

AUSTRALIA

Australia litigation guide



**By Simon Burnett , Ashley Black (left) and Max Bonnell (right)
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The Commonwealth of Australia is a federation with political divisions at a federal, state and local level and litigation may involve consideration of relevant federal and state laws and regulations, as well as the common law.

Depending on the relevant jurisdiction, litigious matters in Australia may be heard in the Federal or State Supreme Courts, and representation at superior courts is generally undertaken by barristers, with instructing solicitors. Australia also has a number of specialist bodies that have the power to hear disputes in specific areas, such as the Administrative Appeals Tribunal in the case of administrative decisions, or the Takeovers Panel for disputes concerning control transactions in widely held Australian entities.

Over the last 10 years, there has been a shift in case management practices towards increasing accessibility and convenience for parties. To this end, the Federal Court of Australia now accepts electronic filing, and makes information regarding proceedings available online, including copies of orders made in proceedings, a list of court events, and lists of documents filed by each party. Courts have also developed protocols in Australia relating to electronic discovery of documents, with such protocols providing that documents must be in a text searchable form.

Remedies

Remedies available in Australian courts may arise under statute or through common law or equity. Some remedies are available as of right, whereas others are discretionary to the court granting relief. Although the primary remedy available in Australia is a compensatory order to pay damages, other available relief includes: nominal, exemplary or aggravated damages; rights of rescission of contract; declarations; restitution; and specific relief.

Australian courts also recognise categories of urgent relief, which include interlocutory orders, interim injunctions, Mareva injunctions, and Anton Piller Orders.

Enforceability of foreign judgments

The entitlement to recognise and enforce a foreign judgment in Australia arises both under the common law and through legislation. The federal Parliament of Australia passed the *Foreign Judgments Act 1991* (Cth), which follows the general form of the UK Foreign Judgments (Reciprocal Enforcement) Act 1933. The Act applies to the enforcement of money judgments rendered in first instance in superior courts of those countries listed in the regulations, including France, Germany, Hong Kong, Israel, Japan, Korea, New Zealand, Papua New Guinea, Singapore, Sri Lanka, Taiwan, and the UK. Where expressed in the regulations, the Act also extends to judgments rendered by specified inferior courts of listed countries.

Once registered under the Act, a judgment has the same force and effect – and proceedings may be taken thereon and control exercised over it – as if it had been originally given in the court of registration.

Arbitration

Aside from formal litigation, arbitration is one of the oldest means of dispute resolution in Australia and is conducted under two separate statutory regimes. Domestic arbitration (conducted between Australian parties) is governed by State legislation. During the 1980s, each State and Territory of Australia passed essentially uniform legislation termed the *Commercial Arbitration Act*. These acts provide certainty and a common set of rules, and are invoked where Australian parties have entered into an 'arbitration agreement'. This is defined as "an agreement in writing to refer present or future disputes to arbitration". The Act will also operate where a court has been vested with power under legislation to refer a matter to arbitration (which can, in certain courts, be done without the consent of the parties).

Australia is also a forum for international arbitrations, and the New York Convention on the Recognition and Enforcement of

The Federal Court of Australia now accepts electronic filing

Foreign Arbitral Awards came into force in Australia in 1975. Australia is also a signatory to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, which came into force in Australia in 1991. The International Arbitration Act 1974 gives effect to Australia's obligations under the New York Convention; applies to arbitrations conducted in Australia involving at least one party foreign to Australia; and provides that the UNCITRAL Model Law on International Commercial Arbitration has the force of law in Australia.

ADR

Alternative dispute resolution is a rapidly expanding area in Australian practice, and a wide range of processes are available to parties, including negotiation, mediation, evaluation and conciliation. Such processes can be taken by parties at their own discretion, or may otherwise be mandated or managed by the courts.

Presently, there are a number of organisations in Australia that provide ADR services such as accreditation. These organisations include the Institute of Arbitrators and Mediators of Australia (IAMA), Lawyers Engaged in Alternate Dispute Resolution (LEADR) and the Australian Mediation Association (AMA). Along with the Law Council of Australia, they have each developed codes of conduct.

Recommended firms at a glance

BANKING & FINANCE

Tier 1

Allens Arthur Robinson
Freehills
Mallesons Stephen Jaques

Tier 2

Blake Dawson
Clayton Utz
Minter Ellison

Tier 3

Arnold Bloch Leibler
Baker & McKenzie
Corrs Chambers Westgarth
Deacons
Gilbert + Tobin
Henry Davis York

CORPORATE/M&A

Tier 1

Allens Arthur Robinson
Blake Dawson
Clayton Utz
Freehills
Mallesons Stephen Jaques

Tier 2

Gilbert + Tobin
Minter Ellison

Tier 3

Baker & McKenzie
Corrs Chambers Westgarth

Tier 4

Arnold Bloch Leibler
Atanaskovic Hartnell
Chang Pistilli & Simmons
DLA Phillips Fox
Henry Davis York
Johnson Winter & Slattery

