

Dr Michael Underdown

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Admission Date: 23 August 2002, Supreme Court of New South Wales
27 August 2002, High Court of Australia
19 September 2002, High Court of New Zealand
5 June 2007, Supreme Court of Western Australia

Education:

University studies at the University of Adelaide, University of Liège (Belgium), FIDC, Strasbourg/University of Coimbra (Portugal), University of Cologne (Germany), University of Bonn (Germany), University of Melbourne, Deakin University and University of Western Sydney.

2007	Deakin University Master of Laws
2002	University of Western Sydney Graduate Diploma in Legal Practice
2002	Deakin University Bachelor of Laws
1983	University of Melbourne Doctor of Philosophy
1975	University of Bonn Master of Arts (2:2)
1966	FIDC, Strasbourg Diploma in Comparative Law (1 st cycle) (2:1)

Prizes and awards include Maritime Law Association of Australia and New Zealand Prize (1997), University of Wales Lampeter Visiting Research Fellowship in the Humanities (1993), Korea Foundation Fellowship (1993), National Korean Studies Centre Research Award (1992), Australia-USSR Academic Exchange Award (1986), Joint Academies' Australia-China Exchange Fellowship (1984).

Other Qualifications:

Membership (by exam) of the Chartered Institute of Arbitrators (UK).

Professional: Panel Member, Kuala Lumpur Regional Centre for Arbitration
Member, Panel of Arbitrators, China Maritime Arbitration Commission
Member of Editorial Board, *Australian and New Zealand Maritime Law Journal*
Member, European Union Erasmus Plus JMD Expert Team
Academic Assessor, Chevening Reading Committee

Academic Experience:

Adjunct Senior Research Fellow, Cairns Institute, James Cook University (since 2017)

Online Lecturer in International Law, Amity University, Noida UP (since 2017)

Online Tutor and Examiner, Global MBA, University of London (since 2017)

Tutor, Indigenous Student Tutorial Scheme, James Cook University, Cairns (2015-2017); Charles Darwin University, Darwin (2015-2016)

Lecturer (casual), School of Law/College of Business, Law and Governance, James Cook University, Townsville/Cairns (2009-2015) *Maritime Law; Law of the Sea; Contract Law 2; Torts A; Principles of Equity; Legal Research, Writing and Analysis*

Lecturer (casual), School of Business/College of Business, Law and Governance, James Cook University, Townsville/Cairns (2014-2015) *MBA: Current Business Issues; Managing Strategic Resources and Operations; Comparative Global Business Systems; U-G: Business Negotiation; Managing a Global Workforce*

Lecturer (casual), Faculty of Law, University of Western Australia, Perth (2008-2012) *Competition Law*

Lecturer (casual), Faculty of Law, University of Otago, Dunedin (2004) *Maritime Law*

Lecturer, School of Law, University of Western Sydney, Campbelltown (2000-2002) *Conflict of Laws; Public International Law; Trade Practices Law; Contracts*

Lecturer (casual), Sydney Graduate School of Management, Campbelltown/Parramatta (2001-2002) *International Marketing; Globalisation and Business Management*

Lecturer, Department of Chinese, University of New South Wales, Sydney (2000-2002) *Sinology Research Methodology; Social and Cultural Change in Contemporary China; Silk Road; Chinese Culture and Civilisation; Provincial China*

Lecturer (casual), School of International Business, University of New South Wales, Sydney (2001) *Chinese Business and Management*
Executive Officer, UNSW-UTS Centre for Research on Provincial China, University of New South Wales, Sydney (1998-1999)

Research Associate, Centre for Chinese Political Economy, Macquarie University, Sydney (1992-1993)

Professor of Linguistics, College of Liberal Arts, Han Nam University, Taejon, South Korea (1989-1990)

Research Assistant, Public Policy Studies Programme, University of Melbourne (1979-1980)

Tutor (casual), School of Social Sciences, Deakin University, Geelong/Melbourne (1980; 1988) *Strategic Studies; International Relations*

