

JAMES ARNOTT SC

I have practised at the NSW Bar since 2008 and was appointed Senior Counsel in 2021.

I have a broad practice and advise and appear in cases across all areas of commercial law. I have appeared in many long-running, complex and commercially sensitive matters, both at trial and at the appellate level. The areas in which I practise include competition and consumer law, class actions, commercial contract disputes, corporations and insolvency law, energy law and professional negligence.

I regularly act both for regulators and for regulated entities in investigations and civil penalty proceedings (including investigations carried out, and proceedings commenced, by the Australian Securities and Investments Commission, the Australian Competition and Consumer Commission, the Australian Energy Regulator and AUSTRAC).

I also have experience in relation to commissions of inquiry. I appeared for the Westpac Group at the Financial Services Royal Commission, the Commonwealth of Australia at both the Aged Care Royal Commission and the Disability Royal Commission, and advised the Australian Energy Regulator in relation to the Royal Commission into National Natural Disaster Arrangements. Recently, I have appeared for a former Commonwealth minister at the Robodebt Royal Commission.

I hold a Bachelor of Economics, Bachelor of Laws (Hons) and Master of Laws, all from the University of Sydney. Before I joined the Bar, I was a senior associate at Allens.

Recent experience

- Advising and appearing for ASIC in proceedings against Noumi Limited (formerly Freedom Foods Group Limited) and its former CEO and CFO for contraventions of the company's continuous disclosure obligations (2023 – ongoing)
- Advising and appearing for the liquidators of various companies related to the Binetter family against a subsidiary of the Bank of Queensland and a member of the Binetter family alleging they knowingly assisted the directors of the companies to engage in tax fraud which caused loss to the companies (2022 – ongoing)
- Advising and appearing for the ACCC in proceedings against Mastercard alleging it misused its market power in response to the Reserve Bank's 'least cost routing' initiative for debit card transactions (2022 – ongoing)
- Advising and appearing for ASIC in proceedings against the former directors and officers of The Star Entertainment Group Limited for alleged breaches of their duties under section 180 of the Corporations Act in dealing with Star's money laundering risks (2022 – ongoing)
- Advising and appearing for the AER in proceedings against AGL for failing to inform and return to their customers amounts received by AGL through its misuse of the Centrepay service (2022 – ongoing)

Recent decided cases

Competition and consumer law and other regulatory proceedings

<p><i>Australian Energy Regulator v AGL Retail Energy Limited</i> [2024] FCA 969</p>	<p>Appeared for AER in civil penalty proceedings against AGL for contraventions of the National Energy Retail Rules by failing to notify and refund customers for overcharges obtained from the customer's welfare payments through the Centrepay service</p>
<p><i>ASIC v Bit Trade Pty Ltd</i> [2024] FCA 953</p>	<p>Appeared for Bit Trade in civil penalty proceedings concerning whether a margin extension facility used to purchase cryptocurrency on digital exchange was subject to the design and distribution obligations</p>
<p><i>ASIC v Noumi Ltd</i> [2024] FCA 862</p>	<p>Appeared for ASIC in proceedings against Noumi Limited (formerly Freedom Foods Group Limited) for admitted contraventions of the company's continuous disclosure obligations</p>
<p><i>Australian Energy Regulator v Santos Direct Pty Ltd</i> [2024] FCA 579</p>	<p>Appeared for Santos in civil penalty proceedings regarding the record keeping obligations in the capacity auction under the National Gas Rules</p>
<p><i>ASIC v Noumi Ltd</i> [2024] FCA 495 and [2024] FCA 349</p>	<p>Appeared for ASIC in proceedings concerning whether legal professional privilege waived in investigation report provided to ASIC under a voluntary disclosure agreement</p>
<p><i>ACCC v Master Wealth Control Pty Ltd</i> [2024] FCA 344 (liability); [2024] FCA 703 (public interest immunity); [2024] FCA 795 (penalty)</p>	<p>Appeared for the ACCC in civil penalty proceedings against DG Institute and Dominique Grubisa alleging false or misleading representations made to students in promoting and delivering wealth seminars</p>
<p><i>Australian Energy Regulator v AGL Loy Yang Marketing Pty Ltd</i> [2023] FCA 1299</p>	<p>Appeared for the AER in civil penalty proceedings about AGL's Loy Yang and Bayswater power stations not complying with dispatch instructions to provide contingency frequency services</p>
<p><i>ACCC v Fujifilm Business Innovation Australia Pty Ltd</i> [2022] FCA 928 and (2021) 150 ACSR 165; [2021] FCA 153</p>	<p>Appeared for the ACCC in proceedings regarding unfair contract terms used in Fuji's small business contracts</p>