DISPUTE RESOLUTION

Tier 1

Allens Arthur Robinson
Mallesons Stephen Jaques

Tier 2

Blake Dawson
Clayton Utz
Freehills

Tier 3

Baker & McKenzie
Corrs Chambers Westgarth
Gilbert + Tobin
Minter Ellison

INTELLECTUAL PROPERTY

Tier 1

Allens Arthur Robinson
Gilbert + Tobin
Mallesons Stephen Jaques

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Clayton Utz
Freehills

Tier 3

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Corrs Chambers Westgarth
Davies Collison Cave
Minter Ellison

Banking & Finance

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Allens Arthur Robinson

Allens Arthur Robinson is an undisputed leader in banking and finance. As a fixture in these markets, this firm has been picking up roles on several of this year's most high profile deals. Though the team retains a number of competent and capable individuals handling a great deal of work volume, the firm did mourn the retirement of senior leading attorney Mark Wormell. The names Philip Cornwell, Andrew Jinks, Alex Ding, Tim Lester and Catherine Parr attract accolades from clients and competitors time and again.

One of the firm's highlights was the representation of Wesfarmers on its May 2008 A\$2.5 billion (US\$2 billion) capital raising, and the subsequent A\$2.8 billion capital raising in January 2009. These deals made Australian history as the second-largest secondary equity raising in the country, and 2008's largest. In another landmark transaction, Allens' team acted for CSL on its A\$1.74 billion (US\$1.5 billion) equity placement in August 2008 to fund its purchase of Talecris from Cerberus Partners and Ampersand Ventures.

In March 2009, Allens assisted Macquarie Capital Advisors and Goldman Sachs JBWere as joint underwriters of an A\$515 million (US\$442 million) institutional placement by Lihir Gold. The firm took a lead role in advising the Australian government on its urgent establishment of an SPV, which provided liquidity to car dealer financiers from January 1 2009 following GE Money Motor Solutions and GMAC Financial Services'

dramatic exit from the market. Australia's four leading banks financed the SPV structure with government-guaranteed subordinated debt.

Freehills

Freehills retains broadly top-tier capabilities across banking and finance markets despite the loss of leading lawyer John Schembri to Gilbert + Tobin last year. And clients are still hard-pressed to find better counsel on asset and structured finance, securitisation and equity capital markets work.

The firm played a key role on many capital raisings during the Australian equity rush. These included assisting Commonwealth Bank of Australia to place A\$2 billion (US\$1.6 billion) of shares to finance its acquisition of Bankwest, and representing Singapore sovereign investment arm GIC Real Estate in raising A\$1.8 billion for its cornerstone investment in GPT Group.

And banking clients including lenders and borrowers kept Freehills sitting front and centre on the year's fewer big-ticket transactions. For example, the firm advised ANZ, BNP Paribas and NAB on a jointly arranged and underwritten A\$10 billion facility to finance Wesfarmers' Coles Group takeover.

In an unusually large debt finance acquisition for the illiquid markets of late 2008, Freehills represented Incitec Pivot's arrangers of A\$2.4 billion (US\$1.9 billion) facilities. These were used in purchasing Dyno Nobel, and the firm later assisted the arrangers again to partially refinance the deal.

Even busier on project financing matters of late, the firm most noticeably acted on the government side of a pioneering supported debt model PPP for South East Queensland Schools.

Leaders within the practice include Philippa Stone, Tessa Hoser, Brendan Quinn and Patrick St John.

Mallesons Stephen Jaques

Mallesons Stephen Jaques has been at the forefront of innovative equity capital raising structures and has been responsible for bringing a number of the year's biggest and trickiest deals to market.

The firm acted on the issuers' side in a string of private placements, which included assisting Westfield Group to place A\$2.9 billion (US\$2.3 billion) in ordinary stapled securities in February and a A\$3 billion equity capital raising by NAB in November 2009. Greg Hammond and Ian Paterson teamed up to act for the Australian banks throughout the government-run guarantee scheme for large deposits and wholesale funding. They advised on its application to banks' debt programmes and represented cornerstone financiers ANZ, NAB, Commonwealth Bank and Westpac in the Australian government's guaranteed

auto dealer floor plan initiative. This was created to alleviate funding pressure in the dealer financing industry.

Mallesons also acted as sole legal counsel on a recent initiative by the Australian government and big four banks. This involved creating a funding vehicle designed to support commercial property refinancing deals that are at risk of withdrawal from one member of a banking syndicate. The firm has been well positioned to act on much of the large-scale, complex refinancing work being undertaken. This is due to its experience on putting together the original financing documentation, and assisting numerous high-profile clients such as PBL Media Group, Incitec Pivot, and Champ Private Equity.

Jeff Clark, Peter Doyle, Ken Astridge, Greg Hammond, Ian Paterson and Stuart Fuller have carved out leading reputations within the practice.