Tutor (casual), Department of History, University of Melbourne (1979) *German History*

Visiting Appointments:

Visiting Professor, Centre of Northeast Asian Studies, Northeast Normal University, Changchun, China (1996)

Visiting Professor of World Economy, Graduate School, Jilin University, Changchun, China (1995)

Visiting Scholar, School of Asian Studies, University of Sydney (1992-1993)

Visiting Scholar, Research Institute for Asia and the Pacific, University of Sydney (1991-1992)

Visiting Professor of Altaic Linguistics, College of Humanities, Seoul National University, Seoul, South Korea (1990-1991) *Manchu; Altaic Linguistics*

Research Fellowships:

College Visiting Research Fellow in the Humanities, University of Wales Trinity Saint David, Lampeter, Wales (1993)

Australia-USSR Academic Exchange Award, Institute for History, Philology and Philosophy, Siberian Branch, Soviet Academy of Sciences, Novosibirsk, Russia (1986)

Exchange Fellowship, Joint Academies' Australia-China Exchange in the Humanities and Social Sciences, Institute of Nationality Studies, Chinese Academy of Social Sciences, Beijing, China (1984)

Teaching Awards:

Sessional Staff Teaching Award for Outstanding Contributions to Student Learning, Faculty of Law, Business and Creative Arts, James Cook University (2012)

Teaching and Learning Award – Commendation for Postgraduate Teaching and Blackstone Teacher of the Year, School of Law, University of Western Australia (2010)

Experience:

**May 2007 to
June 2013**

**Special Counsel and Consultant, Clayton Utz, Perth
(retired)**

I worked primarily on port, Admiralty, maritime and logistics matters in the Corporate Advisory - Transport and Logistics Team. I was also a member of the firm's German Practice Group and International Arbitration Group and on the panel for the provision of legal services to the Department of Defence. I acted for the following Port Authorities in Western Australia (Dampier, Port Hedland, Broome, Geraldton, Esperance and Fremantle); Victoria (Geelong, Hastings, Portland) and Queensland (Townsville), as well as the leading logistics firms and port operators Toll Energy Logistics Pty Ltd, Patrick Ports Pty Ltd and Asciano Limited in several States. My port work was primarily concerned with the bulk mineral and oil and gas industries.

I undertook maritime, shipping and foreign trade work for the entire firm, including both national and international clients, as well as for Lex Mundi partner firms.

Examples of Matters

Drafted a salvage agreement for an Australian energy company in relation to salvage of a wave energy power generator.

Advised a Norwegian shipping company on crewing requirements for seismic vessels.

Advised a Norwegian oil rig company on ship repair, crewing and supply contracts.

Advised a Spanish explosives company on a demurrage claim by a Norwegian shipowner.

Advised an Australian oil company on an offshore pipeline maintenance contract in New Zealand.

Provided due diligence advice to a WA Port Authority in regard to the establishment of two new oil and gas hubs and two new bulk mineral (iron ore) ports (all greenfield sites).

Participated in negotiations with WA Government departments and multinational proponents over the establishment of new

ports, logistic and other requirements, financial arrangements and maritime aspects (including port boundaries, channels, navigation aids).

Acted for a Malaysian shipping company in mortgage registration and other shipping matters in Papua New Guinea.

Advised the Department of Defence on the scrapping of a former RAN vessel in Turkey.

Advised the Australian Antarctic Division on a charter party for an icebreaker to monitor blue whale movements.

Advised the Department of Defence on the construction of naval support vessels in the Netherlands, and on registration and crewing issues.

Advised an Australian steel company on a demurrage claim by a Canadian shipping company.

Advised a Dutch dredging company on dredging regulatory requirements.

Advised a Malaysian shipping company on barge registration, manning and other regulatory matters.

Advised a Dutch fishing company on the purchase of fishing quota and matters related to the importation of a fishing vessel.

Advised a US aluminium company on a charter party for shipments to Saudi Arabia.

Advised a Spanish explosives company on a contract for the land transportation of explosives from ports in Western Australia and Queensland to explosive depots and mine sites throughout Australia.

