

## **Michael Christie SC**

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Michael Christie is a Senior Counsel practising primarily in commercial law and has acted for major Australian and overseas corporations in a wide variety of matters. He has an extensive practice in complex contractual disputes in the construction industry (including those involving large infrastructure projects and the mining and resources sector), and has appeared in landmark cases in this field.

Michael is a graduate of the University of Sydney (B.Ec., LL.M. (Hons.)) and Oxford University where he obtained the post-graduate degree of B.C.L. with First Class Honours (ranking first in his year amongst overseas graduates). He was admitted as a barrister in 1991, and practised previously as a solicitor.

He has appeared in various jurisdictions, including the High Court of Australia, the Supreme Courts of New South Wales, Queensland, South Australia, Western Australia and the Northern Territory, the Federal Court and in commercial arbitrations and hearings conducted by Court-appointed referees. He has also appeared in the Grand Court of the Cayman Islands (Financial Services Division).

Michael has been a part-time Lecturer at the University of Sydney Law School and a guest lecturer in the University of Melbourne Law School's post-graduate program. He also taught taxation law (part-time) in the Department of Accounting in the University of Sydney. Michael has published articles on commercial law and fiduciary obligations in leading law journals in England and Australia and is also a contributor to *Principles of Equity* (2<sup>nd</sup> Ed., 2003) (edited by Professor P. Parkinson with a foreword by Sir Anthony Mason). He has presented papers in Australia and Singapore. He is General Editor of the *Building and Construction Law Journal*. He is also a member of the Legal Profession Admission Board's Examinations Committee.

## **SELECTED SIGNIFICANT RECENT CASES**

### **High Court of Australia**

*Probuild Constructions (Aust.) Pty Ltd v Shade Systems Pty Ltd* [2018] HCA 4; (2018) 92 ALJR 248 (Contracts, administrative law).

*Maxcon Constructions Pty Ltd v Vadasz* [2018] HCA 5; 92 ALJR 277 (Contracts, judicial review).

*Southern Han Breakfast Point Pty Ltd (in liq.) v Lewence Construction Pty Ltd* (2016) 260 CLR 340; [2016] HCA 52 (Contracts, statutory interpretation).

### **International Commercial Arbitration**

International arbitration pursuant to the rules of the Singapore International Arbitration Centre (private hearing before a panel of three international arbitrators in relation to a large and highly sophisticated mineral processing facility in Asia) (2017-2018).

### **Court of Appeal of the Supreme Court of New South Wales**

*Cockram Constructions Ltd v Fulton Hogan Construction Pty Ltd* [2018] NSWCA 107 (Statutory function of adjudicators, scope of the duty to give reasons).

*Kawasaki Heavy Industries Ltd v Laing O'Rourke Australia Construction Pty Ltd* [2017] NSWCA 291 (Performance bonds, injunctions, international commercial arbitration).

*Shade Systems Pty Ltd v Probuild Constructions (Aust.) Pty Ltd (No. 2)* (2016) 95 NSWLR 157; [2016] NSWCA 379 (Contracts, administrative law, principle of legality).

*Cummins Generator Technologies Germany GmbH v Johnson Controls Australia Pty Ltd* (2015) 326 ALR 556; [2015] NSWCA 264 (Misleading and deceptive conduct, expert evidence).

### **Supreme Court of New South Wales**

*Seymour Whyte Constructions Pty Ltd v Ostwald Bros Pty Ltd (in liq)* [2018] NSWSC 412 (Company liquidation, set-off, construction industry security of payment legislation). [Appeal pending].

### **Supreme Court of Queensland**

*Siemens Ltd v Forge Group Power Pty Ltd (in liquidation)* [2014] QSC 184 (Performance bonds, injunctions).

### **Supreme Court of Western Australia**

*Lampson (Australia) Pty Ltd v Fortescue Metals Group Ltd (No. 3)* [2014] WASC 162 (Edelman J). (Doctrine of free acceptance in the law of restitution).

### **Supreme Court of South Australia**

*Outback Energy Hunter Pty Ltd v New Standard Energy PEL 570 Pty Ltd* [2018] SASC 8 (Oil and gas joint venture dispute). [Appeal pending].

### **Court of Appeal of the Supreme Court of Northern Territory**

*ABB Australia Pty Ltd v CH2M Hill Australia Pty Ltd and UGL Engineering Pty Ltd* (an appeal from (2016) 311 FLR 227; [2016] NTSC 42). (Matter settled after hearing of the appeal).