Blake Dawson

Blake Dawson continues to attract high-profile work in the banking and finance sector. Martin Coleman leads the group that serves more big name clients by the year. Coca-Cola Amatil turned to the firm in 2008 for financing work on several corporate facilities around the region, and Bluescope Steel has instructed Blake Dawson on corporate treasury work throughout the past year.

The firm has remained a strong force in equity capital markets where many clients say the firm performs best. Recently, the firm earned an appointment to the Australian Securities and Investments Commission's national legal services panel. The firm has a strong underwriters' practice, recently advising Merrill Lynch on a A\$1.74 billion (US\$1.5 billion) equity placement by CSL, and Wesfarmers on a A\$2.5 billion capital raising arrangement.

On the issuers' side, the team advised BlueScope Steel on a capital restructure in May 2009, which included an accelerated non-renounceable entitlement offer of up to A\$1.41 billion. The firm has also acted on multi-million dollar deals for ANZ, National Australia Bank, Bank of Scotland (Ireland), and Natixis. Blake Dawson is lead adviser to a consortium of 16 coal producers, including BHP Billiton, Rio Tinto Coal Australia, Vale (Brazil) and Xstrata Coal, on the project financing for the Wiggins Island coal export terminal in Gladstone. The A\$5 billion (US\$4 billion) project is Australia's largest greenfield project of 2008/2009, and Blake Dawson is advising on all aspects of the financing and construction of the terminal.

Clayton Utz

Clayton Utz has been active in debt capital markets this year, holding its tier two position despite a slightly smaller team at partner level. It is still seen by the market as one of the leading securitisation practices in Australia. Highlights

for the firm included acting on the restructuring of Allco's securitisation exposures, and assisting many clients in their participation on six government-funded securitisations on both the sponsor and arranger sides.

In addition this year, the firm assisted the mandated lead arrangers, underwriters and bookrunners on a A\$250 million (US\$200 million) senior secured facility in relation to the acquisition of MYOB by Archer Capital and Harbourvest Partners.

Clayton Utz's project finance team stood out for its excellence in the PPP arena. As usual, it nabbed the government role on several of the most coveted infrastructure projects. For example, the Aquasure consortium on its bid to design, build and operate a 150GL desalination plant in Queensland. Other work included reviewing the tender and related project documents for the New South Wales health department on its A\$950 million public tender for the Royal North Shore Hospital redevelopment. In addition, the Queensland government appointed the firm to advise on the Airport Link PPP, which is a A\$3.2 billion northern busway and airport roundabout upgrade project.

Grant Fuzi, Graeme Gurney, Jason Huinink, Stuart Byrne, Michael Riches, Doug Jones, Greg James, Louise McCoach and Angela Flannery are some of the strongest players on the team.

Minter Ellison

Minter Ellison has kept up a strong pace on equity capital market deals, including working on one of the rare IPOs that made it to market in the second half of 2008. One highlight saw the team assist Mirvac Group with a A\$500 million equity (US\$400 million) fundraising in November 2008. This comprised a A\$72 million institutional placement and a A\$428 million accelerated non-renounceable entitlement offer, and exploited the Corporations Act's low-documentation provisions.

In another noteworthy role, Minters advised on a A\$625 million IPO in August for Ivanhoe Australia. This constituted a landmark value for Australian mining exploration companies, and was one of the few IPOs to come to market in late 2008. While Minters has the ability to act as both lenders' and borrowers' counsel, market commentators note that its bank-side work is its particular strength. After assisting the mezzanine syndicate on PBL Media's leveraged buyout of Ticketek and Acer Arena in 2007, the firm was mandated by Goldman Sachs JBWere on the complex December 2008 debt restructuring to recapitalise the troubled media company.

Minters also acted for an RBS and ABN Amro-led syndicate in February 2009 to restructure A\$2.32 billion of facilities granted to Primary Health Care for its

acquisition of Symbion Health in 2008. The firm also had a strong year in project financing, acting on two successful PPP (public-private partnership) bids and pioneering alternative financing structures.

Paul Paxton, Fred Tinsley, Jeremy Blackshaw, Bart Oude-Vrielink and Theo Kindynis come highly recommended.

Other active firms

Lavan Legal

Established over a century ago, Lavan Legal provides a comprehensive range of financial and corporate services. The team is formed by 19 partners and 71 associates who cover core areas of law including banking, finance, M&A, IP, insolvency and restructuring, compliance, dispute resolution, commercial litigation and competition. Particularly its litigation group is one of the largest in the country. On the finance side, the firm has a solid track of experience acting for lenders and borrowers on various project financings and loan syndications. Corporate and M&A work spans advice on commercial transactions, sales, mergers, acquisitions, joint ventures, takeovers, tax and duties.

Corporate/M&A

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Atanaskovic Hartnell

Chang Pistilli & Simmons

DLA Phillips Fox

Henry Davis York

Johnson Winter & Slattery

Allens Arthur Robinson

Allens Arthur Robinson is best known for representing Anglo-Australian iron-ore miner Rio Tinto in its heated and high-profile negotiations in February 2009 with China's state-owned Aluminum Corporation of China (Chinalco) to reach an agreement on a strategic alliance. Chinalco then famously pulled-out in July 2009 to form a joint venture covering iron-ore production with rival BHP Billiton. Ewen Crouch is a standout member of the team.