Acted for a US oil drilling company in an investigation by the Civil Aviation Safety Authority into the transportation of dangerous goods.

Advised a Thai oil exploration company on the decommissioning of the Atlas oil rig and drafted a towage contract for its towage to Singapore.
Advised a US aluminium company on liability for damage to containers.

Undertook litigation in the Federal Court of Australia in relation to damage caused by a vessel to a navigation beacon at Port Hedland.

Arrested a Korean bulk carrier at Dampier for a Greek shipping company.

Negotiated a Berthing Licence for the Royal Australian Navy at Dampier.

Drafted gas pipeline agreements and seabed leases for Woodside Project Pluto.

Drafted many port licence agreements (bunkering, towage, pilotage, berthing, mooring and stevedoring).

Reviewed and drafted gas and oil charter parties for Australian and foreign clients.

Advised Australian and international clients (including from the USA and UAE) on charter parties, bills of lading, livestock shipment and foreign trade matters.

Drafted port standard terms and conditions for Australian and New Zealand ports.

Drafted vessel sale and purchase agreements, and vessel construction contracts.

Drafted numerous lease and service agreements for ports (iron ore, nickel, lithium, mineral sands, woodchips, oil drilling mud farms, tug pens).

Undertook miscellaneous port/maritime matters (for example, wreck removal, tsunami beacon licence, berthing licences, contract for direct transmission of oceanographic data to the Bureau of Meteorology).

Acted in marine, aviation and aquaculture insurance matters.

Regularly provided advice to harbour masters on navigation and other maritime matters.

Drafted terrestrial drilling (hot rocks, oil) consignment agreements.

**July 2006
to April 2007**

Barrister, Octagon Chambers, Dunedin, New Zealand

At the Bar I acted for Port Otago Limited and Sunderland Marine Mutual Insurance Company Limited. I was also very active in fisheries and immigration matters, and was briefed in

misfeasance in public office, passing off, shop and farm leases, and other commercial matters.

Examples of Matters

Advised Port Otago Limited on the new Maersk Line Terminal contract for its consolidated service to New Zealand.

Acted for a Korean-NZ JV fishing company prosecuted by Nelson City Council over the discharge of oil while it was bunkering at Port Nelson.

Acted for Workboats NZ Ltd, the leading New Zealand ship broking firm, in a passing off matter involving a Fijian company.

**September 2003
to June 2006**

Hamish.Fletcher Lawyers, Nelson, New Zealand Solicitor

Hamish.Fletcher Lawyers [HFL] is a leading specialist fisheries, aquaculture and maritime law firm in New Zealand, and was established by splitting off the entire Fisheries and Maritime Team from Fletcher Vautier Moore to form a new firm.

My largest clients were Sunderland Marine Mutual Insurance Company Limited and Port Otago Limited, but I also acted for a number of New Zealand, Australian and Korean fishing companies, as well as in maritime matters for ports and regional councils. I undertook much of the firm's litigation work in the District Court and High Court and acted as counsel in several mediations.

Examples of Matters

- Provided an opinion to the Harbourmaster, Environment Southland (regional council) on marine matters, including provision of navigation aids, pilotage standards, port safety audits, wreck removal and By-law requirements.
- Acted for an Australian fishing company in relation to faulty rudder repairs by a maritime engineering firm in Lyttelton. Proceedings in the High Court were for breach of contract and negligence, and also involved a loss of fishing claim. The action was successful on causation, but not on quantum.
- Acted for Sunderland Marine Mutual Insurance Company Limited [SMMI] in respect of a collision between the Interislander ferry "Aratere" and a fishing vessel tied up in Wellington harbour. I arrested the "Aratere" and negotiated with her P&I Club. The claim was

satisfactorily settled. I was subsequently involved in the removal of the wreck.

