

JAMES ARNOTT

PRACTICE AREAS

I joined the NSW Bar in May 2008. I have a broad practice across all areas of commercial law. I have particular expertise in advising on and appearing in large commercial disputes, class actions, matters involving competition and consumer law, corporations law and professional negligence, and regulatory investigations (including ACCC and ASIC investigations).

QUALIFICATIONS

BEc (Syd); LLB (Hons) (Syd); LLM (Syd).

SELECTED CASES

COMMERCIAL DISPUTES

- Acting for KPMG in two proceedings in the Federal Court brought by the liquidators of Equititrust Ltd with respect to the compliance plan and financial statement audits of two managed investment schemes (interlocutory decisions include *Equititrust Ltd v Equititrust Ltd* [2014] FCA 692, *Equititrust Ltd v Equititrust Ltd* (2016) 341 ALR 301 and *Equititrust Ltd v Equititrust Ltd* [2018] FCA 11).
- Acting for the liquidators of B.C.I Finances Pty Limited and three other companies in Federal Court proceedings for breaches by their former directors of their duties by involving the companies in a tax scheme that caused the companies to suffer tax losses (*B.C.I Finances Pty Limited (in liq) v Binetter (No 4)* [2016] FCA 1351 (liability) and *B.C.I Finances Pty Limited (in liq) v Binetter (No 5)* [2017] FCA 1524 (quantum); interlocutory decisions in related proceedings include *B.C.I Finances Pty Limited (in liq) v Commissioner of Taxation* [2015] FCA 679 and *B.C.I Finances Pty Limited (in liq) v Commissioner of Taxation* [2015] FCA 602).
- Acted for the receivers and managers of BrisConnections Finance Pty Ltd in Federal Court proceedings against Arup alleging misleading and deceptive conduct in relation to traffic forecasts provided by Arup (settled during trial in 2017; interlocutory decisions include *BrisConnections Finance Pty Ltd v Arup Pty Ltd* [2017] FCA 1268).
- Acted for KPMG in proceedings in the Supreme Court of NSW and the Supreme Court of Queensland brought by the liquidators of Octaviar Ltd and some of its subsidiaries concerning financial statement audits and accounting due diligence on a securities issue (resolved at mediation in 2016; interlocutory decisions include *Octaviar Ltd v Craig* [2013] NSWSC 1116).
- Acted for a client alleging professional negligence against a solicitor with respect to the sale of a business (settled before trial; interlocutory decisions include *Cosmetic Laser Clinic Pty Ltd v Pirintji* [2015] NSWSC 983 and *Cosmetic Laser Clinic Pty Ltd v Pirintji* [2015] NSWSC 1926).
- Acted for Spotless in relation to a dispute with a former subcontractor in relation to the provision of maintenance services (settled before trial; interlocutory decisions include *ILC Group v Sydney Water Corporation* [2014] NSWSC 1407).

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- Acted for Integrated Transit Solutions Limited and ERG Limited in proceedings regarding the termination by a NSW Government agency of a contract for the Tcard public transport ticketing system for Sydney (resolved at mediation in February 2012).
- Acted for the appellants in *Ingot Capital Investments Pty Ltd v Macquarie Equity Capital Markets Ltd* (2008) 73 NSWLR 653, a misleading or deceptive conduct claim about a capital raising by a reinsurance company.