Blake Dawson

With a strong focus on the resources sector, Blake Dawson's M&A practice is easily among Australia's best. Carl Della-Bosca's move to rejoin the team following her leave of absence with Slaughter and May in London, together with David Ryan's promotion to partner, shore up the firm's resources in the corporate department.

Key deals include leading the charge for BHP Billiton on the Australian law aspects of its stirring last-minute joint venture offer to Rio Tinto. This complex transaction saw the firm's client nab a A\$5.8 billion deal with Chinalco's much sought after target at the final stages of Rio's negotiations with its Chinese suitor.

A second front-page mining transaction saw Blake Dawson advise China Minmetals on its pursuit of home-grown counterpart Oz Minerals. The deal wrapped with agreeable shareholders selling Oz Minerals at A\$1.7 billion (US\$1.36 billion) to the PRC state-owned enterprise on revised terms. Finally, Blake Dawson represented Kirin Holdings on its proposed buyout of Lion Nathan.

Big names in the practice include Bill Koeck, Marie McDonald and David Williamson.

Clayton Utz

Clayton Utz secures its top-quality reputation for corporate work again this year, with a deal profile that includes representing HBOS on its A\$2.5 billion (US\$2 billion) divestment of Bankwest and St Andrew to the Commonwealth Bank.

The firm also counseled Fortescue Metal Group on its 16% share sale to Chinese iron and steel group Hunan Valin for A\$645 million under a share subscription agreement. This transaction required sanctioning from the Australian Foreign Investment Review Board.

Competitors describe Rod Halstead as an "unquestioned doyen for M&A", while Michael Parshall is also highly recommended.

Freehills

Shake-ups at partner level may place Freehills' corporate practice on watch. However, the firm's deal pipeline throughout the year has not revealed any signs of wear.

Richard Loveridge has taken over leadership of the practice since Mark Rigotti stepped down to a client management position last year. The firm lost a top player in Braddon Jolley, who moved to Corrs Chambers Westgarth. Yet promotions to partnership demonstrate that a next generation is already primed to meet tomorrow's challenges. Baden Furphy, Rodd Levy and Rebecca Maslen-Stannage are proven leaders on the team.

One of the firm's more challenging transactions saw it advise Oz Minerals on China Minmetals' notorious bid for its mining assets. This was eventually settled for A\$1.75 billion.

Freehills represented Santos in another scene-stealing deal, which saw the Australian oil and gas enterprise team up with Malaysian state-owned counterpart Petronas on the A\$7.7 billion (US\$2.5 billion) Gladstone liquefied natural gas (LNG) project development. Freehills' team also assisted CBA to complete its Bankwest and St Andrews insurance business purchases from HBOS for A\$2.1 billion.

Mallesons Stephen Jaques

Mallesons Stephen Jaques is an obvious contestant for high-value corporate work, regularly reeling in a fair share of the season's top transactions. Over the last 12 months, a key mandate saw it advising Aluminum Corporation of China (Chinalco) on its A\$19.5 billion (US\$15.6 billion) attempted play for Rio Tinto.

Chemicals multinational Incitec Pivot sought the team's advisory expertise on its scrip-based scheme of arrangement bid to acquire explosives company Dyno Nobel for A\$3.3 billion. Meanwhile, Hunan Valin Iron and Steel Group instructed the firm on the A\$1.2 billion share it took in Australian metals group Fortescue through subscription and purchase.

Standout names include Peter Cook, David Friedlander, Greg Golding and Stephen Minns.

Gilbert + Tobin

Gilbert + Tobin tackled negotiations for Westpac Banking regarding its tie-up with St Georges Bank. The deal was Australia's largest ever corporate merger, and created the country's largest banking institution. The firm also turned heads representing AGL Energy in disposing of A\$1.2 billion-worth (US\$960 million) of Queensland Gas shares. Garry Besson, Philip Breden, Gary Lawler and John Williamson-Noble stand at the helm of the group.

Minter Ellison

Key deals for Minter's corporate team over the last year include advising the target, Midwest Corporation, on the A\$1.3 billion (US\$1 billion) off-market takeover in September 2008 by Sinosteel Ocean Capital, a wholly-

owned subsidiary of China's Sinosteel. The company was the first Chinese state-owned entity to make an unsolicited takeover bid for an Australian listed resources company.

From October 2008 to January 2009, Minter's team also acted on the A\$1.02 billion airport divestment programme, which involved the coordinated sale of Cairns International Airports and Mackay Airports, as well as a 12.4% shareholding in Brisbane Airport. And in a reverse takeover in July, the firm assisted Qantas Airways with an A\$750 million spin-out of its Qantas Holidays and Qantas Business Travel businesses. This went into listed travel group Jetset Travelworld, in exchange for a controlling equity stake.

