

The Hon Anthony Besanko KC



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The Hon Anthony Besanko KC was a Judge of the Federal Court of Australia from April 2006 to May 2024.

Prior to that period, he was a Judge of the Supreme Court of South Australia from October 2001 to March 2006. Anthony was a judge of the Supreme Court of Norfolk Island from 2013 and Chief Justice of that Court from February 2015 to May 2024. He was an additional Judge of the Supreme Court of the Australian Capital Territory from March 2007 to May 2024. In January 2025, Anthony was appointed an International Judge of the Singapore International Commercial Court.

Anthony accepts appointments as arbitrator, mediator and early neutral evaluator and as an expert for the purposes of expert determinations

As a barrister from 1984, and senior counsel (in South Australia) from 1994, Anthony practised in a wide variety of areas including (primarily) in commercial and company law.

Anthony's expertise as counsel included commercial and company law, administrative law, the law of trusts and estates and general appellate work. He was counsel in a number of long-running cases involving, in particular, professional negligence actions against directors, accountants and auditors. As a judge, his expertise included commercial and company law, equity (including trusts, fiduciary duties and equitable accounting), intellectual property, admiralty, public law (including judicial review), insurance, bankruptcy and general appellate work.

Expertise

Judicial Career

- International Judge of the Singapore International Commercial Court (January 2025)
- Justice of the Federal Court of Australia (April 2006-May 2024)
- Justice of The Supreme Court of South Australia (October 2001-March 2006)

- Justice of the Supreme Court of Norfolk Island from 2013 and Chief Justice from February 2015 to May 2024
- Additional Justice of the Supreme Court of the Australian Capital Territory (March 2007- May 2024)

The Federal Court of Australia is a national superior court established under legislation of the Commonwealth (the national Parliament) and is of equivalent status to the Supreme Court and Courts of Appeal of the States and Territories of Australia. The jurisdiction of the court includes a wide commercial practice area: commercial contracts, banking, finance and insurance, corporations, insolvency both personal and corporate, trade practices, competition and market regulation, supervision of international commercial arbitration, intellectual property (patents, trademarks registered designs, copyright and confidential information) taxation, admiralty and public law.

Between April 2006 and May 2024 and as a Judge of the Federal Court, Anthony exercised the jurisdiction of the Court in all areas of the Court's work. He sat as a judge at first instance in a number of matters and he sat regularly as an appellate judge. In addition and as part of a small committee he assisted the Chief Justice in matters relating to appeals and applications for leave to appeal, including the listing of matters, requests for expedition and, where appropriate, whether the bench should be comprised of three or five judges.

The South Australian Supreme Court is a superior court and is the highest court in South Australia. The Court is a court of general jurisdiction and includes both civil and criminal jurisdiction and appeals from judges sitting at first instance and from the lower courts.

Anthony was involved in all areas of the Court's jurisdiction, including appeals.

Judicial work

Between April 2006 and May 2024 and as a judge of the Federal Court, Anthony delivered more than 650 judgments at first instance and, as a member of the Full Court, in the delivery of more than 280 judgments.

Between October 2001 and March 2006 and as a judge of the Supreme Court, Anthony delivered 133 judgments at first instance and, as a member of the Full Court, in the delivery of 165 judgments.

During his time as a judge of the Federal Court and sitting as an appellate judge, a sample of the judgments in the areas of commercial and company law, equity and trusts, intellectual property, admiralty, public law insurance, bankruptcy and statutory interpretation are as follows:

- *Hancock Prospecting v Rinehart* [2017] FCAFC 170 (concerned with the construction of arbitration clauses and a stay of proceedings whilst arbitration takes place).
- *Gujarat NRC Coke v Coeclerici* [2013] FCAFC 109 (concerned with the enforcement of an international arbitration award).
- *The Ship "Gem of Safaga" v Euroceanica* [2010] FCAFC 308; 185 FCR 308; 269 ALR 49 (concerned with an action involving a "surrogate" ship).
- *CMA CGM SA v Ship "Chou Shan"* [2014] FCAFC 90; 311 ALR 234 (concerned with whether proceedings in Australia should be stayed where there are proceedings in China and consideration of the "natural and obvious forum" test and the "clearly inappropriate forum" test)
- *Ship "Sam Hawk" v Reiter Petroleum Ltd* [2016] 26; 246 FCR 337; 335 ALR 584 (concerned with the recognition of foreign maritime lien in Australian law).
- *Korea Shipping Corporation v Lord Energy SA* [2018] FCAFC 201 (concerned with the issue of the beneficial ownership of a ship).
- *Rockment v AAI* [2020] FCAFC 228 (concerned with the construction of an exclusion clause in an insurance contract dealing with business interruption and an exclusion concerning disease).
- *Liberty Mutual Insurance Company v Icon Co (NSW)* [2021] FCAFC 126 (concerned with the construction of and rectification of insurance policies).
- *Commissioner of Taxation v Resource Capital Fund* [2019] FCAFC 51 (concerning whether a corporate limited partnership was competent to object to an assessment and a double taxation agreement).
- *Minerva Financial Group v Commissioner of Taxation* [2024] FCAFC 228 (concerned with whether the dominant purpose of a taxpayer's scheme was to obtain a tax benefit)
- *Paciocco v Australian and New Zealand Banking Group Ltd* (2015) FCAFC 50; 236 FCR 199; 321 ALR 584 (concerned with the law of penalties, good faith and the meaning of statutory unconscionability).
- *Lodestar Anstalt v Campari America* [2016] FCAFC 92; 120 IPR 1 (concerning whether a trade mark should be removed for non-use)

and whether the arrangement between owner and licensee gave rise to an authorized use).

- *Keller v LED Technologies* [2010] FCAFC 55; 185 FCR 449; 268 ALR 613; 87 IPR 1 (concerned with infringement of registered designs by companies and whether a director was liable as an accessory).
- *Omnilab Media Digital Cinema Network* [2011] FCAFC 166; 285 ALR 63; 86 ACSR 674 (concerned with breaches of directors' duties and knowing involvement of rival companies).
- *LED Technologies v Roadvision* [2012] FCAFC 3; 199 FCR 204; 287 ALR 1; 94 IPR 481 (concerned with the tort of procuring or inducing a breach of contract and consideration of the Designs Act 2003 (Cth)).
- *Djokovic v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2022] FCAFC 3 (concerned with a challenge by an international tennis player to a cancellation of his visa on the ground of a risk to the health, safety and good order of the Australian community).

Publications & Speaking Engagements

Anthony has presented numerous papers to professional bodies including the Law Society and Bar Association and bodies specialising in taxation law, intellectual property and competition and consumer law.

Positions & Memberships

- Member of the University of Adelaide Council
- Lecturer in commercial law and tutor in contract law at the University of Adelaide
- Member of the Legal Practitioners Disciplinary Tribunal (SA) (1989-1998) and Presiding Member (1998 – 2001)
- Member of the Law Society Council (SA)
- Member of the executive of the South Australian Bar Association and President of the Association (2000-2001) and Honorary Member of the Association
- Member of the Legal Practitioners Education and Admissions Council (SA) and of the Law Admissions Consultative Council (national)
- Judicial Fellowship (2020) sponsored by the Institute of Advanced Legal Studies in London and the Inns of Court. The Fellowship involved three months in London studying and preparing a paper for publication

Positions Presently Held

- International Judge of the Singapore International Commercial Court
- Vice-President of the Australian Academy of Law. This is an organization designed to bring together the profession and the academy and has as one of its objectives, the promotion of the highest standards of legal scholarship, legal research, legal education, legal practice and the administration of justice
- Door Tenant at Atkin Chambers, London
- Door Tenant at Jeffcott Chambers, Adelaide