

**PROFESSOR IAN HARLEY BAILEY SC**

Senior Counsel

Professorial Fellow, Faculty of Law, University of Melbourne

Adjunct Professor Faculty of Law, University of Technology, Sydney

Arbitrator, Mediator, Adjudicator and Court-appointed Referee

**QUALIFICATIONS**

Bachelor of Architecture, University of Newcastle, 1969

Diploma of Law, Barristers Admission Board (NSW), 1980

Admitted to practice in New South Wales 11 March 1983, appointed Senior Counsel 2004,

Admitted to practice in the Northern Territory 5 March 1990, Tasmania 2 March 1993, Queensland

10 October 1995, Australian Capital Territory 17 October 1995, and Victoria 10 July 1997

**PROFESSIONAL AND ACADEMIC CAREER AND PROFILE**

1983 - to date	Barrister at Law in full-time practice specialising in commercial and construction law Court-appointed referee, arbitrator, mediator
1981 - 1982	Minter Simpson, Solicitors, graduate employee
1979 - 1981	Self-employed Architect, commercial and residential projects
1978 - 1984	Part-time Lecturer in Professional Practice and Law at NSW Institute of Technology and University of NSW
1976 - 1979	Partner, Todd, Stockley & Partners Pty Limited Architects commercial and industrial projects
1970 - 1976	Architect, Hanson & Todd Pty Limited and Todd Reddacliffe Stockley Johnson Pty Limited
2000 - to date	Professorial Fellow (2004) and Director of Studies University of Melbourne Law School Graduate Studies in Construction Law

1999 - to date	Adjunct Professor Faculty of Law UTS in Dispute Resolution and Arbitration Member Advisory Board MDR Course 1999
1997 - 2001	Part-time lecturer in Faculty of Law UTS various dispute resolution courses

## **DISPUTE RESOLUTION: HEARINGS AND ENQUIRIES**

- **Supreme Court of New South Wales**

Nominee as referee under Part 72 of the Supreme Court Rules (UCP Part 20):

- SP No 57504 -v- Building Insurers Group, December 2007
- Patrick Harrison v Geoffrey Burgess & Others, 2007
- Ziade Investments No 1 Pty Ltd v Tricon Projects Pty Ltd, 2005
- J A Nurmi Pty Ltd v The Owners, Strata Plan No 63526, 2005

Mediator in numerous Court-directed mediations, 2005 – 2009

- **District Court of New South Wales**

Nominee as referee under Part 28B of District Court Rules (UCP Part20) including:

- Seaborne Pty Ltd v Coleman, Report July 2005
- Sisoma and Vida Ros v Mirvac Homes (NSW) Pty Ltd, Report 19 September 2003
- Bernard and Joan Moase v Australian Alliance Insurance Co Ltd, Report dated 4 September 2003
- Janine Wallace v Blacktown City Council, Reports dated 1 November 2002 and 4 December 2003
- Rimoldi & Kremjin v Pioneer Homes Pty Ltd & Donmap Images Pty Ltd, Report dated 23 October 2002
- Karim Overseas Pty Ltd v Abigroup Contractors, Report dated 6 June 2002
- Krueger Shopfitters Pty Ltd v Bustrom Pty Ltd & Anor, Report 13 September 2000
- James Gizis Pty Ltd v Chris Dimis, Report April 1999
- Pilway Constructions Pty Ltd t/as Arclinear Consultant Designs v Bernard & Mina Stang, Report dated 30 June 1999
- Todor & Katica Pavlov v Australian Town Homes Pty Ltd, Report 11 June 1999
- Doliana Holdings Pty Ltd v Savas Polycarbou, Report dated 5 March 1999

Mediator in numerous Court-directed Mediations 2003 to date

- Evaluator, under a Pre-Action Protocol, of substantial disputes involving Supreme Court & arbitration proceedings arising in a mining related contract in South Australia June 2009.
- Adjudicator in ten matters under the *Building and Construction Industry Security of Payment Act 1999* NSW including multi million dollar payment claims 2006 – 2010