In August 2008, Minter Ellison acted on the privatisation of Macquarie Capital Alliance Group (MCAG), a Macquarie Group listed specialised fund. The take-private transaction was completed by an interdependent Australian scheme of arrangement, Bermudian scheme of arrangement and an Australian trust scheme. Leading lawyers at Minters include John Steven and Bart Oude-Vrielink.

Dispute Resolution

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Tier 1

Allens Arthur Robinson

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Tier 2

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Clayton Utz

Freehills

Tier 3

Baker & McKenzie

Corrs Chambers Westgarth

Gilbert + Tobin

Minter Ellison

Allens Arthur Robinson

Allens Arthur Robinson enjoys an excellent reputation for litigation and dispute resolution and houses strength in depth for class actions, competition cases, takeover disputes, and public and private investigations (by ASIC, ASX, ACCC, ATO, APRA and Royal Commissions).

Recent class action experience includes advising Aristocrat in Australia's largest shareholder class action to go to trial, including in relation to settlement negotiations, and Philip Morris in Australia's first and only class actions brought against Australian tobacco manufacturers.

The firm's recent public enquiry work includes acting for various parties in the HIH Royal Commission, representing James Hardie over the availability of funding to meet future asbestos claims, and Sydney Ferries over a succession of accidents that resulted in fatalities.

Regulatory investigation work includes advising KPMG in relation to the Westpoint collapse. This involved responses to ASIC investigations, public examination by liquidators and other potential litigation. The firm also represented Macquarie Group in its dealings with the ASX regarding futures trading.

Other high profile cases include acting for Amcor on an ACCC investigation into alleged cartel behaviour, and advising New Ltd and FOXTEL on the C7 litigation.

Michael Ball is consistently rated as one of Australia's best litigation lawyers, while fellow partner Craig Phillips also receives plaudits.

Mallesons Stephen Jaques

The dispute resolution practice at Mallesons Stephen Jaques has been particularly active over the last 12 months, acting on many of Australia's commercial and regulatory disputes, investigations, class actions and public enquiries. The firm's practice has been one of the main beneficiaries of the knock-on effects of the financial crisis – such as the rise in well-funded class action (particularly around non-performing financial services players), regulator-driven enquiries and litigation.

Mallesons' key clients include BHP Billiton, Lion Nathan, Xstrata Coal and Telstra, with the firm recently advising the latter on its C7 litigation.

Significant matters over the last year include advising British Airways in two class actions in the Federal Court of Australia – one of which was for alleged cartel activity in the air cargo industry (on which the firm was successful in having the claim struck out).

In March 2009, the firm also won a tax dispute for BHP Billiton against the Commissioner of Taxation worth A\$2 billion (US\$1.7 billion). This related to a dispute with the ATO over the deductibility of expenditure and the financing costs of investments which went bad around 2000.

Headed by Roger Forbes, Mallesons' practice includes such leading lights as Ashley Black, Robyn Chalmers and Chris Fox, while Peter Stockdale focuses on insurance matters.

Blake Dawson

Covering all aspects of dispute resolution and litigation across every major industry sector, the practice at Blake Dawson has enjoyed a very busy year on many of Australia's highest profile and most significant commercial cases. Highlights include work on the largest

ever civil litigation, and the largest judgment in the country's history (the A\$1.6 billion (US\$1.4 billion) Bell Group litigation), as well as commercial cases involving the likes of BrisConnections, James Hardie, Opes Prime and Lift Capital, Sons of Gwalia and Ingot v Macquarie. The firm has also been acting in the two highest profile Commissions of Inquiry: Equine Influenza and Victorian Bushfires Royal Commission.

Blake Dawson's disputes practice represents many ASX-listed blue-chip corporates, in addition to banks, financial institutions, accountancy firms, insurance firms, government and regulatory bodies. Key clients include ANZ Bank, Coca-Cola Amatil, Deloitte, Department of Defence, Macquarie Bank, Newcrest Mining, RailCorp, Shell and UBS.

The practice is headed by Ashley Wharton who, in April 2009, successfully obtained a judgment in his clients' favour on the Bell Group litigation. This was Australia's longest running civil trial in Australian corporate history (involving a 404 day trial and some 2,600 pages of reasons for judgment). Wharton's 36-partner team includes Class Action practice head John Emmerig, as well as Andrew Carter, Chris Davidson, John Pavlakis and Peter Voss. In June 2008, the team was joined by Georgia Quick from Clayton Utz.

Clayton Utz

The litigation and dispute resolution practice at Clayton Utz remains one of the largest in Australia with more than 60 partners. The firm has benefited from the recent trend of greater use, by the federal government and state and territory governments, of private firms for litigation. Examples of work include advising corporate regulator ASIC on the prosecutions of James Hardie, as well as representing the Department of Defence and Queensland Health.