- Acted for a fishing company over a collision between a fishing vessel and a barge anchored across the lead lights of a fishing port. The civil claim was settled successfully. I also defended the skipper of the fishing vessel in a criminal prosecution brought by the Maritime Safety Authority as a result of the death of a crew member in the incident.
- Provided an opinion to the Harbourmaster, Tasman District Council on the removal of a wrecked Australian yacht.
- Acted for SMMI in connection with the suspected scuttling of a fishing vessel. I undertook extensive investigations and liaised closely with the Maritime Safety Authority and with SMMI Head Office in Durham (UK). SMMI declined the insurance claim.
- Advised SMMI on removal of wrecks in New Zealand and the Cook Islands.
- Acted for a fishing company sued for misrepresentation over the collapse of a gantry on a fishing vessel it had sold to another fishing company. The matter was settled favourably.
- Successfully acted for Port Otago Limited [POL] to secure the removal of two Russian fishing vessels that had been tied up for years at the port following their seizure by the Ministry of Fisheries and subsequent forfeiture to the Crown. This was part of a long-running saga involving 5 Russian fishing vessels and some 20 legal proceedings, and involved researching Russian bankruptcy law, ship registration and tracing property. I successfully recovered the full amount of berthage owed to POL.
- In a sequel to the above action, I successfully acted for Workboats NZ, the largest ship broker in New Zealand, in a dispute involving the Indian towage company Ekali Pty Ltd and a Russian company disputing the sale.
- Acted for a fishing company in proceedings against a marine survey company when a vessel it had surveyed prior to purchase broke up on its maiden voyage. At issue were misrepresentations made by the surveyor, vendor and ship broker, the statutory Safe Ship Management scheme and liability for economic loss. The

action was unsuccessful, but as a result of my criticism of a Court of Appeal decision relied upon by the survey company's insurer, the Maritime Safety Authority overhauled the SSM system.

- Drafted a towage contract between a fisherman and Tasman District Council in relation to the towage of a fishing vessel to a scuttling site.
- Advised Manukau Coast Guard on issues, including that of liability, arising from the request by Manukau/Onehunga Port (part of Ports of Auckland Limited) that the CG provide pilotage services.
- Undertook a range of work for POL, including drafting the port's Standard Terms and Conditions of Trade, advising on a coolstore JV with a Korean client and advising on an alleged breach of competition law in relation to the provision of wharf access.
- Advised Port Marlborough with respect to marina matters, including signage, and drafted berthage Terms and Conditions for its three marinas.
- Advised Ngai Tahu Seafood and Ngai Tahu Tourism on maritime matters, including ship registration and issues arising from a jet boat accident.
- Advised a Maori trust in relation to its application for a resource consent for a marine farm on Great Barrier Island, and in particular with respect to objections that it would constitute a marine hazard.

**September 2002
to August 2003**

**Fletcher Vautier Moore, Nelson, New Zealand
Solicitor (Fisheries and Maritime Team)**

Fletcher Vautier Moore is the largest law firm in the top of the South Island, New Zealand. It covers all main areas of legal work, and acts for both Nelson City Council and Tasman District Council. I acted for SMMI and its aquaculture arm, Aquaculture Risk (Management) Limited [ARM], which is the only aquaculture insurer in Australasia, as well as for POL and other maritime and fisheries clients.

Examples of Matters

- Provided opinion for Australian Aquaculture Products, Euroa with respect to losses of Murray Cod attributed to negligence by Goulburn Valley Region Water Authority.

- Advised ARM with respect to losses sustained by marine farms near Port Lincoln arising from the failure of ETSA to ensure continuity of electricity supply.
- Advised Port Nelson Limited with respect to the levying of rates for wharf areas by Nelson City Council (one of the two Council owners of the port), contrary to the provisions of the Rating Powers Act 1988 and a Court of Appeal decision on the subject.
- Drafted ship arrest documents for Port Marlborough Limited in connection with the non-payment of berthage by the Interislander ferries.
- Acted for a hydraulic engineering sub-contractor and an engine mechanic in proceedings for breach of contract against the builder of a mussel barge. The matters were mediated, but unsuccessfully as the builder had no reachable assets.