CLASS ACTIONS

- Acting for PTTEP in a Federal Court class action brought by Indonesian seaweed farmers alleging loss to their crops as a result of an oil spill (interlocutory decisions include *Sanda v PTTEP Australasia (Ashmore Cartier) Pty Ltd* (2017) 347 ALR 647, *Sanda v PTTEP Australasia (Ashmore Cartier) Pty Ltd (No 2)* [2017] FCA 644 and *Sanda v PTTEP Australasia (Ashmore Cartier) Pty Ltd (No 3)* [2017] FCA 1272).
- Acted in a Federal Court class action brought on behalf of Pizza Hut franchisees against the franchisor with respect to losses caused by the franchisor's direction to price pizzas at \$4.95 and reduce the menu (*Diab Pty Ltd v YUM! Restaurants Australia Pty Ltd* [2016] FCA 43 (first instance) and *Virk Pty Ltd (in liq) v YUM! Restaurants Australia Pty Ltd* [2017] FCAFC 190 (appeal)).
- Acted for British Airways plc in a Federal Court class action concerning alleged contraventions of s 45 of the *Competition and Consumer Act* in relation to air cargo fuel and security surcharges (resolved at mediation, settlement approved in *De Brett Seafood Pty Limited v Qantas Airways Limited (No 7)* [2015] FCA 979).
- Acted for KPMG in a unitholder class action concerning transactions engaged in by the former responsible entity of the Premium Income Fund (resolved at mediation, settlement approved December 2014 (*Hodges v Waters (No 6)* [2014] FCA 1343; *Hodges v Waters (No 7)* (2015) 232 FCR 97).
- Acted for the Commonwealth of Australia in a Federal Court class action brought regarding the suspension by the Therapeutic Goods Administration of Pan Pharmaceuticals' manufacturing licence (resolved at mediation in November 2010).

COMPETITION AND CONSUMER LAW

- Acted for the Australian Energy Regulator in applications to the Australian Competition Tribunal by five Victorian and one ACT service providers for review of the regulatory price determinations for the 2016 to 2020/2021 period (*Re ActewAGL Distribution* [2017] ACompT 2; *Re AusNet Electricity Services Pty Ltd* [2017] ACompT 3; *Re CitiPower Pty Ltd and Powercor Australia Ltd* [2017] ACompT 4).
- Acted for the ACCC in its investigation and subsequent civil penalty proceedings against ANZ and Macquarie with respect to attempted cartel conduct in relation to published benchmark exchange rates for the Malaysian ringgit (*ACCC v Australia and New Zealand Banking Group Limited* (2016) 118 ACSR 124).
- Acted for the Australian Energy Regulator in applications to the Australian Competition Tribunal by SA Power Networks for review of the regulatory price determinations for the 2015 to 2019 period (*Re SA Power Networks* [2016] ACompT 11).
- Acted for the Australian Energy Regulator in applications to the Australian Competition Tribunal by the NSW electricity and ACT electricity and gas distribution businesses of review of the regulatory price determinations for the 2015 to 2019 period (*Re Public Interest Advocacy*

Service Ltd, Ausgrid Distribution, Endeavour Energy, Essential Energy, ActewAGL Distribution and Jemena Gas Networks (NSW) Ltd [2016] ACompT 1 to 5).

- Acted for Pfizer Australia in ACCC civil penalty proceedings alleging misuse of market power and exclusive dealing in relation to the launch of generic atorvastatin (*ACCC v Pfizer Australia Pty Ltd* (2015) 323 ALR 429).
- Acted for a director in ACCC civil penalty proceedings alleging cartel conduct in the gas cylinder industry (*ACCC v Renegade Gas Pty Ltd (trading as Supagas NSW)* [2014] FCA 1135).
- Acted for Cyclopet Pty Ltd in proceedings against ANSTO alleging misuse of market power and breach of the competitive neutrality principles through its tender for and supply of fluorodeoxyglucose to NSW Health (resolved at mediation in August 2014).
- Acted for Scoopon Pty Limited (a group buying website) in ACCC civil penalty proceedings alleging contraventions of the Australian Consumer Law arising from its dealings with consumers and merchants (*ACCC v Scoopon Pty Ltd* [2014] FCA 820).
- Acted for Co-operative Bulk Handling Limited in an application to the Australian Competition Tribunal for review of an ACCC decision regarding an exclusive dealing notification (*Application by Co-operative Bulk Handling Limited (No 3)* [2013] ACompT 3).
- Acted for Viscas Corporation in ACCC civil penalty proceedings alleging collusive conduct in a tender for high voltage power cables (*ACCC v Prysmian Cavi E Sistemi Energia S.R.L. (No 5)* [2013] FCA 294 and *ACCC v Prysmian Cavi E Sistemi Energia S.R.L.* [2011] FCA 938).
- Acted for the ACCC in an appeal to the Full Federal Court by an unsuccessful respondent from the decision in *ACCC v TF Woolam & Son Pty Ltd* [2011] FCA 973, concerning collusive tendering for public works in contravention of s 45 of the *Trade Practices Act*.
- Acted for Transend Networks Pty Limited in an application to the Australian Competition Tribunal for a review of a decision of the Australian Energy Regulator pursuant to the National Electricity Law (*Application by EnergyAustralia and Others* [2009] ACompT 8).