Key clients also include AMP Capital Investors, Fortescue Metals Group and TRUenergy. But the firm's most significant matter in the last year was its role on ASIC v Macdonald & Ors. Led by partners Brigitte Markovic and Zac Chami, Clayton Utz acted for ASIC on claims against 10 former officers and directors of companies in the James Hardie Group, ABN 60 and James Hardie Industries. The proceedings have significant ramifications for publicly listed companies and their executive and non executive directors. Another key case was Merck & Co and Merck Sharp & Dohme (Australia) – the largest product liability class action before the Australian courts.

The practice is headed by Stuart Clark and includes the well respected Sid Wang, who recently advised a client on a dispute over the sale of one of Australia's largest defence contracting conglomerates. The matter attracted a lot of media attention and involved claims for over A\$250 million (US\$208 million).

Freehills

With some 300 litigators at its disposal across its network of offices, Freehills' litigation and dispute resolution practice is one of the largest. It is frequently called upon to act on many of the most significant and complex commercial matters occurring in Australia, and across a broad range of industries.

For the last three years the firm has played a key role on the A\$1.6 billion (US\$1.4 billion) Bell Group litigation, advising 20 banks – including Westpac, Lloyds, NAB, Commonwealth Bank of Australia and SG Australia – in defending claims by companies in the Bell Group and their liquidators. Freehills also acted for Citigroup in civil penalty proceedings brought by ASIC alleging breach of its obligation to manage conflicts of interest and insider trading.

Other recent work highlights includes acting for Telstra in a shareholder class action proceeding in the Federal Court, which included some novel points of law that had not been previously litigated in an Australian forum. As such the case attracted a substantial media following. And there was ground-breaking litigation over shareholders' rights in Australia's largest insolvency matter this decade, the Sons of Gwalia insolvency, on which the firm is advising deed administrators Ferrier Hodgson.

Key lawyers in the practice include Melbourne-based Malcolm Cooke, who was recently seconded to a telecommunications client of the practice. Accredited mediator and experienced commercial litigator Peter Smith was made up to partner in January 2009.

Baker & McKenzie

Andrew Christopher heads the 13-partner dispute resolution practice at Baker & McKenzie of whom 11 of the partners share the Sydney office with him. Each member of the team carries out ADR services, with the Sydney office recently involved in a number of expert determinations, expert appraisals and expedited arbitrations. The two-partner Melbourne practice has particular expertise in construction and commercial litigation.

Corrs Chambers Westgarth

The 21-partner dispute resolution practice at Corrs Chambers Westgarth is headed by James Whittaker and is acting on many of the largest and most complex matters in Australia. This includes BrisConnections, the 2009 Victorian Bushfire Royal Commission, the collapse of Allco Finance Group and the Commonwealth's defence of Pan Pharmaceuticals, which is the largest damages claim ever brought against the Commonwealth of Australia.

Gilbert + Tobin

The 13-partner litigation and dispute resolution practice

at Gilbert + Tobin, headed by Michael Williams, has particular strength in connection with internet publications and applications including search engines, content hosts, content providers and user-generated-content sites. The firm is representing the major international film studios in their groundbreaking action against Internet Service Provider iiNet, in a claim that the ISP is allowing copyright infringement on its network. Other work includes advising Google Inc in defence of proceedings brought by the ACCC, in what is the first reported case of a market regulator taking action against an internet company.

Minter Ellison

Scott Chesterman heads the 51-partner national dispute resolution practice at Minter Ellison, which welcomed the return of Paul Kitch as special counsel in January 2009 but saw the departure of Adelaide partner Jane Schammer to Gilchrist Connell in April 2009. Recent work includes acting as primary advisers to ANZ in the collapse of Opes Prime, as well as representing the former CEO and managing director of James Hardie Industries in civil penalty proceedings brought by ASIC against former James Hardie directors and senior executives and companies.

Other active firms

Chang Pistilli & Simmons

Dispute resolution practice head Diana Chang was appointed as a member of the Australian Takeovers Panel in 2008. The practice, which has seen some turnover at associate level, has experience handling a broad range of commercial disputes for key clients such as Macquarie Telecom, Life Therapeutics, Australian Pipeline Trust and Heritage Building Society. Recent work includes representing the former chairman and CEO of New Cap Reinsurance in appeal proceedings brought by the Ingot parties in the NSW Court of Appeal concerning allegations of misleading and deceptive conduct arising from a corporate collapse.

Intellectual Property

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Allens Arthur Robinson

Allens Arthur Robinson maintains its position at the summit of IP law in Australia thanks in no small part to its depth of knowledge and expertise across various industries. Offering the full range of IP services to clients of the calibre of Pfizer, Australia Post and Viater Medical, the firm continues to develop its prosecution department.

In the last year, Singapore-based renewable energy company Atlantis Resources Corporation asked the firm to manage and protect its patent rights for underwater power generative systems across 45 jurisdictions. Allens also advised recent client MySpace on issue such as the ownership of information and branding within the new digital environment. Other work from the News Corporation subsidiary includes registering a trade mark portfolio in Australia and drafting specifications for new trade mark applications.

