC 1166 – an important and widely commented decision concerning the reception by the court of expert programming evidence and the requirements of proof of causation of delay in construction cases. Further, a novel application of the power of the Court to obtain assistance and act upon advice from an independent expert under UCPR r 31.54. [Judgment of the Court of Appeal reserved.]*

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- *Commonwealth Bank of Australia t/as Bankwest* v Mastronardo* [2019] FCCA 2371 [final judgment reserved] – contested applications to dismiss creditors petitions in light of claims said to arise on other proceedings in the Common Law Division of the Supreme Court.
- *Mastronardo v Commonwealth Bank of Australia Ltd** [2019] FCAFC 127, [2019] FCA 58 – enforcement proceedings – decisions at first instance and appeal upholding the validity of bankruptcy notices.
- *Mastronardo & anor v Commonwealth Bank of Australia Ltd* & ors* [2018] NSWCA 136, [2017] NSWSC 1052 (Special Leave refused [2018] HCASL 361) – A claim by a Customer against its Banker on various grounds including, on appeal, the applicable principles in respect of the unconscionable conduct provisions under the ASIC Act.
- *Lainson Holdings Pty Ltd v Duffy Kennedy Pty Ltd** [2017] NSWSC 203 – The Court rejected and application to restrain the conduct of an expert determination that dispute outside intended operation of clause. The expert proceeded to determine the claim in favour of Duffy Kennedy. A subsequent attempt to “appeal” the ED was rejected by the Court.
- *Ku-ring-gai Council v Chan** [2017] NSWCA 226 (2017) 224 LGERA 330 - A further development in the law on when a duty of care to avoid economic loss will be imposed, there in the context of a certifier and subsequent owner of a residential property
- *Walker Group Constructions Pty Ltd v Tzaneros Investments Pty Ltd** [2017] NSWCA 27 [2017] 94 NSWLR 108 – A successful claim by the lessee of a container distribution facility for defective works considering the construction of an assignment of the relevant warranty in respect of existing and future rights, the application of the *Bellgrove v. Eldridge* test where the leasehold was assigned prior to trial, and numerous related issues including causation and betterment
- *Re Felan’s Fisheries Pty Limited* [2016] NSWSC 581 – Proceedings in the Corporations List concerning the plaintiff’s interest in land on which the Sydney Fish Markets operate arising under a shareholders’ agreement, and challenges to board appointments and decisions in the context of a wider dispute as to proposals for the redevelopment of the Fish Markets
- *PT Thiess Contractors Indonesia v PT Arutmin Indonesia** [2015] QSC 123 – A claim for over \$300m for moneys payable under a deed of settlement through a cash distribution agreement involving complex questions of contractual construction and the application of penalty principles in respect of interest
- *Coshott v Prentice** [2014] FCAFC 88; (2014) 221 FCR 450; (2014) 311 ALR 428 – A successful appeal against an order for sale made by a trustee in bankruptcy under s. 66G of the Conveyancing Act NSW and related issues, and considerations in respect of sham transactions
- *Avery v Saree Holdings Ltd**; *Lava Ltd v Avery* [2012] NSWSC 463 – Regarding Mortgages and Securities, and related issues
- *Built Environs Pty Ltd v Saunders International Limited** [2012] SASC 111 – Regarding adoption of an award referred to arbitration under the South Australia in respect of the fabricating of mining process equipment

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- *Lipman Pty Ltd v Emergency Services Superannuation Board** [2011] NSWCA 163 – Consideration of the enforceability of a dispute resolution clause
- *Bitannia Pty Ltd* v Parkline Constructions Pty Ltd* [2009] NSWSC 1302 – Consideration of the principles on adoption of a referee’s report
- *Manildra Laboratories v Campbell** [2009] NSWSC 987 – Successful defence of a claim for breach of fiduciary duties and related causes of action by an employer against former employee
- *Rickard Constructions Pty Ltd v Rickard Hails Moretti Pty Ltd & Ors** [2006] NSWCA 356, [2008] NSWCA 283 – Successful defence of a claim by the assignee of a building contract against a design consultant, including consideration of whether a purported assignment of a cause of action was effective and the liability of a non-party funder for costs of unsuccessful claimant
- *Abigroup Contractors Pty Ltd v Sydney Catchment Authority** (No 3) [2006] NSWCA 282; (2006) 67 NSWLR 341 (and related cases) – An important decision on claims for misleading conduct: including recovery of damages under s. 236 of the ACL for additional costs rather than on a no-contract or difference contract basis, and the test of causation in respect of a negative misleading statement

RECENT ARBITRATIONS

- As arbitrator, of a dispute (conducted under the Commercial Arbitration Act NSW) between the principal and contractor under an EPC Contract in relation to a power plant concerning claims competing claims for delay, delay damages and variations and liquidated damages.
- As counsel, SIAC Arbitration concerning a dispute in connection with a landmark development between an Australian structural steel contractor and Korean supplier and fabricator involving claims in the order of AUD \$30 million.
- As counsel, successful SIAC Arbitration concerning the design and construction of a polymetallic processing plant in Asia and an international engineering consultant involving claims more than AUD \$165 million, and enforcement proceedings in the Federal Court of Australia in which security of USD95 million has been lodged – GAR 24 May 2019.
- As counsel initial phase of ICC Arbitration involving claims and cross claims exceeding AUD \$1 billion arising in connection with design and construction of a combined cycle power generation plant in Northern Australia

RECENT EXPERT DETERMINATIONS

- Dispute between a State Government Department and a leading contractor on a significant public infrastructure project