## **MAIN AREAS OF PRACTICE**

In **commercial law and equity**, he has acted in a wide range of matters including those involving:

- contractual disputes in a broad range of industries and technologies.
- misleading and deceptive conduct claims pursuant to the *Trade Practices Act* and the *Australian Consumer Law*.
- corporations law.
- matters concerning restitution, unjust enrichment, quantum meruit and estoppel.

In relation to **construction contracts**, he has acted in a variety of matters including those involving:

- complex contractual disputes with respect to major construction and engineering projects and infrastructure (such as high-rise structures, tunnels, roads, power stations, rail, mining and resources infrastructure, port and water infrastructure).
- injunctive proceedings with respect to performance bonds and unconditional bank guarantees.
- security of payment legislation, including proceedings challenging adjudication determinations.
- commercial arbitration proceedings (domestic and international).
- hearings before Court appointed referees.
- expert determinations.

## **SELECTED CASES AND MATTERS**

### **(1) Construction and Technology Contracts**

#### *Selected matters*

- Briefed to advise in relation to disputes arising from major infrastructure projects throughout Australia and overseas, including disputes subject to confidential resolution through expert determination and arbitration.
- Appeared in international arbitration in relation to major polymetallic ore processing facility.
- Appeared in a lengthy arbitration hearing concerning construction of a new power station and refurbishment of existing power station.
- Appeared for and advised joint venture in relation to \$1 billion infrastructure contract.
- Advised a leading construction company in relation to major rail infrastructure contract.
- Briefed to advise and appear in proceedings concerning design and construction of major port container terminal.
- Briefed to appear in dispute concerning one of Australia's tallest buildings.
- Briefed to advise in proceedings concerning construction of an iron ore processing plant.
- Briefed to advise and appear in arbitration concerning a copper mine and processing plant.

#### *Selected cases*

*Renard Constructions (ME) Pty Ltd v Minister for Public Works* (1992) 26 NSWLR 234.

*Presmist Pty Ltd v Turner Corporation Pty Ltd* (1992) 30 NSWLR 478.

*Friend and Brooker Pty Ltd v Council of the Shire of Eurobodalla* [1993] NSWCA 103.

*Turner Corporation Ltd v Co-ordinated Industries Pty Ltd* (1994) 11 BCL 202.

*Peninsula Balmain Pty Ltd v Abigroup Contractors Pty Ltd* (2002) 18 BCL 322; [2002] NSWCA 211.

*Brewarrina Shire Council v Beckhaus Civil Pty Ltd* (2003) 56 NSWLR 576.

*John Holland Pty Ltd v Cardno MBK (NSW) Pty Ltd* [2004] NSWSC 258.

*Grosvenor Constructions Pty Ltd (in administration) v Musico* [2004] NSWSC 344; (2005) 21 BCL 344.

*Kembla Coal & Coke Pty Ltd v Select Civil Pty Ltd* [2004] NSWSC 628.

*Quasar Constructions NSW Pty Ltd v Demtech Pty Ltd* (2004) 20 BCL 276; [2004] NSWSC 116.

*Transgrid v Siemens Ltd* (2004) 61 NSWLR 521.

*Coordinated Constructions Pty Ltd v JM Hargreaves (NSW) Pty Ltd* (2005) 63 NSWLR 385.

*Energetech Australia Pty Ltd v Sides Engineering Pty Ltd* (2005) 226 ALR 362.

*Etlis v New Age Constructions (NSW) Pty Ltd* [2005] NSWCA 165.

*Australian Remediation Services v Earth Tech Engineering* [2005] NSWSC 362.

*Brewarrina Shire Council v Beckhaus Civil Pty Ltd* [2005] NSWCA 248.

*Veolia Water Solutions & Technologies (Australia) Pty Ltd v Kruger Engineering Pty Ltd* [2006] NSWSC 1406.

*John Goss Projects Pty Ltd v Leighton Contractors* (2006) 66 NSWLR 707.

*Shell Refining (Aust) Pty Ltd v A.J. Mayr Engineering Pty Ltd* [2006] NSWSC 94.

*Halkat Electrical Contractors v Holmwood Holdings Pty Ltd* [2007] NSWCA 32.

*John Holland Pty Ltd v Roads & Traffic Authority of NSW* [2007] NSWCA 19; (2007) 23 BCL 205.

