



**TIM  
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*Barrister*

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## ABOUT

Tim Breakspear has a commercial practice with particular expertise in major infrastructure, mining, resources and construction projects. He appears as counsel in Australian courts and in domestic and international arbitrations. He also appears regularly in alternative dispute resolution forums such as mediations, expert determinations and dispute resolution panels.

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## INDUSTRY RECOGNITION

### *Construction/Infrastructure:*

*Australian Financial Review's Best Lawyers*: awarded "Lawyer of the Year" in Sydney for Construction/Infrastructure.

*Chambers & Partners Asia Pacific Guide* - ranked Band 1 in Construction & Infrastructure 2020, 2019, 2018, 2017 and 2016.

*Australian Financial Review's Best Lawyers* - Construction/Infrastructure Law - 2019, 2018, 2017.

*Doyle's Guide* - Construction & Infrastructure (Australia wide) - ranked as "preeminent" 2019, 2018, 2017, 2016 and 2015.

### *Arbitration:*

*Who's Who Legal - Arbitration Future Leaders 2020*

*Australian Financial Review's Best Lawyers* - International Arbitration - 2019.

*Australian Financial Review's Best Lawyers* - Alternative Dispute Resolution - 2019, 2018.

*Doyle's Guide* - Arbitration (Australia wide) - ranked as "preeminent" 2019, 2018 and 2017.

### *Commercial litigation*

*Doyle's Guide* - Commercial litigation (New South Wales) - "recommended" counsel 2019, and 2018.

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## SAMPLE CASE LIST

*Rail and logistics facility arbitration, Sydney (2020)*: appeared for a government entity in a commercial arbitration involving disputes under a development agreement for an inter-modal transport facility.

*Railway infrastructure dispute, Sydney (2019)*: appeared before a three-member dispute panel on a \$100 million late completion claim.

*Gas infrastructure arbitration, Singapore (2019)*: \$100 million delay and disruption claims relating to the construction of onshore operations facilities. Cross-examination of four lay witnesses, delay & disruption expert and quantum expert.

*Gas infrastructure arbitration, Singapore (2018)*: circa \$1 billion claim relating to defects in a gas pipeline. Issues of contract law

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and corrosion engineering. Cross-examination of pipeline expert and quantum expert.

*Mining infrastructure arbitration, Singapore (2018):* \$200 million dispute involving misrepresentation, variation, delay and acceleration claims arising from the construction of infrastructure for an iron ore mine. Cross-examination of four lay witnesses, including through interpreters. Cross-examination of quantum experts.

*Brighton Australia Pty Ltd v Multiplex Constructions Pty Ltd [2018] VSC 246:* claims of misrepresentation and delay relating to the construction of a major commercial building in Melbourne. Cross-examination of 3 witnesses.

*Gas infrastructure arbitration, Singapore (2017):* circa \$1 billion claim relating to the legality of an EPC contract. Primarily involving issues of statutory construction and restitution law.

*Electricity generating boiler arbitration (2017):* dispute between New Zealand and Fijian companies concerning a wood-fired burner located in Fiji.

*Bitumen plant arbitration, Sydney (2016):* claims relating to delay and defects in the construction of a batch plant at a port facility. Cross-examination of engineering and quantum experts.

*Warehouse and logistics facility arbitration, Melbourne (2016):* dispute concerning failures of concrete pavements in an industrial warehouse and logistics facility. Cross-examination of lay witnesses, engineering expert and quantum experts.

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

*Highway infrastructure, DRB hearing Sydney:* \$200 million claim for precontract misrepresentation.

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

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

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

*John Holland Pty Limited v Kellogg Brown & Root Pty Ltd [2015] NSWSC 451:* referral under s 8 of the Commercial Arbitration Act; proper construction of arbitration clauses; alleged waiver of arbitration clauses.

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

*Brookfield Multiplex v Owners Corporation 61288 (2014) 254 CLR 185* 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.

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

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

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

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

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

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

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

*Gas field infrastructure (Qld)* (2012) \$250 million claim before a DRB relating to a major water infrastructure project in the Queensland gas fields.

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

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

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

*Light rail PPP* (2012): \$20 million claim arising out of a light rail PPP.

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

*Owners Corporation Strata Plan 61288 v Brookfield* [2012] NSWSC 1586- award of indemnity costs.

*Owners Corporation Strata Plan 61288 v Brookfield* [2012] NSWSC 1219 - separate question; concurrent duty of care; pure economic loss.

*Owners Corporation Strata Plan 72535 v Brookfield* [2012] NSWSC 712 - duties of care; pure economic loss; statutory warranties.

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

*Power station arbitration, Sydney* (2011): \$70 million claim relating to alleged defects in a gas-fired power station

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

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

*McCrohon v Harith* [2010] Aust Torts Reports 82-056: professional negligence proceedings.

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

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