1994-1997

**United Nations Development Programme [UNDP],
Manager, Tumen River Area Development Programme, New
York/Beijing
Director, Tumen Secretariat**

I managed a UNDP multilateral economic development and trade facilitation project in Northeast Asia and was Director of the intergovernmental Tumen Secretariat in Beijing.

- Liaised with National Teams in the Member countries (China, North Korea, Russia, South Korea and Mongolia) and the Observer countries (Finland, Canada and Japan).
- Negotiated international agreements and an MOU on environmental principles between the five Member countries (*including the first international agreement signed jointly by North and South Korea*).
- Drafted the Headquarters Agreement and Protocols for the intergovernmental Tumen Secretariat on behalf of the Legal and Treaty Division, Chinese Ministry of Foreign Affairs.
- Facilitated a direct container shipping service between Rajin (North Korea) and Pusan (South Korea) (later extended to include Niigata, Japan) and a passenger ferry service between Sokch'o (South Korea) and Rajin (North Korea), to facilitate tourism.

- Co-chaired the Joint Mixed Commission for the Southern Primorsky Transit Transport Corridor (Russia-China).
- Liaised with UNDP Resident Representatives in the Member countries and coordinated UN agencies and international consultants.
- Sourced and mobilised funds, established a trust fund for North Korea, liaised with international development banks (ADB, EBRD, World Bank), official development agencies (ODAs) and major investment funds.
- Identified and prioritised projects, planned and coordinated infrastructure pre-feasibility and feasibility studies, and arranged technical assistance in EDI for shipping (North Korea), in fisheries (Russia) and on investment treaties (North Korea).
- Negotiated feasibility studies for port expansion in Pacific Russia and North Korea with the Japanese Engineering Consulting Firms Association (ECFA), Keidanren and the Economic Research Institute for Northeast Asia (Erina, Niigata).
- Harmonised Customs and border crossing documentation and procedures between China, Russia and North Korea.
- Marketed the Tumen Region and briefed foreign diplomats, parliaments (including testifying before the Committee of Economic Policy, Russian Duma), the European Commission (DG II and DG VII) and major shipping, port and infrastructure companies.
- Collaborated with UNIDO in holding investment promotions in North Korea and China.
- Organised donor meetings, produced investment guides, organised overseas investment promotion missions by China and North Korea, assisted China and North Korea to hold investment promotions in Beijing and Hong Kong.
- Negotiated with the Russian Ministry of Railway Transportation for a government grant to ensure completion of the cross-border Kraskino-Hunchun railway.
- Arranged a Swedish feasibility study into a new 500-km railway from Choibalsan (Mongolia) to Baicheng (China)

to provide access to the sea for oil, gas, mineral and coal exports.

- Facilitated an oil storage facility in North Korea for Shell Pacific Enterprises.
- Arranged a study by UN DDSMS to forecast cross-border trade flows.
- Secured funding from the Global Environmental Facility to prepare a Strategic Action Plan for an International Waters/Biodiversity project.

1993-1994

**Parliament of Australia, Parliamentary Research Service,
Foreign Affairs, Defence and Trade Group
Research Specialist (East Asia)**

- Undertook research on East Asian and CIS foreign affairs and APEC, publishing research papers on Japanese politics, the North Korean succession issue and the Macedonian question.
- Provided written papers and oral briefings for Members of Parliament and parliamentary committees.
- Produced speeches and speech notes for the Governor-General, Speaker of the House of Representatives and President of the Senate.
- Provided briefings for outgoing parliamentary delegations.