PUBLIC AND ADMINISTRATIVE LAW

- Acted for the Australian Energy Regulator in judicial review proceedings brought by SA Power Networks with respect to a decision of the Australian Competition Tribunal (*SA Power Networks v Australian Competition Tribunal (No 2)* [2018] FCAFC 3).
- Appeared with the amicus curiae in the High Court of Australia sitting as the Court of Disputed Returns to take evidence before a single judge in relation to the reference about whether Senator Roberts was incapable of being elected as a senator for Queensland by reason of s 44 of the Constitution (*Re Roberts* (2017) 91 ALJR 1018).
- Acted for the Australian Energy Regulator in judicial review proceedings brought by it with respect to a number of decisions of the Australian Competition Tribunal (*Australian Energy Regulator v Australian Competition Tribunal (No 2)* (2017) 345 ALR 1 and *Australian Energy Regulator v Australian Competition Tribunal (No 3)* [2017] FCAFC 80).

CORPORATIONS LAW

- Acted for FAL Healthy Beverages Pty Ltd in a claim alleging breaches of directors' duties against its former chief executive officer with respect to funds paid out of the company at his direction (*Re FAL Healthy Beverages Pty Ltd* [2016] NSWSC 625 (freezing order application); *FAL Healthy Beverages Pty Ltd v Xenos* [2017] NSWSC 476 (primary judgment); *Xenos v FAL Healthy Beverages Pty Ltd* [2017] NSWCA 240 (application for security for costs for an appeal brought by the former chief executive officer).

- Acted for ASIC in proceedings by the trustee for debenture holders regarding the ability of the issuer to meet its obligations to all debenture holders when they fall due (*Trust Company (Nominees) Limited v Angas Securities Limited* [2014] FCA 1397).
- Acted for the directors in proceedings brought to restrain a proposed share issue (*Re U&D Coal Ltd* [2014] NSWSC 1128).
- Acted for the responsible entities of the Westfield Retail Trusts 1 and 2 in the trust scheme and scheme of arrangement to form the Scentre Group (*Re Westfield Holdings Ltd; Re RE1 Ltd & RE2 Limited (No 5)* [2014] NSWSC 976; *Re RE1 Ltd and RE2 Ltd (No 3)* [2014] NSWSC 762; *Re Westfield Holdings Ltd; Re RE1 Ltd and RE2 Ltd* [2014] NSWSC 158).
- Acted for ASIC at first instance in *Permanent Trustee Company Limited v O'Donnell* (2009) 15 BPR 28,101 and on appeal in *Tonto Home Loans Australia Pty Ltd v Tavares* (2011) 15 BPR 29,699 regarding the role of a mortgage broker and whether "low doc" loans were void under the *Contracts Review Act* or unconscionable under the *ASIC Act*.
- Acted for the defendants in *Lu v Hua Cheng International Holdings Pty Limited* [2010] NSWSC 228 which concerned the fiduciary obligations of joint venturers and shareholder oppression.
- Acted for the appellant in *Crawley v Short* (2009) 262 ALR 654 which concerned the appropriate remedy for shareholder oppression.
- Acted for the defendant in *Wallace Funds Management Pty Ltd v Wallace Absolute Return Ltd* (2009) 69 ACSR 711 concerning breaches of ASX "related party transaction" rules and the consequent termination of a management agreement.

PREVIOUS EXPERIENCE

Before joining the NSW Bar, I was a solicitor and senior associate at Allens. While at Allens, I was part of the team acting for News Limited, FOXTEL and Fox Sports in the C7 litigation (*Seven Network Limited v News Limited* [2007] FCA 1062) and appeared as counsel for AAPT Limited before the Australian Competition Tribunal in *Re Optus Mobile Pty Limited & Optus Networks Pty Limited* [2006] ACompT 8 and *Re Vodafone Network Pty Ltd & Vodafone Australia Limited* [2007] ACompT 1.