

## **Tony Samuel, Consulting Director, LECG**



### **BIO/SUMMARY**

Tony Samuel joined LECG as a Consulting Director in March 2008 as leader of its Australian Forensic Accounting practice. He has over 23 years of post-qualification accounting experience, and 18 years with disputes, valuations and intellectual property (IP) matters. Tony's focus is on the provision of expert accountancy and valuation services in commercial disputes and IP disputes.

Based in London from October 1994 through August 2004, Tony was admitted to partnership with PricewaterhouseCoopers (**PwC**) in 1998 in its Forensic Services practice, and in 2004 to PwC's Australian partnership. As a partner at PwC, he was instructed in numerous matters across a range of industries, and testified in the High Court in the UK, the Southern District of New York, ICC and UNCITRAL arbitrations in Switzerland, the UK Copyright Tribunal and an arbitration in Queensland.

Between January 2006 and March 2008, Tony led the Forensic Services practice for CRA International in Asia Pacific. During that period, he testified in the Supreme Court of NSW (on valuation and lost profit issues), the Federal Court (South Australia, on valuation and lost profits issues), arbitrations in New Zealand (on valuation and lost profit issues) and Victoria (on valuation and lost profit issues) and in the High Court of Singapore (lost profit issues). Since joining LECG, Tony has testified in the Federal Court of Australia (NSW, as to damages arising from patent infringement and accounting issues, and in Victoria as to the value of distribution rights), the Supreme Court of NSW (as to damages arising from breach of contract), and the High Court in Malaysia (as to damages arising from breach of contract), acted as mediator as to commercial issues in a post-acquisition dispute and been instructed as the independent expert for the purposes of determining a post-acquisition dispute.

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## **EDUCATION, QUALIFICATIONS AND MEMBERSHIPS**

Bachelor of Commerce, University of Western Australia  
Member of the Institute of Chartered Accountants in Australia  
Diploma in International Commercial Arbitration

## **PRESENT POSITION**

LECG, Consulting Director

Mar 2008 Consulting Director and Head of Forensic Services Australia,  
LECG Limited

## **OTHER POSITIONS HELD**

Jan 2006 Vice President and Head of Forensic Services – Asia Pacific, CRA  
International Pty Ltd  
Oct 2004 Partner, Dispute Analysis & Investigations, PwC Australia  
Jul 1998 Partner, Forensic Services, PwC UK  
Leader, Intellectual Property & Licensing Disputes  
Oct 1994 Senior Manager, Forensic Services Price Waterhouse UK  
Jul 1994 Senior Manager, Corporate Finance & Recovery (CF&R), PW Hong Kong  
Apr 1991 Assistant Manager, then Manager, CF&R, PW Hong Kong  
Aug 1990 Insolvency Administrator, PW Perth  
Mar 1989 Financial Accountant then Acting Group Accountant, Lex Services plc  
Aug 1987 Senior Accountant, then Assistant Manager, PW London  
Jan 1984 Junior Accountant, PW Perth

## PROFESSIONAL EXPERIENCE – Representative Projects

### *Commercial Disputes*

- Independent expert report and testimony in relation to the accounting for employment expenses (*Peter Gothard & John Sherman as receivers and managers of each of AFG Pty Ltd & 2 others v Steven Davey & Ors*, Federal Court of Australia, NSW district)
- Independent expert reports and testimony in relation to a claim for damages arising from the alleged failure of a machine in the agricultural sector (*Ollivayle Pty Ltd v Flottweg GMBH*, Federal Court of Australia, South Australia district)
- Independent expert report, joint report of experts and testimony in relation to a claim for damages arising from the performance of secondary support work at a mining site (Supreme Court of NSW)
- Independent expert reports and testimony in relation to claim for damages arising from the breach of a deed in the restaurant sector (High Court of Singapore)
- Independent expert reports and testimony in relation to claim for loss of profit and loss of opportunity arising from the alleged failure of a machine in the medical waste disposal sector (Arbitration in Victoria)
- Independent expert reports, joint report of experts and testimony as to the adequacy of accounting records and the loss of profit arising from breach of contract in the café and restaurant sector (Supreme Court of New South Wales, Common Law Division)
- Independent expert reports and testimony as to the loss of profit, and the value of alternative cash flow streams in different countries, arising from an alleged breach of contract in the offshore drilling industry (arbitration in New Zealand)
- Independent expert reports and testimony in relation to the alleged diversion of US\$1.5 billion of vendor financing. This matter combined review of accounting evidence with the tracing of cash through several offshore entities. The judge described Tony's evidence as "credible and soundly based" before adopting his report in its entirety as the Court's findings (RICO action in the Southern District of New York)
- Independent expert reports and testimony in Switzerland in relation to the amount payable for early termination of a Build Operate Transfer contract in the mobile telecommunications sector in Lebanon. Claims and counterclaims both exceeded US\$1 billion (UNCITRAL arbitration)
- Independent expert report and testimony in Switzerland in relation to the reasons concerning a company's inability to pay debts that had fallen due (ICC arbitration)
- Independent expert reports and testimony in Switzerland as to the loss of profits arising from an alleged breach of a beer supply agreement (ICC arbitration)
- Independent expert reports and testimony concerning the cost implications of a change in legislation on a commercial contract (arbitration in Queensland)