Other positions

Australian Army Reserve Officer on Full-Time Service - responsible for implementation of Defence Land Information project and for physical security in 3MD (Victoria/Riverina); **Australian Government** public servant - defence procurement, Australian High Commission, London; internal auditor, Department of the Army, Adelaide; **Academic** academic appointments at James Cook University; University of Western Australia; University of Otago; University of Western Sydney; University of New South Wales; Macquarie University; Han Nam University (Taejon, S Korea); University of Melbourne; Seoul National University (S Korea); Jilin University (Changchun, China); Northeast Normal University (Changchun, China); Deakin University); **Exchange Fellowships** University of Wales Lampeter; Institute for History, Philology and Philosophy, Siberian Branch, Soviet Academy of Sciences, Novosibirsk; Institute of Nationality Studies, Chinese Academy of Social Sciences, Beijing

Memberships: Maritime Law Association of Australia and New Zealand (Member of New Zealand Branch Committee 2004-2007; Member of Western Australian Branch Committee, 2010-2012).

Law Society of Western Australia (Member of the Commercial Law Committee; Member of the Administrative Law, Constitutional Law and Migration Law Committee, 2008-2012)

Military Service: Australian Army, Officer, Australian Intelligence Corps (Army Reserve/Australian Regular Army), 1981-1991 (Regimental Training 126 Signal Squadron 1 Commando Regiment; ROBC, School of Military Intelligence)

Responsible for implementation of the Defence Land Information project and for physical security in 3 MD (Victoria/Riverina)

Australian Defence Medal

Interests: bushwalking; sailing; collecting Oriental art; travelling; reading (especially poetry, philosophy, history); languages; classical music

Publications and papers

More than 90 publications and papers

Law publications and papers

“Legal issues in a federal state: protecting the interests of Macau,” paper presented to the First International Seminar on the Basic Law of the Macau Special Administrative Region, Faculty of Law, University of Macau, 4-5 December 1998.

“Abuse of dominant position and the public interest in Japanese competition law,” 4 *Macarthur Law Review* (Sydney, 2000), 173-196.

“Deregulation in the European maritime sector,” 21, 1 *University of Queensland Law Journal* (Brisbane, 2000), 85-93.

“International dimensions of EC competition law,” 7 *James Cook University Law Review* (Townsville, 2000), 191-213.

“Attachment of maritime liens to fishing permits,” paper presented to the 5th International Conference on Maritime Law, Shanghai, 11-14 October 2002.

“Surveys and negligence,” 18 *Maritime Law Association of Australia and New Zealand Journal* (Brisbane, 2004), 24-29.

"Paying for port security," paper presented to the 16th International Congress of Maritime Arbitrators, Singapore, 26 February-2 March 2007.

"Marine insurance perspectives on substandard shipping," paper presented to the SPC Seminar on Substandard Shipping in the Pacific Islands Region, Suva, 13-17 August 2007.

"Shipping and Climate Change," Chapter 16 in *Climate Change Law and Policy in Australia*, Sydney: LexisNexis, 2009 [on-line publication].

"Salvage Arbitration," *International Arbitration Insights*, Sydney: Clayton Utz (22 June 2009) (also published in *Lloyd's List Daily Commercial News*, 6 August 2009 and *The Australian ADR Reporter*, No 12 September 2009).

"Arbitrating competition law disputes," *International Arbitration Insights*, Sydney: Clayton Utz (22 March 2010).

"*Masefield AG v Amlin Corporate Member Ltd*" [case note] (2010) 21 ILJ, 62-65.

"Review of the *Navigation Act 1912*," paper presented to the Marine Safety Conference 2010, Perth, 22-24 August 2010.

"Maritime issues in new ports," paper presented to the Biennial Conference of the Australasian Institute of Marine Surveyors, Fremantle, 25 August 2010.

"The Rotterdam Rules and Australia," paper presented to the International Colloquium on Multimodal Transport of Goods, Marbella, Spain, 19-23 September 2010.

"Australia's National Port Strategy," paper presented to MITRANS (Malaysian Institute of Transport), Universiti Teknologi MARA, Shah Alam, 30 November 2010.

"Enforcing arbitral awards against non-parties to an arbitration agreement," *International Arbitration Insights*, Sydney: Clayton Utz (25 February 2011).

"Shipping dangerous goods by air – checking procedures," *Clayton Utz Insights*, Sydney: Clayton Utz (8 December 2011).

Currently working on a book on Reform of the State in Belgium.