

ANDREW BYRNE

Called to Bar in **May 2015**
Solicitor at Allens from 2003 to 2015

A. Summary

My practice covers the areas of commercial, equity and trusts; corporations law; trade practices; taxation and revenue; insurance and reinsurance; real property; intellectual property; and administrative law.

Most cases are in the Supreme Court of NSW or Federal Court, including their appellate divisions. I also regularly appear in tribunals (e.g. NCAT) and lower courts (particularly the Federal Circuit Court and District Court of NSW).

B. Education

University of Sydney (1998-2000), LLB (First Class Honours)
Walter Reid Memorial Prize
Allens Clerkship

University of NSW (1994-96), BComm (Finance & Accounting)
Accenture Scholarship
World Universities Debating

St. Ignatius College, Riverview (1988-93)
State Debating Team

C. Selected cases

Appellate

- *Blue Visions Management Pty Ltd v Aspire Pty Ltd & Ors* [2018] NSWCA 179; (2018) 129 ACSR 265 (led by J Giles SC; appeal of [2017] NSWSC 255; fiduciary duties, misleading or deceptive conduct, deceit).
- *DAO16 v Minister for Immigration & Border Protection* [2018] FCAFC 2; (2018) 353 ALR 641 (unled; credibility findings, legal unreasonableness in *Li* sense, adequacy of lower court's reasons).
- *Issa v Cambridge Law Pty Ltd & Anor*, Supreme Court of NSW, Court of Appeal, 2015/349485 (led by C Birch SC; advocate's immunity, fiduciary duties; settled).
- *Aulakh ats Minister for Immigration & Border Protection* [2018] FCAFC 91 (unled; legal unreasonableness in *Li* sense, introduction of new contentions on appeal, judge's evaluative judgment).
- *Levers Solomon Ltd & Ors ats Lavukal Investment Company Ltd*, Court of Appeal of Solomon Islands, CAC 15/2018 (unled; locus standi, authority to commence proceedings and instruct solicitors; dismissed).
- *EVS17 v Minister for Immigration & Border Protection* [2019] FCAFC 20 (unled; Migration Act s 473CC, Immigration Assessment Authority "review" requirements).

Commercial & equity

- *Nextgen Networks Pty Ltd & Anor ats IBM Australia Ltd*, Supreme Court of NSW, 2016/373440 (led by M Darke SC; breach of contract, misleading or deceptive conduct; on foot).
- *Retail Employees Superannuation Pty Ltd ats McVeigh*, Federal Court, NSD1333/2018 (led by J Lockhart SC; superannuation trustee duties, Corporations Act s 1017C; on foot); [2019] FCA 14 (interlocutory: maximum costs orders).

- *Chubb Insurance Australia Limited & Ors ats Australian Executor Trustees Limited & Anor*, Supreme Court of NSW, 2015/171592 (led by G Rich SC; excess insurance cross-claims by defendant in representative proceedings; settled).
- *South Pole Holding Ltd & Ors ats Sharpe & Ors*, Supreme Court of NSW, 2016/384961 (led by J Giles SC; shareholder dispute; formation and breach of contract; enforceability of term sheet; Corporations Act ss 236 & 237; settled); [2017] NSWSC 2 (interlocutory: urgent injunctive relief); [2017] NSWSC 1065 (interlocutory: legitimate forensic purpose, common interest privilege).
- *Australian Rugby Union Limited ats Sports Marketing & Management Pty Ltd*, Supreme Court of NSW, 2016/360652 (led by P Brereton SC; breach of contract; settled).
- *Commonwealth Bank of Australia v Clapham & Anor* [2015] NSWSC 1714 (led by D Sulan; misleading or deceptive conduct, unconscionable conduct, Contracts Review Act).
- *NSW TAFE Commission v Cordoba*, Supreme Court of NSW, 2015/264987 (led by S Balafoutis; freezing order, monies had and received, unjust enrichment; settled).
- *Rufford & Ors ats Saints Management Pty Ltd*, Supreme Court of NSW, 2015/149051 (unled; misrepresentation, unconscionable conduct, Contracts Review Act, estoppel; settled).
- *National Australia Bank Limited v Jawad*, Supreme Court of NSW, 2016/335909 (unled; freezing order, monies had and received, restitution, constructive and resulting trusts; settled).

(See also commercial and equity cases referred to under “Appellate” sub-heading above)

Intellectual property

- *Nautitech Systems Pty Ltd v Kearsey & Anor*, Federal Court, NSD1844/2016 (led by M Condon SC; breach of contract, misleading or deceptive conduct, contractor fiduciary duties, copyright, confidential information, summary judgment).
- *Rhino Play Pty Ltd v Eaglestone*, Federal Court, NSD2141/2017 (led by N Murray SC; breach of contract, misleading or deceptive conduct, contractor fiduciary duties, copyright, confidential information; settled).