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- Independent expert reports and testimony as to the value of goodwill in a fitness centre (District Court of Gosford)
- Independent expert reports and testimony as to the losses arising from early termination of a restaurant lease (Administrative Decision Tribunal)
- Independent expert reports concerning the losses arising from the alleged enforced shutdown of a kiln for producing clinker (Supreme Court of New South Wales, Technology and Construction List)
- Independent expert reports concerning the adequacy of accounting records and the solvency of a construction company (Supreme Court of Queensland)
- Independent expert reports concerning the adequacy of accounting records and the solvency of a construction company (Supreme Court of New South Wales, Equity Division)
- Independent expert reports concerning the adequacy of accounting records and the solvency of a construction company (Supreme Court of New South Wales)
- Independent expert report concerning the losses arising from the acquisition of an IT education network (Federal Court of Australia, New South Wales district)
- Independent expert reports concerning the losses claimed by an insurance broker from the publication of a particular press release (Supreme Court of the Australian Capital Territory)
- Independent expert report concerning the value of shares in an organic retail outlet following an oppressed minority action
- Independent expert report addressing the loss of profits arising from breach of contract in the bio pharmaceutical industry
- Independent expert report concerning the value of shares in a company providing local radio services in accordance with pre-emptive acquisition rights in the shareholder agreement
- Independent expert reports concerning the interpretation of financial documents under instruction from the Australian Federal Police
- Independent expert report in relation to a claim for damages under Hungerford principles and section 57 of the Insurance Contracts Act 1984
- Advice as to the damages payable by and/or to the Australian Government in connection with an alleged breach of contract by a foreign defence contractor

## ***Intellectual Property Disputes***

- Independent expert report and testimony as to the value of distribution rights in the pharmaceutical sector (*Orica Ltd v Commissioner of Taxation*, Federal Court of Australia, Victorian District)
- Independent expert reports and testimony as to the damages arising from patent infringement, including an opinion as to reasonable royalty rates, in the medical devices sector (*Gambro Pty Ltd & Anor v Fresenius Australia Pty Limited*, Federal Court of Australia, New South Wales District)

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- Independent expert report and testimony as to the reasonable royalty payable for copyright in sound recordings by an in-house radio station/narrowcaster (UK Copyright Tribunal)
- Independent expert report and testimony as to the reasonable royalty payable for copyright in academic texts by higher education institutions in the UK (UK Copyright Tribunal)
- Independent expert reports and testimony as to the lost profit, the reasonable royalty payable in the alternative, and the financial condition of the claimant, arising from the infringement of design rights in the retail sector (Chancery Division of the High Court in the UK)
- Independent expert report as to the value of distribution rights (Federal Court of Australia)
- Independent expert reports in an Inquiry as to Damages concerning both lost profit and reasonable royalty arising from the infringement of patents relating to the process and equipment for laying pipe along the ocean bed
- Independent expert report as to the damages arising from unauthorised acquisition of .co.uk domain names (see *Nominet UK v Diverse Internet Pty Ltd* [2005] FCA 669, Federal Court of Australia, New South Wales District)
- Independent expert report as to lost profit and reasonable royalty arising from the infringement of a patented medical device
- Preparation of a 120 page schedule to a Statement of Claim concerning the value attributable to trademarks and copyright for a publishing business in connection with a claim for damages arising from alleged auditor negligence
- Independent expert reports and attendance at mediation concerning the royalty payable for infringement of patents in the UK and Japan concerning a more fuel efficient engine for motor vehicles
- Instruction as to the damages, including reasonable royalty in the alternative, for breach of copyright
- Instruction as to the damages, including reasonable royalty in the alternative, for breach of trademarks (ongoing)
- Advisory work as to the amount payable for breach of software licences

## ***Post-acquisition Disputes and Expert Determinations***

- Instruction to review and amend a valuation conducted in the context of an acquisition
- Instruction as independent expert to determine the adjustment to be made to the purchase price as a result of a post-acquisition dispute in the banking sector
- Instruction as mediator in connection with commercial and accounting issues arising from a post-acquisition dispute
- Assisting the expert in the determination of the value of a large privately held business following an oppressed minority action
- Preparation of submissions to the expert on behalf of a mobile telecommunications company following the acquisition of a chain of mobile phone retail stores

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- Preparation of submissions in accordance with a Sale & Purchase Agreement as to the adjustments required to the Completion Balance sheets, together with advice on subsequent drafting of counter-claims
- Advice as to the effect of the consideration formula in a Sale & Purchase Agreement
- Preparation of submissions for the purposes of mediation as to the value of a business acquired
- Preparation of expert witness report as to alleged breaches of financial warranties following an acquisition in the manufacturing sector

## *Contract Compliance*

- In 1998, launched Price Waterhouse's European Licensing Management service, which focussed on the confirmation of contract compliance, in particular compliance with royalty payment clauses in licence agreements and compliance with supply agreements
- Led contract compliance assignments in numerous industries including manufacturing, luxury clothing brands, luxury retail, software, swimwear, entertainment and pharmaceuticals. These assignments have been conducted in approximately 20 countries including the UK, USA, Canada, Australia, China, Hong Kong, Korea, Japan, Singapore, Israel and Mexico

LECG Ltd  
Level 14, 68 Pitt Street  
GPO Box 220  
Sydney NSW 2001  
Australia  
Phone: +61 (0) 2 9234 0220  
Mobile: +61 (0) 417 673 558  
Email: [tsamuel@lecg.com](mailto:tsamuel@lecg.com)