<i>AER v Hornsdale Power Reserve Pty Ltd</i> [2022] FCA 738	Appeared for the AER in civil penalty proceedings about the Hornsdale 100MW battery not complying with dispatch instructions to provide contingency frequency services
<i>ACCC v IVF Finance Pty Limited (No 1)</i> [2021] FCA 1266 and (No 2) [2021] FCA 1295	Appeared for Healius Limited in proceedings brought by the ACCC to restrain the sale of a fertility business
<i>ASIC v TAL Life Ltd (No 2)</i> (2021) 389 ALR 128; (2021) 150 ACSR 224; [2021] FCA 193	Appeared for TAL in proceedings brought by the ASIC alleging misleading or deceptive conduct and breach of the duty of utmost good faith
<i>Vodafone Hutchison Australia Pty Ltd v ACCC</i> [2020] FCA 117	Appeared for Vodafone Hutchison Australia in proceedings against the ACCC for declaratory relief to allow its merger with TPG to proceed
<i>Corporations law, insolvency and general commercial proceedings</i>	
<i>Ramsay Health Care Australia v Australian Nursing Federation Industrial Union of Workers Perth</i> [2024] FCA 519	Appeared for Ramsay in proceedings alleging misleading or deceptive conduct by the union respondent in its print and radio advertising
<i>Binqld Finances Pty Ltd (In Liq) v Binetter</i> [2024] FCA 361	Appeared for applicants in interlocutory proceedings concerning whether time period for claim for statutory compensation under the Corporations Act is capable of extension
<i>Re Suncoast Cabs Ltd</i> [2023] FCA 1605 and [2024] FCA 56	Appeared for Suncoast Cabs Ltd in relation to a scheme of arrangement for the acquisitions of its shares
<i>Potts v National Australia Bank Limited</i> (2023) 98 ALJR 81; [2023] HCA 41	Appeared for NAB in the appeal by the former CFO concerning whether the company was a concurrent wrongdoer for the purposes of proportionate liability defences relied upon by the former CFO to reduce his liability to NAB
<i>nib Holdings Ltd v Raffy Nominees Pty Ltd as trustee of Whitecoat Holding Trust</i> [2023] NSWSC 715 and [2023] NSWSC 1036	Appeared for nib to recover a loan made to a co-investor in the Whitecoat healthcare review platform, including defending a cross-claim alleging breach of fiduciary duty as joint venturers
<i>Alto Pty Ltd v General Motors Australia and New Zealand Pty Ltd (formerly GM Holden Pty Ltd)</i> [2023] NSWSC 759	Appeared for General Motors' Australian subsidiaries in relation to plaintiff's application for approval to make §1782 application under Title 28 of the United States Code