*Siemens Ltd v Tolco Pty Ltd* [2007] NSWSC 257.

*John Holland Pty Ltd v Roads & Traffic Authority of NSW* [2007] NSWCA 140; (2007) 23 BCL 434.

*Shorten v David Hurst Constructions Pty Ltd* (2008) 72 NSWLR 211.

*Thiess Pty Ltd v Zurich Specialities London Ltd* [2009] NSWCA 47.

*Shorten v David Hurst Constructions Pty Ltd* (2009) 25 BCL 205; [2008] NSWSC 546.

*Thiess Pty Ltd v Lane Cove Tunnel Nominee Company Pty Ltd* [2009] NSWCA 729.

*John Holland Pty Ltd v Schneider Electric Buildings Pty Ltd* [2010] QSC 159.

*Bauen Constructions v Westwood Interiors* [2010] NSWSC 1359.

*Olympia Group (NSW) Pty Ltd v Hansen Yuncken Pty Ltd* [2011] NSWSC 165.

*EGL Management Services v Northern SEQ Distributor-Retailer Authority* [2011] NSWSC 1234.

*CH2M Hill Australia Pty Ltd v State of New South Wales* [2012] NSWSC 963; (2014) 30 BCL 35.

*Transfield Services (Australia) Pty Ltd v Nortask Pty Ltd* [2012] QSC 306.  
*IWD No. 2 Pty Ltd v Level Orange Pty Ltd* [2012] NSWSC 1439.  
*State Water Corporation v Civil Team Engineering Pty Ltd* [2013] NSWSC 1879.  
*PPK Willoughby Pty Ltd v Eighty Eight Construction Pty Ltd* [2014] NSWSC 760.  
*Siemens Ltd v Forge Group Power Pty Ltd (in liquidation)* [2014] QSC 184.  
*New South Wales Netball Association v Probuild Construction (Aust) Pty Ltd* [2015] NSWSC 1339.  
*J. Hutchinson Pty Ltd v Glavcom Pty Ltd* [2016] NSWSC 126.  
*Shade Systems Pty Ltd v Probuild Constructions (Aust) Pty Ltd (No. 2)* (2016) 95 NSWLR 157.  
*Southern Han Breakfast Point Pty Ltd (in liq.) v Lewence Construction Pty Ltd* (2016) 260 CLR 340; [2016] HCA 52; (2016) 91 ALJR 233.  
*Fitz Jersey Pty Ltd v Atlas Construction Group Pty Ltd* (2017) 94 NSWLR 606.  
*Kawasaki Heavy Industries Ltd v Laing O'Rourke Australia Construction Pty Ltd* [2017] NSWCA 291.  
*Probuild Constructions Pty Ltd v Shade Systems Pty Ltd* [2018] HCA 4; (2018) 92 ALJR 248.  
*Maxcon Constructions Pty Ltd v Vadasz* [2018] HCA 277; (2018) 92 ALJR 277.  
*Seymour Whyte Constructions Pty Ltd v Ostwald Bros Pty Ltd (in liq)* [2018] NSWSC 412.  
*Cockram Construction Pty Ltd v Fulton Hogan Construction Pty Ltd* [2018] NSWCA 107.

## **(2) Commercial Law & Equity**

### ***Selected matters***

- Appeared in the Grand Court of the Cayman Islands (Financial Services Division) in complex proceedings involving corporate control and directors' fiduciary duties and powers.
- Briefed to advise and appear by international law firm in insurance proceedings commenced in Australia for joint venture which constructed major infrastructure in Singapore.
- Engaged by major Australian law firm to give expert evidence on Australian law on behalf of a large Australian public company in overseas Court proceedings in connection with a bonus share issue.

- Advised on major software contract with respect to large public infrastructure project.
- Advised the New South Wales Attorney-General (the Hon. J.W. Shaw QC) on law reform in relation to employee entitlements and insolvent corporations (1997-2000).
- Advised a major Rugby League football club during the Super League dispute (instructed by Robert McClelland, later to be Commonwealth Attorney-General).

### *Selected cases*

*Lock v Westpac Banking Corporation* (1991) 25 NSWLR 593.

*Bhagat v Australian Securities Commission* (1995) 13 ACLC 516.

*First State Computing Pty Ltd v Kyling* (1995) 13 ACLC 939.