- Arbitrator in numerous substantial Construction Disputes 1988 to date
- Expert in 10 Commercial and Construction Expert Determinations 1985 to date
- Nominee of Royal Australian Institute of Architects in 5 joint arbitrations 1980 – 83
- Chairman, Public Hearing and Enquiry under s 68 of the *Environmental Planning and Assessment Act 1979* concerning proposed amendments to the draft Baulkham Hills Local Environmental Plan 1986, author of Report to Council

## **PROFESSIONAL ASSOCIATIONS AND PARTICIPATION**

### **New South Wales Bar Association**

- Member since 1983
- Member, Mediation Committee 1999 to 2007, and ADR Committee 2008- 2010
- Member, subcommittee to consider and advise on the National Mediation Accreditation Standards and the role of the NSW Bar as a Registered Mediation Accreditation Body 2007
- Member, Bar Association Panels of Mediators, Expert Determiners and Arbitrators for Supreme Court and District Court Listings 2000 – 2003
- CPD Program, joint presentation of Mediation seminars 2002 – 2003
- Facilitator in Court Procedure, Bar Association Practice Course 1999 – 2000
- Readers Practice Course, lecturer “Examination in Chief – Expert Witnesses” 1999
- Article Bar Brief “The Overriding Objective of Avoiding a Costs Order – *Dunnett v Railtrack*” No 99, November 2002

### **Institute of Arbitrators and Mediators Australia**

- Member since 1979, Fellow since 1997 and Grade 1 Arbitrator
- Vice President of National Council 2004-2008, and Councillor 2004 – 2008
- Chairman New South Wales Chapter Committee 2000 – 2003
- Deputy Chairman NSW Chapter and Chairman of Education Sub-Committee 1999 – 2000
- Honorary Treasurer NSW Chapter 1997 – 1998
- Member of New South Wales Chapter Committee since 1997
- Primarily responsible, with the former Chapter Chairman, Geoff Markham, for establishment of the Dispute Resolution Centre, Level 9, 52 Phillip Street, Sydney, providing hearing and conference rooms and the IAMA NSW Chapter office
- Member of Expert Working Group convened by the NSW Attorney General’s Department to review commercial arbitration legislation and to recommend reforms
- Committee member for the drafting of new Fast Track simplified Arbitration Rules 2007
- Presentation of papers at professional development Forums 1998 – 2009, including:
  - “Proportionate Liability – The Elephant in the Room”, 4 June 2008
  - “Concise Dispute Resolution – the possibilities”, 4 October 2006

- “Reflections on China, Dispute Resolution in China”, 2 August 2006
  - “How can this be so? Recent cases in NSW”, 6 October 2004
  - “Developing Trends in ADR for the Construction Industry”, 2 July 2003
  - “Simplified Arbitration” ACT Chapter, 3 October 2002
  - “Unconscionability and Arbitration Proceedings”, 3 April 2002
  - “Dealing with Costs – Final Awards”, 8 November 2000
  - “Expert Witnesses – Role and Responsibility”, 23 August 2000
  - “Section 109ZJ of the *Environmental Planning and Assessment Act* – How will it work?”, March 1999
  - “Simplified Arbitration”, 28 January 1999
  - “Crouch No More – Disputes and Arbitrability”, 16 December 1998
  - “Aspects of Evidence”, 9 September 1998
- Training Programs/Seminars
    - Presenter of papers or facilitator at training seminars including:
      - Expert Witness Workshop, 28 June 2007, May 2008 and July 2009
      - Expert Witness Workshop for construction and related disputes, with Justice McDougall of NSW Supreme Court, 13 and 27 February 2004 and 2009
      - Master Class for Grades 1 & 2 Arbitrators, Assessor and Convenor 2003-2009
      - Seminars and Tutorials, Adjudication under the *Building and Construction Industry Security of Payment Act*, July 2003
      - Mediation skills seminar: Breaking Through, Chairman/Facilitator 15 February 2003
      - General ADR Training and Adjudication Seminar Dubbo 20 – 22 September 2002
      - Arbitration Skills Seminars May 2002
      - Arbitration Skills Seminar 22 September 2001
      - Master Class for Grades 1 & 2 Arbitrators, Examiner and Assessor 24 Feb 2001
      - Master Class for Grades 1 and 2 Arbitrators 7 September 2000, and 2009
      - Training Course for Adjudicators under the *Building and Construction Security for Payment Act 1999*, 28 February – 1 March 2000
      - General Arbitration Course, presenter, 28 January 1999
      - Master Class for Grades 1 and 2 Arbitrators, 15 May 1999
      - Advanced Arbitration course “Aspects of Evidence”, 7 November 1999
      - Seminar “Dispute Resolution – ADR Procedures and Court Rules”, Newcastle 4 – 5 November 1998

