

Gregory Keith Burton SC

FCIArb, FRI, TEP



+61 2 8066 6133

gregory.burton@5wentworth.com

Summary

Senior Counsel, including as commercial arbitrator, referee, mediator, expert determiner, domain name determiner, early neutral evaluator (accredited/listed with various Court and private panels); part-time Senior Member NCAT.

BCL (Oxon), BA (Hons), LLB (Hons) (Syd); Senior Counsel (SC) from September 2004; barrister (NSW, Qld, High Ct, Fed Cts, Ireland); barrister and solicitor (Vic, ACT, WA, NT); reciprocal recognition all Australian jurisdictions; Dip Intl Arbn (CIArb) Sept 2012, Fellowship CIArb December 2012.

Senior Counsel since September 2004; part-time Senior Member NCAT Appeal Panel and Consumer and Commercial Division from March 2017; barrister in private practice since 1989; solicitor (corporate and finance), Freehills (now Herbert Smith Freehills Kramer) (1980-83); Associate to Hon Justice Sir William Deane AC, KBE, QC, High Court (1984-85); senior adviser to federal shadow Attorney-General John Spender QC MP (1986); lecturer in law, Australian National University (1987-88).

Areas of Practice

Trial and appellate. Ongoing opinion and litigation appearance work in:

- Commercial/equity
- Corporate
- Finance
- Securities
- Insolvency
- Insurance
- Property (real, personal, IP, IT)
- Trusts
- Consumer and Competition
- Torts/negligence, statutory duties including construction and professional liability
- Succession/family provision
- Associations and Charities
- Public Law
- Alternative Dispute Resolution

Selected Appearances

Selected appearances counsel and appointment as referee:

Blake v Blake – ongoing (complex estate and partnership dispute with fiduciary, contractual, co-ownership and valuation issues).

CMAA Property Trust v HAC – ongoing (charitable trust, nature of proprietary interest).

McDonald v Clifton & Ors – ongoing (joint venture, fiduciary, estoppel and valuation).

Ongoing advice on trust, charitable, administrative law, abuse and discipline matters as retained counsel for Presbyterian Church.

Lieschke v Lieschke [2024] HCASL 66, [2023] NSWCA 241, [2023] NSWSC 92, [2022] NSWSC 1705 (setting-aside of arbitral award).

Galati v Deans [2023] NSWCA 13 (trust, secret commission, damages and other issues arising from prospective joint venture).

Beyond Bank Australia Ltd ats Human Appeal International Australia [2023] NSWSC 382; [No. 2] [2023] NSWSC 1161; [No. 3] [2023] NSWSC 1622 (bank/customer contract – incorporation and effect of code of practice into terms of contract – alleged implied obligation of good faith in exercise of power to terminate relationship by bank – did that require commercial reasons and disclosure of those reasons).

(Name withheld) Supreme Court retail tenancy, registered club, planning permissions, building defects dispute, alleged misleading conduct and breach, compensation for improvements, causation and quantification - resolved immediately prior to 17-day hearing in September/October 2023.

Johnson and Williams v Campbell; re Rockgedgiel Pastoral Co PL and Skeldon PL (corporations law (register of members, oppression), trust, rectification, estoppel and valuation proceedings; settled shortly before long hearing 2018/19).

Abraham v Watkins (rights of way that pre-dated current statutory requirements – validity and scope of implication from title plans and description, removal for obsolescence; settled shortly before hearing with submissions to Court on appropriateness of settlement).

Re Fearndale Holdings PL (admin apptd) (r&m apptd) [2019] NSWSC 1810, 1885 (referee's report in complex securities proceedings, including contested hearing on matters of credit during reference, adopted by Black J).

Re Cisera FT [2016] NSWCA 319, [2017] NSWSC 960 and [2018] NSWCA 286 (reconsideration of section 81 Trustee Act 1925 (NSW) as interpreted in *Re Dion Investments PL* (2014) 87 NSWLR 753, [2014] NSWCA 367 and *Stein v Sybmore Holdings* [2006] NSWSC 1004, 64 ATR 325).