Key practitioners at the firms include Jackie O'Brien (who led the team for MySpace), Richard Hamer (for his science background), the very experienced Jim Dwyer, Andrew Wiseman and practice head Phillip Kerr. Consultant Michael Dowling is a past executive president of AIPPI.

Gilbert + Tobin

The IP department at Gilbert + Tobin is split into four dedicated practice areas: patents; copyright; trade marks, designs and domain names; and commercial IP. Housing particular strength on patents and copyright, the firm also benefits from its high tech roots and is active advising clients on anti-counterfeiting, high tech investigations and internet based work.

Key clients of the practice include AGL, Aristocrat Technologies Australia, EMI Music Australia, Google Group, Motion Picture Association, Red Bull and Wyeth Pharmaceuticals.

Gilbert + Tobin acts for EMI on all of its digital music deals, and recently drafted and negotiated a full suite of licence agreements with EMI's digital music partners. The firm also successfully acted for FOXTEL in a major claim against smart card programmers and pirate equipment providers. This tested the rights of pay-tv providers to protect encoded broadcasts and was one of the first uses of the broadcast decoding device provisions in Australia's Copyright Act.

Partner Michael Williams heads the five-partner department, and recently acted for the leading film studios in their landmark copyright infringement case against an Australian ISP (iiNet). He also advised Nine Network in its long running case against IceTV in the High Court on copyright protection in compilations and databases.

Other leading lawyers include Anthony Muratore, Lisa Lennon and Michael Argy.

Mallesons Stephen Jaques

Mallesons Stephen Jaques is at the forefront of IP developments in Australia, with its team of litigators, patent and trade mark attorneys and lawyers advising across a broad range of sectors including pharmaceuticals, biotechnology, IT, media and communications, food and beverage, and marketing.

Key clients of the group include Telstra, Microsoft, Cadbury Schweppes and Nestlé. Significant work for Telstra over the last year includes copyright tribunal proceedings concerning copyright collecting society APRA|AMCOS and its proposed licensing scheme for digital music downloads. With the matter expected to be set down for a final hearing at the end of 2009, the proceedings will have substantial implications for the long term viability and operation of the digital music industry in Australia.

Another important case has been the firm's representation of Cadbury Schweppes in its long running proceedings concerning Darrell Lea's use of the colour purple on the packaging of its chocolate confectionery products. Mallesons argued that consumers were likely to be misled or deceived in breach of section 52 of the Trade Practices Act. The decision, which is pending, will clarify certain legal principles about the role of reputation in actions for passing off / misleading and deceptive conduct.

The 14-partner national team includes the highly regarded Maurice Gonsalves, Cheng Lim and Katrina Rathie.

Blake Dawson

Blake Dawson's IP practice offers clients the complete range of contentious and non-contentious specialist services and is known to be extremely commercial and solution focused. On the trade marks side, the firm manages portfolios for such brands as Condé Nast Publications Australian and Qantas Airways. And it has more recently been instructed by Burger King, HSBC and Rolex – while AstraZeneca appointed the firm to its IP advisory group this year.

On the patent litigation side, Blake Dawson recently finished more than nine years of representation for subsidiaries of Swedish medical technology and healthcare group Gambro and Gambro Lundia in a settlement with Fresenius Medical Care Australia.

Respected team members include Lisa Ritson, Peter Chalk and Ben Miller.

Clayton Utz

The IP practice at Clayton Utz has suffered the departures of Peter Knight and Anna Sharpe, who both retired from the partnership in January 2009, but remains one of the best around. Providing both front-end and back-end advice, the firm specialises in all aspects of IP law, passing off and Trade Practices Act claims and related commercial disputes, and now houses a dedicated trade marks group.

Key clients of the practice include Eli Lilly & Company, Astrazeneca, Weatherford International, Free TV Australia and Racing Victoria.

The highlight of its patent litigation work is undoubtedly its work for Eli Lilly concerning patent infringement and revocation allegations for the company's gemcitabine hydrochloride molecule. This forms the basis of its successful anti-cancer treatment GEMZAR, and the case deals directly with the complex interplay of patent rights, product registration and PBS (Australia's Pharmaceutical Benefits Scheme) listing procedures.

A significant copyright tribunal dispute is the firm's instruction by Free TV Australia in proceedings commenced by Phonographic Performance Co of Australia, which represents the interests of record labels and Australian recording artists. The proceedings relate to a licensing scheme for the television broadcast of commercial sound recordings in Australia, and this will be the first determination of such a scheme by the Copyright Tribunal.

Practice head John Collins is advising on the Eli Lilly case. Other star performers include John Fairbairn and Kate Marshall.

Freehills

Sue Gilchrist is the practice area leader of Freehills' IP litigation, and patent and trade mark groups and enjoys an excellent reputation. The firm continues to act for Glaxo

SmithKline and Biochem Pharma Inc in a series of cases in the Federal Court and the Patent Office concerning compounds used in the treatment of the AIDS virus. And it is advising Deutsche Bank on the licensing and IP aspects of its investment in Redfern Photonics. Despite the recent loss of senior partner Anthony Muratore to Gilbert + Tobin, the firm has strength in depth with other leading lawyers including Tom Gumley, Kristin Stammer and Frances Drummond.

