

David Hughes

CALLED TO THE BAR: 2010

PRACTICE AREAS

- Commercial and Corporate
- Equity
- Competition
- Private and Public International Law
- International Commercial Arbitration
- Administrative and Public Law
- Construction and Technology Law

David is regularly briefed in complex commercial and corporate disputes in the Supreme Court and Federal Court. David also appears regularly in the Federal Court in judicial review applications of administrative decisions.

BOOK

The Interpretation of Contracts in Australia (2012)

Co-authored with Lord Justice Lewison

ACADEMIC

2007 – 2008

University of Oxford Law School BCL (with distinction)

1998 – 2004

University of New South Wales

LLB, B Sc (Pure Mathematics, First Class Honours)

ASSOCIATESHIP

Supreme Court of New South Wales

2006

Research Director to the Chief Justice

2005

Tipstaff to the Chief Justice

PRIOR LEGAL EXPERIENCE

2009 – 2010

Clayton Utz

Solicitor, Commercial Litigation / Insolvency

2008 – 2009

Hague Conference on Private International Law

Legal Officer, Judicial Co-operation and Litigation

MAJOR CASES

Resources and Infrastructure

- **Electricity Generation Corporation v Woodside Energy Ltd, High Court of Australia.** Acted for an electricity-supply corporation in a High Court appeal on the interpretation of a long-term gas supply agreement, and questions of the law of economic duress. With N Hutley SC and J Giles.
- **ICC Arbitration in Singapore.** Acted for a dredging contractor in a wide ranging dispute with a principal over variation claims relating to dredging methodologies, and extensions of time. Amount in dispute over \$100 million. With S Furst QC and S Townend (London Bar).
- **SIAC Arbitration in Sydney.** Acted for the owner of a mineral resource against a global engineering firm in relation to services provided under a design and procurement contract. The dispute involved deceit, misleading conduct, delay and causation issues. Amount in dispute over \$100 million. With M Dempsey SC.
- **Sydney Light Rail, Alstom Australia Pty Ltd.** Advised Design and Construct contractor on ongoing issues with delivery of major public infrastructure.
- **Wright Prospecting Pty Ltd v Hamersley Iron Pty Ltd, Supreme Court of New South Wales.** Advised Wright Prospecting in a dispute over the construction of certain royalty agreements relating to iron ore tenements in the Pilbara region of Western Australia. With RM Smith SC.
- **PT Thiess v PT Arutmin, Supreme Court of Queensland.** Acted for an Indonesian coal company in a dispute with a contractor over the proper construction of a settlement deed. The amount in dispute was approximately \$300m. With M Dempsey SC.
- **James Point Pty Ltd v Minister for Transport (WA), Supreme Court of Western Australia.** Acting for James Point in a dispute over an operating agreement for a private port in the Fremantle outer harbor. Amount in dispute over \$100 million. With E Muston SC.

Telecommunications

- **Optus v Vodafone, Supreme Court of New South Wales.** Acted for Optus in a dispute with Vodafone over obligations in a joint venture agreement that involved the sharing of mobile telecommunications infrastructure. With AC Archibald QC and C Moore SC.
- **Kordia Solutions v Nokia Siemens Networks, Supreme Court of New South Wales.** Acted for Kordia Solutions in a multi-million dollar contractual dispute

between companies involved in servicing and maintaining mobile telecommunications infrastructure. With J Giles SC.

- **Telstra v NBN.** Briefed to advise and appear for Telstra before an expert legal arbitrator on the construction of a contract. The amount in dispute was approximately \$150m. With A Sullivan QC.

Investor Class Actions and Funded Litigation

- **Forge Group Ltd v Grant Thornton, Supreme Court of New South Wales.** Acting for auditor of collapsed Forge Group in proceedings brought by funded liquidator. With P Brereton SC.
- **Caason Investments Pty Ltd v Cao, Federal Court of Australia.** Briefed to advise and appear for a non-executive director in proceedings brought by investors, including allegations of market based causation. With E Muston SC.
- **RiverCity Litigation, Federal Court of Australia.** Briefed to advise and appear for Leighton Contractors (now CPB Contractors) in an investor class action turning of the accuracy of, and responsibility for, traffic forecasting material contained within a prospectus. With RM Smith SC.
- **Centro Litigation: Kirby v Centro Properties Ltd, Federal Court of Australia.** Acted for PricewaterhouseCoopers in a large class action brought by holders of securities issued by Centro companies. With R McHugh SC.
- **Mercedes Holdings Pty Ltd v Waters, Federal Court of Australia.** Acted for a director in an investor class action. With A Coleman SC.

Corporate and Commercial

- **Bradcorp v Country Garden, Supreme Court of New South Wales.** Acted for party to an option deed in dispute over validity of exercise of put option. Issues involved questions of planning, mining, and contractual interpretation. Amount in dispute over \$100 million. With R Newlinds SC.
- **Stuckey v Pengana Holdings, Supreme Court of New South Wales.** Acted for a shareholder in a dispute with a company regarding obligations of disclosure in a shareholders agreement. With J Giles SC,
- **HNA Irish Nominee Ltd v KV Aviation Holdings Pty Ltd, Federal Court of Australia.** Briefed in an oppression dispute between shareholders in corporate vehicles holding a portfolio of 38 commercial aircraft with a combined value of \$1.3b. With S Robb QC.
- **A&B Leisure Investments Pte Ltd v Staywell Hospitality Group Pty Ltd, Supreme Court of New South Wales.** Oppression suit between investors in a hotel group. With R Dick SC and J Watson.