	<p><i>Re S, an incapacitated young person</i> [2017] NSWSC 859 (protective jurisdiction – taxation and other implications of change of protective management order and existing personal injury damages trust).</p> <p><i>Macquarie International Health Clinic Pty Ltd v Sydney Local Health District (formerly South West Area Health Service)</i> [2016] NSWSC 1587 (significant trial submissions upheld on appeal from primary decision [2020] NSWCA 274); [2008] NSWSC 738, [2009] NSWSC 629, [2010] NSWSC 1139, [2010] NSWCA 268, [2010] NSWCA 348, [2011] NSWCA 171 (trespass, public/private co-venture, good faith, contract interpretation, restrictive covenants, loss of opportunity, mesne profits, valuation).</p> <p><i>Sahab Investments PL v Castle Constructions PL</i> [2011] NSWCA 395, [2012] NSWCA 42, [2013] HCA 11 (entitlement of registering authority to alter land titles register or to be compelled to do so).</p> <p><i>Heperu PL v Perpetual Trustees Ltd; Heperu PL v Belle</i> [2009] NSWCA 252, [2010] NSWCA 13, [2010] NSWCA 339, [2011] NSWSC 1151 (settled day before delivery of judgment by HC; conversion and restitutionary rights in cheque fraud and receipt by third parties).</p>
Selected Decisions in NCAT	<p><i>Bondarek v NSW Land and Housing Corp</i> [2018] NSWCATAP 299 (lead writer)</p> <p><i>Capcelea v Owners SP48887</i> [2019] NSWCATCD 27</p> <p><i>Owners SP 58068 v/ats Cooper</i> [2019] NSWCATCD 62 and costs (unrep, 31.i.20 SC 19/18982, SC 19/27422), primary decision upheld by NSWCA [2020] NSWCA 250, (2020) 103 NSWLR 160</p> <p><i>Liberant v Owners SP 62713</i> [2020] NSWCATCD 16; appeal dismissed [2022] NSWCATAP 80</p> <p><i>Benjamin v Geneville Constructions PL</i> [2021] NSWCATAP 138 (lead writer)</p> <p><i>Palm Lake Resort PL v King and Metcalfe</i> [2021] NSWCATAP 195 and 355 (lead writer)</p> <p><i>Owners SP 36613 v/ats Doherty</i> [2021] NSWCATAP 285 (lead writer)</p> <p><i>Bajimaya and Paudel v Reward Homes PL</i> [2021] NSWCATAP 297 (lead writer)</p> <p><i>Palyagar v Lalee Construction PL</i> NSWCATCD 1 December 2022 HB 20/21207 and HB 20/21578</p>

	<p><i>Coolah Home Base PL v Tait</i> [2022] NSWCATAP 324, [2023] NSWCATAP 3 (lead writer)</p> <p><i>Oakland Ops PL v Morrison</i> [2023] NSWCATAP 134 (lead writer)</p> <p><i>Turner v Owners SP 70822</i> NSWCATCD 3 April 2023 SC 22/34975</p> <p><i>Hollingsworth v Owners SP 22283</i> NSWCATCD 31 October and 5 December 2023 SC 23/21872</p> <p><i>Selkirk v Owners SP 2661</i> [2024] NSWCATAP 17 (lead writer), [2024] NSWSC 760 (appeal upheld on limited aspect)</p> <p><i>Owners SP 95693 v Alta Vale Residential PL</i> NSWCATCD 22 May and 26 July 2024 2023/00392110 and two other proceedings heard and determined together</p> <p><i>Renaud v Two Build Constructions PL</i> NSWCATCD 17 December 2024 and 21 March 2025 2023/00389619</p> <p><i>JJ Built This PL t/as JJJ Constructions v Department of Customer Service (Building Commissioner) and Ensor</i> NSWCATCD 18 December 2024 2024/00135450</p> <p><i>Singh v Ellis</i> [2024] NSWCATAP 21</p> <p><i>Kalwanu Constructions PL v/ats Sandhu and Singh</i> NSWCATCD 28 February 2025 2023/00384794 and five other proceedings heard and determined together</p> <p><i>Agnew and Russell (executors) v LDK Turramurra PL</i> NSWCATCD 31 March 2025 2023/00442099</p> <p><i>Sader v Renbar Constructions PL</i> NSWCATCD 10 June 2025 2024/00031840</p> <p><i>Bartlett v Owners SP 12375</i> NSWCATCD 10 July 2025 2024/00363027</p> <p><i>Avago Investments PL v Kotis and Coogee View PL</i> NSWCATCD 11 August 2025 2023/0383817 (renewal)</p>
ADR Qualifications and Experience	<p>Reference in <i>Fearndale</i> mentioned above.</p> <p>A number of auDA domain name determinations as single member and chair of 3- member panel decisions.</p> <p>A number of private commercial arbitrations in commercial/securities, finance and IT.</p>