*Masterton Homes Pty Ltd v LED Builders Pty Ltd* (1996) 33 IPR 417; (1996) 12 BCL 408.

*Griffith Producers Co-operative Co. Ltd v Calabria* (1996) 15 ACLC 19.

*Dixon Projects Pty Ltd v Masterton Homes Pty Ltd* (1996) 36 IPR 136.

*117 York Street Pty Ltd v Proprietors of Strata Plan 16123* (1998) 43 NSWLR 504.

*TV Shopping Network Ltd v Scutt* (1998) 43 IPR 451.

*Kelso v Salvation Army (NSW) Property Trust* [2001] NSWSC 191.

*Kalifair Pty Ltd v Digi-Tech (Australia) Ltd* (2002) 55 NSWLR 737.

*Digi-Tech (Australia) Ltd v Brand* [2004] NSWCA 58; 62 IPR 184.

*Council of the City of Botany Bay v Soccer NSW Ltd* [2004] NSWSC 1262.

*QBE Workers Compensation (NSW) Pty Ltd v Simaru Pty Ltd* (2005) 14 ANZ Insurance Cases 61-682; [2005] NSWCA 464.

*Veolia Water Solutions & Technologies (Australia) Pty Ltd v Kruger Engineering Pty Ltd (Subject to a Deed of Company Arrangement) (No. 3)* [2007] NSWSC 459.

*Burbidge v Wolf* [2008] NSWSC 60.

*Owners of Strata Plan 36131 v Dimitriou* (2009) 74 NSWLR 370.

*Howards Storage World Pty Ltd v Haviv Holdings Pty Ltd* (2010) 182 FCR 84;  
*Haviv Holdings Pty Ltd v Howards Storage World Pty Ltd* (2009) 254 ALR 273.

*Koutsopoulos v Pintusen (No. 2)* [2011] NSWCA 122.

*Lampson (Australia) v Fortescue Metals Group Ltd (No. 3)* [2014] WASC 162.

*Cummins Generator Technologies Germany GmbH v Johnson Controls Australia Pty Ltd* (2015) 326 ALR 556; [2015] NSWCA 264.

*Outback Energy Hunter Pty Ltd v New Standard Energy PEL 570 Pty Ltd* [2018] SASC 8.

### **(3) Employment Law (and anti-discrimination law)**

#### ***Selected matters***

- Advised the New South Wales Government on law reform to protect employee entitlements in relation to corporate insolvency (1998-1999)
- Advised employee representatives on entitlements arising from collapse of One-Tel.
- Advised New South Wales Government on complaint made to the International Labour Organisation in Geneva (1991).

#### ***Selected cases***

*Nicholson v Heaven & Earth Gallery Pty Ltd* (1994) 126 ALR 233.

*Thomas v Westpac Banking Corporation* (1995) EOC 92-742; (1995) 62 IR 28.

*Burazin v Blacktown City Guardian Pty Ltd* (1996) 142 ALR 144.

*Mooney v W & B Morieson Pty Ltd* (1997) 145 ALR 224.

*Teletech International Pty Ltd v Medical Benefits Fund of Australia* [1999] NSWIRComm 264.

*Sherman v Peabody Coal Ltd* (1998) 88 IR 408.

*Lismore Challenge v Lavis* (1999) 88 IR 230.

*Transfield Pty Ltd v A.F.M.E.P & K.I. Union* [2001] FCA 1533.

*Australian Workers Union v Zoological Parks Board of NSW* [2003] NSWIRComm. 49.

*Re McBain; Ex parte Australian Catholic Bishops Conference* (2002) 209 CLR 372.

*O'Farrell v Network Entertainment Pty Ltd* [2005] NSWCA 284.

*Prince v North Coast Area Health Service* (2006) 160 IR 134; [2006] NSWIRComm 398.

### **(4) Taxation Law**

#### ***Selected cases***

*Fletcher v Federal Commissioner of Taxation* (1991) 173 CLR 1.



*Prestige Motors Pty Ltd v Federal Commissioner of Taxation* (1993) 47 FCR 138.

*Unilever Australia Securities Ltd v Federal Commissioner of Taxation* (1994) 122 ALR 402; (1994) 94 ATC 4388.

*McCurry v Federal Commissioner of Taxation* (1998) 98 ATC 4487.

*Zizza v Federal Commissioner of Taxation* (1999) 99 ATC 4711.