Competition

- **ACCC v Cathay Pacific & Ors, Federal Court of Australia.** Acted for Cathay Pacific in proceedings relating to allegations of a world-wide cartel in the airline cargo industry. With R Newlinds SC.
- **Acquisition of Macquarie Generation by AGL Energy Limited [2014] ACompT 1.** Acted for AGL Energy in proceedings seeking approval of an acquisition opposed by the ACCC. With A Bannon SC, C Moore SC, R Higgins and D Roche.
- **Tatts and Tabcorp Merger, Full Federal Court [2017] FCAFC 150.** Advised Tatts Group in relation to a proposed merger approval application in the Australian Competition Tribunal, and appeared in related judicial review proceedings in the Full Federal Court. With RM Smith SC and G Ng.

International

- **Tiger Yacht Management Ltd v Morris, Full Federal Court of Australia [2019] FCAFC 8.** Acted for Cayman Islands holding company in jurisdictional challenge to oppression and winding up proceedings commenced in Australia. With P Brereton SC.
- **Indochina Medical Co Pty Ltd v Nicolai, New South Wales Court of Appeal [2013] NSWCA 436.** Appeared unled in appellate proceedings relating to an application to take evidence abroad pursuant to the Hague Evidence Convention.
- **Genworth Securities Class action.** Provided strategic advice for a party to a class action in New York, and acted and appeared for witnesses the subject of depositions taken in Australia.

Construction

- **Bundanoon Sandstone Pty Ltd v Cenric Group Pty Ltd, New South Wales Court of Appeal [2019] NSWCA 87.** Acted at trial and on appeal for head contractor in wide ranging construction dispute with principal and sandstone harvesting contractor. With R Newlinds SC.
- **Westpoint Litigation: Boulderstone Hornibrook Pty Ltd v Queensland Investment Corp, Supreme Court of New South Wales.** Acted for a building head contractor in a wide-ranging construction dispute arising from the refurbishment of a major shopping centre in Sydney. With S Kerr SC.

- **Alstom Ltd v Yokogawa Australia & Ors, Supreme Court of South Australia.** Briefed in appellate proceedings between a contractor and subcontractor arising from a \$158m refurbishment project for a power station. With M Dempsey SC.
- **Macmahon Mining Services Pty Ltd v Cobar Management Pty Ltd: Supreme Court of New South Wales.** Acted for a contractor in a dispute with a principal under a contract to perform repurposing works and extension works to a mine shaft. The amount in dispute was over \$100m. With J Giles SC.
- **Bank Guarantees: Expert Determination between Contractor and Subcontractor.** Acted for a subcontractor seeking the return of bank guarantees encashed by receivers appointed to the head contractor following the collapse of the Forge group.
- **Dymocks v Traditional Stone Masonry, Supreme Court of New South Wales.** Acting for Dymocks Book Arcade in proceedings relating to the adequacy of restoration works to the western façade of the Dymocks building in George Street. With D Miller SC.
- **Arconic Australia Rolled Products Pty Ltd v McMahon Services Australia Pty Ltd [2017] NSWSC 1114.** Appeared unled against silk for a contractor resisting an injunction to restrain an adjudication application under SOP legislation.
- **Ellton Longwall Pty Limited v Thitchener & Ors, Supreme Court of New South Wales.** Acted for a project manager in proceedings relating to alleged defects in a large concrete slab for use in the mining industries. Proceedings involve detailed factual issues relating to geotechnical and structural engineering evidence.
- **OC 68372 v Allianz Australia Insurance & Ors.** Acted for a developer of a strata title development of 128 townhouses sued under implied warranties arising from the Home Building Act. The claim related to structural, geotechnical, hydraulic and building defects and raised complex issues of proportionate liability and the operation of the implied warranties. With M Henry SC.

Insurance

- **Commonwealth Bank v Savills (Qld).** Briefed to advise and appear for Savills, in proceedings brought by the Commonwealth Bank claiming damages for an allegedly negligent valuation. With R Newlinds SC.
- **New South Wales Land and Housing Corporation and Quattro Design Pty Ltd.** Acted for an architect, in proceedings alleging negligent design. Issues included construction of consultancy and sub-consultancy agreements, proportionate liability; causation; and architectural, structural and hydraulic expert evidence.

Administrative law

- **Pfizer v Comptroller-General of Customs.** Acted for Pfizer in an administrative challenge to the imposition of import duties under the Customs Tariff Act 1995 (Cth).
- **Minister for Immigration v CZBP [2014] FCAFC 105.** Appeared unled against silk for a refugee applicant in the Full Federal Court.
- **SZUNZ v Minister for Immigration [2015] FCAFC 32.** Appeared unled for the Minister for Immigration in the Full Federal Court.
- **Minister for Immigration v Ly [2018] FCAFC 123.** Appeared unled against silk for a visa applicant in the Full Federal Court.
- **BKP19 v Minister for Immigration [2019] FCA 809.** Appeared unled for refugee visa holder on Nauru, seeking orders for his return to Australia.

PUBLICATIONS

- *Australia Joins the Hague Service Convention* (2010) 84(8) Australian Law Journal 532, with Gina Elliott.
- *The Insolubility of Renvoi and its Consequences* (2010) 6(1) Journal of Private International Law 195.
- *A Classification of Fusion after Harris v Digital Pulse* (2006) 29(2) UNSWLJ 32.
- Co-author of chapter on the contract law of Australia in *Droit de l'Australie* (2016, Bibliothèque de l'Association Henri Capitant).

AWARDS

- Commonwealth Scholarship (Oxford)
- Winner, Oxford Mooting Competition 2008