#### **Society of Construction Law Australia**

- Foundation Chairman 2009-2010

#### **Australian Commercial Dispute Centre (ACDC)**

- Accredited Commercial Mediator

- Nominee for Arbitrations and Expert Determinations 1989 to date
- Assessor in training programs for Commercial Mediation courses 1999 – 2001

### **National Association for Women in Construction (NAWIC)**

- Examiner for Annual Academic Award 2002 to 2006

### **Royal Australian Institute of Architects**

- Associate and Member since 1976
- Member of Practice Board of the NSW Chapter 1983 – 1984
- Member of Practice Committee of NSW Chapter 1978 – 1984
- Seminars on Mediation and ADR – 1990-1991 “Mediation – How to Avoid Litigation and Arbitration” 13 March 1991
- Occasional lecturer in professional practice under CPD Program 1999 – 2000, including paper on Expert Evidence 7 November 1999

## **UNIVERSITY AND ACADEMIC PARTICIPATION**

### **University of Melbourne, Faculty of Law**

- Professorial Fellow since 2004 and Senior Fellow 2000 – 2004
- Director of Studies, Construction Law Graduate Program 2000 to date; Co-Director with Matthew Bell since 2007
- Member, Advisory Board for Construction Law Program 1999 to date
- Course Coordinator and presenter for Rights and Liabilities in Construction and Advanced Construction Claims, 2000 to 2008, and Advanced Construction law since 2010
- Responsible as inaugural Co-Director of Studies for the development of the first and only graduate program in construction law in Australia, providing a Masters degree and Graduate Diploma in Construction Law for graduate professionals in law and the construction professions, and the promotion of teaching of construction law in a number of universities in Asia

### **University of Technology (UTS) Sydney**

- Adjunct Professor in Faculty of Law since 1999
- Member, Advisory Board on Review of Masters of Dispute Resolution Course 1999
- Regular Lecturer and Facilitator of Workshops in Joint Professional Certificate in Arbitration conducted by UTS and IAMA 1998 – 2001
- Part-time lecturer and presenter at seminars in Commercial Arbitration and Decisional Dispute Resolution (with Ms Tania Sourdin, currently Professor of Law and Dispute Resolution at Latrobe University) 1995 – 1997

- Course presenter, “Commercial Dispute Resolution – Commercial Arbitration and Part 72 References” 27 – 29 August 1998
- Papers for Construction Industry Dispute Resolution Courses (3 day programs) January 1997, March 1998 and August 1998

### **University of New South Wales**

- Faculty of Architecture, Part-time Lecturer, Professional Practice and Architects and the Law, 1979 – 1984

## **PUBLICATIONS**

### **Major Works**

- *Construction Law in Australia*, LBC Information Services 2nd Edition June 1998, first published 1981 (3<sup>rd</sup> Edition – late 2010)
- *Understanding Australian Construction Contracts*, co-author with Matthew Bell, Thompson LBC, August 2008
- Laws of Australia, Chapter 27.7 “Professional Liability, Architects and Engineers”, Law Book Company, 1993
- “Australian Building and Construction Contracts: A Flow Chart Analysis of E5(b)”, Australian Federation of Construction Contractors, 1991