Taxation & revenue

- *Commissioner of Taxation v Ornelas & Ors* [2016] FCA 457 (led by J Giles SC; freezing order, Conveyancing Act s 37A, constructive and resulting trusts, summary judgment).
- *Commissioner of Taxation v Anatax & Ors*, Federal Court, NSD304/2016 (unled; freezing order, Conveyancing Act s 37A, restitution, constructive and resulting trusts; settled).
- *Commissioner of Taxation v Nadim & Anor*, Federal Court, NSD1620/2015 (led by J Giles SC; freezing order, Conveyancing Act s 37A, constructive and resulting trusts; settled).
- *Chief Commissioner of State Revenue ats Lou* [2019] NSWCATOD 9 (NCAT) (unled; land tax, principal place of residence exemption, onus).
- *Chief Commissioner of State Revenue ats Newcastle Security Pty Ltd*, Supreme Court of NSW, 2018/268402 (led by R Seiden SC; payroll tax, employment agency contracts; on foot).
- *Chief Commissioner of State Revenue ats Unified Security Group (Aust) Pty Ltd*, NCAT, 1610352 (led by N Hutley SC and T Wong; payroll tax, employment agency contracts; discontinued).

Public law

- *Smith v Australian Prudential Regulation Authority* [2017] FCA 807 (led by S Rushton SC; Insurance Act s 26; revocation of APRA disqualification order related to HIH collapse).

- *Amoorthum v Minister for Immigration & Border Protection* [2016] FCA 277 (unled; Migration Act s 501, “character test”, jurisdictional error, legal unreasonableness in *Li* sense, procedural fairness).
- *EXU17 v Minister for Immigration and Border Protection* [2018] FCA 1675 (unled; Migration Act s 477, jurisdictional error, lower court misapplication of legislative test).
- *FSR17 v Minister for Immigration and Border Protection & Anor* [2018] FCCA 2931 (unled; Migration Act ss 424A & 424AA, failure to invite comment on information, jurisdictional error, legal unreasonableness by reason of illogicality).
- *In the matter of Eberand & Ors*, Greyhound Racing NSW Inquiry into the Unauthorised Export of Greyhounds, Exp 005-008 of 2018 (Counsel Assisting, unled; aiding and abetting unauthorised export; decision published on 22 January 2019).
- *Mitchell v Racing NSW*, Racing Appeal Panel of NSW (unled; appeals of jurisdiction of stewards’ inquiry and merits of residual matters within jurisdiction; decisions published on 22 August 2017 & 30 November 2017); Racing Appeals Tribunal (unled; steward’s appeal of jurisdiction decision; decision published on 4 June 2018).

(See also public law cases referred to under “Appellate” sub-heading above)

D. Allens

Prior to being called to the Bar, I was a litigator at Allens (2003-15) specialising in financial services, trade practices, taxation and insurance disputes. Examples of the matters on which I worked include the following:

- *Macquarie Bank Limited & Ors ats ASIC & Ors*, 2010-13, Supreme Court of NSW & Federal Court (misrepresentation, unconscionable conduct and contract claims related to collapse of Storm Financial)
- *News Limited & Ors ats Seven Network Limited & Anor*, 2004-06, Federal Court (trade practices and confidential information claims relating to News Limited’s acquisition of AFL rights)
- *ASX50 infrastructure group v ATO*, 2009-14, settled before proceedings commenced (TAA 1997 s 974-80, distributions within stapled structures)
- *ASX50 investment bank v ATO*, 2011-12, settled before proceedings commenced (ITAA 1936, Part IVA, multi-jurisdictional transactions)
- *Lloyd’s Syndicates ats NSW SICOR*, 2007-11, Supreme Court of NSW, Court of Appeal & High Court (Special Leave) (reinsurance claims relating to GIO structured settlements, late notification)
- *General Reinsurance Australia Ltd ats HIH*, 2004-09, arbitration, Supreme Court of NSW & Court of Appeal (“trade credit” and professional indemnity reinsurance claims)

E. Further information

For further information (including additional examples of cases in the areas of law identified above, or examples of cases in other areas of law), please contact me on (02) 9230 5056 or ajb@7thfloor.com.au, or my clerk, Simon Walker, on (02) 8224 3001, 0404 046 180 or swalker@7thfloor.com.au.

Copies of decisions can also be provided on request.

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