

**Practice and experience**

Tim Breakspear has a commercial practice with a particular expertise in major infrastructure, mining, resources and construction projects. He is listed in the *Australian Financial Review's* Best Lawyers in Australia 2017 for construction/infrastructure.

In that field *Chambers & Partners Asia Pacific Guide 2016 and 2017* ranked him as one the top four Band 1 juniors in Australia, stating that “*His drafting and advocacy are outstanding*” and clients characterising him as “*a class act*” and “*incredibly efficient*”.

*Doyle's Guide 2015 and 2016* identified him as one of Australia's “preeminent” junior counsel in construction law. *Doyle's Guide 2014* stated that “Breakspear has emerged as the “*clear standout*” and an “*absolute star*” and sat comfortably as the state's most favoured Junior Counsel”.

He appears as counsel in major domestic and international commercial arbitrations, both ad hoc and those administered by institutions such as the ICC, SIAC and ACICA. He is an Approved Arbitrator by the NSW Bar Association and an Associate of the Australian Centre for International Commercial Arbitration.

His Commercial List caseload encompasses a range of general commercial litigation including contract disputes, telecommunications, commercial leases, proprietary estoppel, misleading and deceptive conduct and strata title.

---

**High Court of Australia**

*Brookfield Multiplex v Owners Corporation 61288* [2014] HCA 36; (2014) 88 ALJR 911: (with David Jackson QC) a landmark High Court appeal on the question of whether duties in tort are owed concurrently with obligations under a commercial contract and whether a duty of care is owed by a builder to a successor in title to a commercial property.

---

**Court of Appeal**

*Owners - Strata Plan No 61288 v Brookfield* (2013) 85 NSWLR 479: (with Bret Walker SC) a leading decision on duties in tort owed by commercial builders to successors in title.

*Metro Chatswood v CRI Chatswood Pty Ltd* [2012] NSWCA 49: (with Studdy SC) injunction proceedings relating to a transport interchange PPP.

*Lucas Stuart v Hemmes Hermitage* (2012) 28 BCL 226: (with Kerr SC) leading appeal decision in relation to injunctions to restrain calls on bank guarantees.

*United Group Rail Services Limited v Rail Corporation New South Wales* (2009) 74 NSWLR 618: (with Pembroke QC) leading decision on the obligation of good faith in commercial contracts.

*McCrohon v Harith* [2010] Aust Torts Reports 82-056: (with Kerr SC) professional negligence proceedings.

---

## **Arbitration and expert determination**

*Singapore arbitration – gas pipeline:* (with Walker SC and Boulding QC) billion dollar dispute arising from the construction of a major gas pipeline and associated infrastructure (SIAC, UNCITRAL Rules).

*Singapore arbitration - Mining infrastructure:* (with McHugh SC) \$100m+ dispute between Australian and Korean entities arising from the construction of infrastructure for a major resources project (SIAC, UNCITRAL Rules).

*Electricity generating boiler arbitration:* (with Brereton SC) \$30 million dispute between New Zealand and Fijian companies concerning a wood-fired burner located in Fiji (ACICA).

*Warehouse and logistics facility* (unled): Melbourne seated arbitration concerning failures of concrete pavements in an industrial warehouse and logistics facility.

*John Holland Pty Limited v Kellogg Brown & Root Pty Ltd* [2015] NSWSC 451: (unled against silk) referral under s 8 of the Act; proper construction of arbitration clauses; waiver of arbitration clauses.

*John Holland Pty Limited v Kellogg Brown & Root Pty Ltd [No 2]* [2015] NSWSC 564 (unled against silk) indemnity cost application for proceedings commenced in breach of arbitration clause.

*Cavasinni Constructions Pty Ltd v New South Wales Land and Housing Corporation* [2014] NSWSC 1678: (unled) severance of void arbitration clause; enforcement of expert determination clause.

*Gas fired power station arbitration:* (with West QC and Gleeson SC) \$70 million claim before an arbitral panel comprising Murray Gleeson AC QC, Michael McHugh AC QC and Robert Hunter QC (ACICA).

*Gas field infrastructure (Qld):* (unled) \$250 million claim before a DRB relating to a major water infrastructure project in the Queensland gas fields (ad hoc).

*Light rail PPP stop-watch hearing:* (unled against silk) stop-watch hearing before Chesterman AO QC; \$20 million claim arising out of a light rail PPP (ad hoc).

*Airport valuation arbitrations:* (unled against silk) acted in successive arbitral proceedings relating to the valuation of an airport (IAMA).

*Federal agency building:* (unled) extension of time claims brought against a federal agency in relation to the construction of its national facilities (expert determination and ICC arbitration).

---

*LNG infrastructure (WA)*: (with Inatey SC) claims for variations and delay costs arising from the construction of infrastructure for a major Western Australian gas project (IAMA).

*Bituman plant arbitration*: (with Miller SC) claim against the contractor relating to the construction of a batch plant at a port facility (IAMA).