Baker & McKenzie

The practice at Baker & McKenzie is very highly regarded, particularly for trade marks, anti-counterfeiting and enforcement. The firm can cite numerous high profile brands as clients. For example, Mars' Asia-Pacific instructs the firm with its trade mark portfolio in addition to all of its IP work in Australia. Other clients such as Macquarie Bank and Pfizer have similarly sought out the practice to manage their marks. Practice head Robert Arnold is well respected, with his previous tenure in Asia giving the firm an edge.

Corrs Chambers Westgarth

Corrs' profile in IP is on the rise and its 12-partner team is led by the well respected Stephen Stern. The firm can boast an impressive client list, which includes Louis Vuitton and Blackberry (RIM), while the likes of Johnson & Johnson and Foster's have trusted Corrs with their strategic IP work for decades. Work over the last year includes its role on the Lundbeck Lexapro case, which involved the consideration of enantiomer patents, how extensions of term of such patents are to be calculated, and the consideration of the non-literal infringement of chemical process patents.

Davies Collison Cave

Though boosted by the February 2008 arrival of Ian Pascarl from Blake Dawson, IP boutique Davies Collison Cave has long been known for its strength in depth. One of the larger practices in Australia, the firm has a lot of experience in taking IP issues to the Federal Court. Recent work includes advising US-based Hanson Beverage Company through an ultimately successful passing off action against local drinks maker Bickfords. The firm also worked on a copyright infringement case brought by Polo Ralph Lauren against Ziliani Holdings. In addition to Pascarl, Michael Wolnizer is one of a number of other partners commended by clients.

Minter Ellison

Another practice that has been active with its lateral hires is Minter Ellison which, in March 2008, lured Lynne Peach across from Mallesons Stephen Jaques. The firm is best

known for its outstanding pharmaceutical group. High profile work includes advising John Fairfax Publications on the alleged reproduction of headlines by the Australian Financial Review. And the practice negotiated with the Australian Performing Rights Association on behalf of Google and Fox (MySpace) regarding the latter two's respective use of music on their websites. Partners Paul Zawa and Charles Alexander give the firm a strong litigation capability.

Other active firms**DLA Phillips Fox**

The intellectual property and technology practice at

DLA Phillips Fox is led by partner Tony Conaghan and comprises specialists in commercial and litigious IP and franchising. On the latter, the firm recently made a submission to the government's enquiry into the franchising code of conduct, and Conaghan was requested by the Senate Committee to appear before it and provide oral evidence at the Committee hearing. The firm also advised Pac Mining and CQMS in patent infringement proceedings in the Federal Court in Sydney, where Pac and CQMS were alleged to have infringed two patents. In a judgment delivered on March 4 2009, the Full Federal Court unanimously found that the patents had not been infringed.

Other notable areas of law – recommended firms

Further information available online at www.asialawprofiles.com

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Tier 1
Blake Dawson
Clayton Utz
Mallesons Stephen Jaques
Tier 2
Allens Arthur Robinson
Freehills
Minter Ellison
Tier 3
Baker & McKenzie
Corrs Chambers Westgarth
Deacons

ENERGY & NATURAL RESOURCES
Tier 1
Allens Arthur Robinson
Clayton Utz
Freehills
Mallesons Stephen Jaques
Tier 2
Blake Dawson
Corrs Chambers Westgarth
Gilbert + Tobin
Minter Ellison
Tier 3
DLA Phillips Fox
Johnson Winter & Slattery

IT, TELCO & MEDIA
Tier 1
Freehills
Gilbert + Tobin
Mallesons Stephen Jaques
Tier 2
Blake Dawson
Clayton Utz
Corrs Chambers Westgarth
Minter Ellison
Tier 3
Baker & McKenzie
DLA Phillips Fox

LABOUR & EMPLOYMENT
Tier 1
Blake Dawson
Clayton Utz
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Tier 2
Corrs Chambers Westgarth
Harmers Workplace Lawyers
Mallesons Stephen Jaques
Tier 3
Baker & McKenzie
Deacons
DLA Phillips Fox

SHIPPING MARITIME & AVIATION
Tier 1
Blake Dawson
Tier 2
Clayton Utz
DLA Phillips Fox
HWL Ebsworth & Ebsworth
Minter Ellison
Norton White
Piper Alderman

TAX
Tier 1
Allens Arthur Robinson
Clayton Utz
Greenwoods & Freehills (incorporating Shaddick & Spence)
Mallesons Stephen Jaques
Tier 2
Arnold Bloch Leibler
Baker & McKenzie
Blake Dawson
Corrs Chambers Westgarth
Tier 3
Atanaskovic Hartnell
DLA Phillips Fox
Henry Davis York