*Federal Commissioner of Taxation v Brown* (1999) 99 ATC 4600.

*Bell & Moir Corp Pty Ltd v Federal Commissioner of Taxation* (1999) 99 ATC 4738.

*Brown v Federal Commissioner of Taxation* (2002) 119 FCR 269.

*Coleambally Irrigation Mutual Co-operative Ltd v Commissioner of Taxation* (2004) 139 FCR 115.

## **PUBLICATIONS**

### **Commercial Law and Equity**

Contributing author of *Principles of Equity* (Lawbook Co., 2<sup>nd</sup> Ed., 2003 (edited by Professor P. Parkinson, with a preface by Sir Anthony Mason)), chapter on "Tracing".

"The Director's Fiduciary Duty Not to Compete" (1992) 56 *Modern Law Review* 506.

Book review of Mason & Carter, *Restitution Law in Australia* in (1997) 71 *Australian Law Journal* 307.

"Breaches of contract by corporations – Potential liabilities of directors and controllers for inducing breach", (2013) 28 *Australian Journal of Corporate Law* 304.

Book review of *The Interpretation of Contracts* (4<sup>th</sup> Ed., 2007) by Sir Kim Lewison, in (2009) 25 *Building and Construction Law* 222.

"The Equitable Lien in a Commercial Context: Some Recent Australian Developments" (1986) 14 *Australian Business Law Review* 435.

"Amending Discretionary Trust Deeds" (1992) *Law Society Journal* 71 (February).

"Investor Protection and the High Court: the A.C.C.U. Decision", (1986) *Australian Business Lawyer* Vol. 1, No. 3.

### **Construction Contracts**

Book review of *Construction Law* (3 volumes), by Julian Bailey in (2012) 28 *Building and Construction Law Journal* 164.

Book review of *Hudson's Building and Engineering Contracts* (12<sup>th</sup> Edition, 2010) in (2011) 27 *Building and Construction Law Journal* 144.

“The Singapore Security of Payment Act: Some Lessons to be Learned from Australia” (2010) 26 *Building and Construction Law* 24 (a paper presented to the Singapore Society of Construction Law, 15 April 2010).

Book review of *Keating on Construction Contracts* (by Furst QC & the Hon. Sir Vivian Ramsay (8<sup>th</sup> Ed., 2006)) in (2008) 24 *Building and Construction Law* 6.

Book review of *Building and Construction Claims & Disputes* by Doug Jones in (1999) 15 *Building and Construction Law* 299.

Editorials on various topics in the *Building and Construction Law Journal*.

### **Employment Contracts & Industrial Law**

“The Contract of Employment and Workplace Agreements: A Commentary”, in Ronfeldt & McCallum (Eds.), *A New Province for Legalism: Legal Issues and the Deregulation of Industrial Relations* (Australian Centre for Industrial Relations Research & Teaching (ACIRRT), University of Sydney, Monograph No. 9, 1993).

“Legal Duties and Liabilities of Federal Union Officials” (1986) 15 *Melbourne University Law Review* 591.

“Unlawful termination under federal employment law: the exception based on the ‘inherent requirements of the particular position’”, (2013) 4 *Workplace Review* 55.

Formerly contributing author of *Federal Industrial Laws* (edited by the Hon. J.W. Shaw QC et al.), Butterworths loose-leaf publication.

### **Taxation Law**

Book review of *Principles of Taxation Law 2015* by K Sadiq (Ed.), (2015) 89 *Australian Law Journal* 814.

### **PROFESSIONAL ORGANISATIONS AND OTHER LEGAL ACTIVITIES**

General Editor, *Building and Construction Law Journal*.

Harvard Law School Executive Education Program on Mediating Disputes (2018).

Member of the Legal Profession Admissions Board's Examinations Committee since 2006 (representing the NSW Bar Association).

Associate member, American Bar Association (including the Construction Litigation Committee of the Litigation Section, and the Forum on the Construction Industry).

Member of the Societies of Construction Law in Australia, UK, Singapore and Hong Kong.

Member of the Construction and Infrastructure Law Committee of the Business Law Section of the Law Council of Australia.

Member, Taxation Institute of Australia (1990-2014).

Associate member, Resolution Institute (formerly Institute of Arbitrators & Mediators of Australia).

Member of Appeal Committee of the Football Federation of Australia (relating to suspension of footballer and Olympics eligibility) (2008).

Member, Selden Society.

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