*Marina arbitration*: claim by owner of a Sydney Harbour marina against the contractor (IAMA).

*Siemens v Origin Energy Uranquinty Power* [2011] NSWSC 195: (with Kerr SC) – whether dispute arbitral; interaction between the new Act and the security of payment legislation.

*Cessnock City Council v Aviation and Leisure Corporation Pty Ltd* [2012] NSWSC 221: (unled against silk) scope of dispute resolution clause; expert determination; permanent stay.

*Goodman Holdings v Hughes* [2009] NSWSC 682: (with Kerr SC) judicial review of award; whether arbitrator exceeded jurisdiction; whether 'manifest error on the face of the award'.

*Rolling stock arbitration*: \$100 million claim in a fast-track arbitration before Cole QC (IAMA – fast track).

*Distribution facility arbitration*: (with Inatey SC) claim by a multi-national company in relation to an industrial distribution facility before Douglas QC (IAMA).

*Derailment arbitration*: (with Miller SC) claim in relation to coal train derailment before Callinan AC QC.

*Highway infrastructure*: (with McHugh SC) \$200m claim for misrepresentation (before DRB).

---

### **Supreme and Federal Court litigation**

*Allphones Retail Pty Ltd v Optus Networks Pty Limited* [2016] FCA 1233 – (with Brereton SC) – successfully resisted a preliminary discovery application.

*Wantagong Farms Pty Ltd as Trustee for the Bulle Family Trust v Bulle* [2015] NSWSC 1603 – (with Brereton SC) – proprietary estoppel claim relating to Angus cattle stud property.

*Broadlex Services v RCR Resolve FM (No 2)* [2015] NSWSC 1514 (unled) – breach of contract and conventional estoppel.

*Built NSW Pty Ltd v Politic Pty Ltd* [2015] NSWSC 380 – (unled) leave to amend; rectification of contract; oral terms; entire agreement clause; *Aon* principles.

*RCR Resolve FM v Serco Australia* [2014] NSWSC 1477 – (unled) transfer and consolidation of separate proceedings.

---

*Siemens Limited v Forge Group Power Pty Ltd (in liq)* [2014] QSC 184: (with Christie SC) – injunction restraining call on bank guarantee.

*Macmahon Mining Services v Cobar Management* [2014] NSWSC 502: (with Inatey SC) successful summary dismissal of a \$67 million loss of profit claim.

*Macmahon Mining Services v Cobar Management (No. 2)* [2014] NSWSC 731 – (with Inatey SC) exclusion clause; consequential loss; direct vs indirect loss.

*CRI Chatswood Pty Ltd (In Liq) v Metro Chatswood Pty Ltd (No 4)* [2013] NSWLEC 83: (with Robb QC) – proceedings arising out of transport interchange PPP.

*King v Benecke* [2013] NSWSC 568: (with Williams SC) - professional negligence claim against a solicitor relating to the transfer of a major agricultural land holding.

*Owners Corporation Strata Plan 61288 v Brookfield* [2012] NSWSC 1586 (unled against silk) – award of indemnity costs.

*Owners Corporation Strata Plan 61288 v Brookfield* [2012] NSWSC 1219 (with McHugh SC) – separate question; concurrent duty of care; pure economic loss.

*Owners Corporation Strata Plan 72535 v Brookfield* [2012] NSWSC 712: (with Walker SC) – duties of care; pure economic loss; statutory warranties.

*Strata Plan 61390 v Multiplex Corporate Agency (No 2)* [2012] NSWSC 322 – (with Stoljar SC) – proper construction of deed of release; principles in *Grant v John Grant & Sons*.

*Procter & Gamble v Energizer* [2011] FCA 1347: (with Robb QC) - acted for Gillette (P&G) in a misleading advertising claim against Schick.

*Owners Corporation v Walsh Bay Finance* – (unled) acts for Mirvac and Transfield in proceedings relating to a marina at Walsh Bay.

*Kordia v Nokia Siemens*: (with Brereton SC) litigation relating to the operation and maintenance of the mobile telecommunications network.

*Transaction Network Services v Optus*: (with Brereton SC) proceedings relating to trespass of data on the EFTPOS network.

*Baulderstone v Queensland Investment Corporation*: (with Rowland QC) \$100 million claim arising out of the termination of the contract for the construction of Westpoint shopping centre, Blacktown.

---

**Significant clients:**

---

Alstom, Brookfield Multiplex, Built, Hyder, General Electric, Glencore, John Holland, Kellogg Brown & Root, Laing O'Rourke, Leighton, Lend Lease, McConnell Dowell, Mirvac, Nokia Siemens, Optus, RCR Tomlinson, Siemens, Vopak.

---

**Prior roles**

Before being called to the Bar, Mr Breakspear worked for King & Wood Mallesons in Sydney and London. He was also a tipstaff to the Hon. Keith Mason AC QC, then President of the New South Wales Court of Appeal.

January 2017