### **Seminars, Papers, Publications and Articles**

- Inaugural National Conference; Society of Construction Law Australia, Perth June 2010 “Reform and Development of Construction Law & the Role of SoCLA “
- Regional Arbitral Institutions Forum Conference, Kuala Lumpur 7-8 May 2010, Paper “Recent Developments in Australia”
- Lexis Nexis 10<sup>th</sup> Annual Conference Series: Contracts 2010,” February 2010, Chair
- IBA International Conference Madrid, October 2009, Paper “Concurrency, Causation , Commonsense and Compensation” Part 2 with Andrew Stephenson, 2010 ICLR 197
- Regional Arbitral Institutions Conference, Hong Kong, June 2009, Paper
- Institute of Arbitrators and Mediators Australia, National Conference, Melbourne, May 2009, Paper “Legislative Reform, Construction & Dispute Resolution”
- Regional Arbitral Institutions Conference, Brunei June 2008, Paper
- Institute of Arbitrators and Mediators Australia, National Conference, Perth 12-13 April 2008, “Challenging an Arbitrator’s Award”
- Lexis-Nexis Building & Construction Law Conference 16 – 17 August 2007, Paper “Examining Delay & Disruption Disputes”

- Inaugural Regional Arbitral Institutions Conference, Singapore 12 – 13 July 2007, Paper “How much misconduct, or how wrong can one be? Intervention by Courts, an Australian perspective”
- Institute of Arbitrators and Mediators Australia, National Conference, Adelaide 1 June 2007, Co-presentation with HH Mr Justice Hamilton, “Containment of Costs: Litigation and Arbitration”, Paper “Proportionality of Costs”
- Institute of Arbitrators and Mediators Australia, National Conference, Cairns 28 – 29 May 2006, “Reducing Time and Costs in Complex Proceedings”
- Building Science Forum Australia, Seminar presentation, “A Fast Game’s a Good Game: Making Construction Arbitrations Work”
- Institute of Arbitrators and Mediators Australia, National Conference, Canberra 28 – 29 May 2005, Papers “Concise Dispute Resolution for Small Business” and “Time Limited Arbitration”
- Institute of Arbitrators and Mediators Australia, National Conference 22 – 23 May 2004, Paper “Restoring Respectability – Providing a Service in Domestic Arbitration and Dispute Resolution”
- Macquarie Graduate School of Management, Seminar Program on Residential Building Disputes, Paper “Resolution of Disputes” 17 March 2004
- National Alternative Dispute Resolution Advisory Council Conference (NADRAC) 4 – 5 September 2003, Workshop paper, “Dispute Management and Avoidance in the Construction Industry”
- CLE Centre, Seminar, Construction Contracts, Dispute and Expert Evidence, paper “Developing Trends in ADR for the Construction Industry”, 11 July 2003
- Building Science Forum of Australia, paper “Security of Payment – Will the Legislation now work? an ANA’s perspective”, 25 June 2003
- LexisNexis 2003 Construction Law Master Class, paper “Evaluating Developing Trends in ADR for the Construction Industry including Dispute Management and Avoidance”, 3 – 4 June 2003
- 6th National Mediation Conference, Pathways to Dispute Management, Workshop Panel Member “ADR and Mediation Techniques”, 18 – 20 September 2002
- Building Disputes Practitioners Society (VIC), paper “Construction Disputes – Expert Witnesses and Independence”, 19 July 2000
- LAAMS Conference “Building Disputes”, Chairman, 20 July 2000
- NDC (Telstra) Training Program for Project/Construction Managers on Law of Contract and Standard Form Contracts, 5 May 2000
- “Off the Ground: Removing Procedural Constraints from Commercial Arbitration”, Law Society Journal (NSW, Australia) 1999 37(10) *LSJ* 46

- Seminars on Local Government and Building for the Law Society of New South Wales Young Lawyers, paper Expert Evidence 1998
- LAAMS Conference, Practice & Procedure in Building & Construction Disputes, paper “Arbitration Making a Difference: Hybrid Dispute Resolution Procedures”, 23 March 1998
- “Release of Joint Tortfeasors – Old Rule Abolished” *Law Society Journal* (NSW, Australia), (1997 35(8) *LSJ* 37
- NSW Construction Law Discussion Group, paper “The Assessment of a Standard of Care of Professionals”, 29 October 1996
- “Commercial Arbitration, Private but Not Confidential”, *Law Society Journal* (NSW Australia) (1995) 33(9) *LSJ* 35
- Conference Kings College London, Centre of Construction Law and Management, paper “Commercial Dispute Resolution – Lessons from Australia” 16 September 1995
- Editorial Panel – Australian Construction Law Newsletter 1988 - 1990