**Other
Experience**

Chaired and advised dispute panels for large private and educational organisations.

Mediated hundreds of hours in above commercial practice areas and also retail tenancy, farm debt, employment, personal injury and public law.

LEADR and IAMA (now Resolution Institute (RI)) mediation and arbitration qualifications and IAMA grading 1993/94, NMAS then AMDRAS accreditation; RI Advanced Mediator Panel; ADC panels; listed with Supreme Court, District Court, NSW Bar Association.

Procurator (retained general counsel) Presbyterian Church of Australia (in NSW from 2002 and federally from 2004, WA from 2005, Queensland from 2006).

Several years as lead director (during practice) of 5 Wentworth Chambers during substantial re-organisation, recruitment, expansion; current director of 5 Wentworth Chambers and current ranking senior counsel in chambers.

Former member NSW Bar Association professional conduct committee, Bar News committee, ADR committee.

Founding and current editor, Journal of Banking and Finance Law and Practice from 1990.

Co-editor, Weaver and Craigie's The Law Relating to Banker and Customer in Australia.

Title editor and contributor, Finance, Banking and Securities in The Laws of Australia.

Former Banking and Finance editor of Australasian Dispute Resolution Service.

Personal property contributor, Australian Legal Dictionary.

Editor, Directions in Finance Law (Butterworths, 1990).

Author:

- "Negotiability: Set-Offs and Counter-Claims", in Burton (ed), Directions in Finance Law (1990)
- Australian Financial Transactions Law (Butterworths, 1991)
- "Trusts", in Australian Commentary on Halsbury's Laws of England (1992)
- "Bills of exchange and other negotiable instruments", in Halsbury's Laws of Australia (1992 and subsequent updates and reissues)
- "Set-off", in The Laws of Australia (1993 and subsequent updates) and The Principles of Equity (1996 and 2nd ed 2002)

	<ul style="list-style-type: none"> ▪ "Arbitration in Australia", in <u>Comparative Law Yearbook of International Business 1994</u> (Kluwer/CILS, Vienna). <p>Seminar presentations and occasional articles and notes on aspects of banking, finance, equity, property, corporate securities, commercial and corporate law, ADR, public law and private international law.</p> <p>Director, Australian Elizabethan Theatre Trust (from 1994); member various research and charitable institutes; interests (as time permits) in world affairs and the arts, reading, writing, sport (rugby referee approx 20 years), languages, travel.</p>
Education	<p>Lindfield Public, Artarmon Opportunity Classes, scholarship to Trinity Grammar (dux of each year and various prizes), scholarships and prizes (including Geddes Prize and Roper Prize in Equity and Commercial Law) in law, English, history and government, University Medal in History, University of Sydney, Editorial Committee, <u>Sydney Law Review</u>, 1978-1979, Oxford University postgraduate bursary and Keble College awards.</p>
Memberships	<p>Member: New South Wales Bar Association</p> <p>Banking and Financial Services Law Association</p> <p>Commercial Law Association (Fellow)</p> <p>Australian Institute of Administrative Law</p> <p>Chartered Institute of Arbitrators (Fellow)</p> <p>Society of Trust and Estate Practitioners (STEP).</p>