<i>DSHE Holdings Ltd (Receivers and Managers) (in liq) v Potts</i> (2022) 405 ALR 70; [2022] NSWCA 165 and (No 2) [2022] NSWCA 258	Appeared for the receivers in the appeal against the former CEO and CFO of Dick Smith and for NAB in the appeal by the CFO
<i>Melbourne Aircraft Leasing (UK) Ltd v Algeri in their capacity as joint and several Trustees of Project Volar Creditors' Trust</i> (2022) 161 ACSR 569; [2022] NSWSC 443	Appeared for several lessors of aircraft to the Virgin Group in relation to whether the <i>Lundy Granite</i> principle afforded priority to the aircraft rent during the administration
<i>Re Aventus Holdings Ltd and Aventus Capital Ltd as responsible entity of Aventus Retail Property Fund</i> [2021] NSWSC 1711 and [2022] NSWSC 266	Appeared for the acquirer on a scheme of arrangement to acquire the Aventus Retail Property Fund
<i>Martin v Norton Rose Fulbright Australia</i> (2021) 289 FCR 369; (2021) 395 ALR 413; [2021] FCAFC 216	Appeared for Norton Rose Fulbright Australia in relation to a dispute with a former partner
<i>Re Home Consortium Developments Limited</i> [2021] NSWSC 1476 and [2021] NSWSC 1708	Appeared for the proponent of a scheme of arrangement to restructure a stapled group
<i>SIF Holdings Pty Ltd v CRC Gosford Pty Ltd</i> (2021) 392 ALR 697; [2021] NSWCA 174	Appeared for the respondent on an appeal concerning the proper construction of a trust and other transaction documents and whether the equitable doctrine of subrogation was enlivened
<i>Westpac Banking Corp v Forum Finance Pty Ltd</i> [2021] FCA 807	Appeared for Westpac in connection with proceedings to wind up a company that was alleged to have been used to defraud Westpac using forged lease finance facilities
<i>DSHE Holdings Ltd v Abboud (No 3); National Australia Bank Ltd v Abboud (No 4)</i> (2021) 155 ACSR 1; [2021] NSWSC 673 and <i>DSHE Holdings Ltd v Abboud (No 4); National Australia Bank Ltd v Abboud (No 5)</i> [2022] NSWSC 91	Appeared for the receivers of and lenders to Dick Smith in proceedings against the former directors of the listed company that operated the Dick Smith business, which was heard over 64 hearing days, commencing in March 2020 and concluding in February 2021
<i>Binqlid Finances Pty Ltd (In Liq) v Israel Discount Bank Ltd</i> (2020) 384 ALR 148; (2020) 147 ACSR 342; [2020] FCA 1208	Appeared for the liquidators in proceedings against an Israeli bank alleging it knowingly assisted directors of certain Australian companies to engage in tax fraud in Australia causing loss to those companies
<i>Re Equititrust Ltd</i> [2019] FCA 1063	Appeared for the auditors in an action by the liquidators alleging professional negligence in the conduct of certain compliance plan audits

<i>Crown Sydney Property Pty Ltd & Lendlease (Millers Point) Pty Ltd v Barangaroo Delivery Authority</i> [2018] NSWSC 1931	Appeared for the Barangaroo Delivery Authority in relation to the “sight lines” dispute with Crown and Lend Lease
<i>BCI Finances Pty Ltd (in liq) v Binetter</i> (2018) 362 ALR 597; (2018) 132 ACSR 1; [2018] FCAFC 189	Appeared for the liquidators in proceedings against the former directors of companies that they involved in a tax fraud scheme
Class actions	
<i>Ingram as trustee for the Ingram Superannuation Fund v Ardent Leisure Limited (Settlement Approval)</i> [2024] FCA 836	Appeared for Woodsford, intervening as litigation funder, in relation to deductions from settlement sum, including funder’s success fee.
<i>J Wisbey & Associates Pty Ltd v UBS AG</i> [2024] FCA 147 and [2021] FCA 36	Appeared for Citi in a class action alleging cartel conduct in the foreign exchange market from 2008 to 2013, including in application for soft class closure orders
<i>Ghee v BT Funds Management Limited</i> [2023] FCA 1553	Appeared for BT Funds Management Limited and Westpac Life Insurance Services Limited in a class action brought by former members of two superannuation funds
<i>Sanda v PTTEP Australasia (Ashmore Cartier) Pty Ltd</i> [2022] FCA 1409 and [2023] FCA 143	Appeared for PTTEP AA in relation to the opt out and settlement approval process for the Montara class action, having appeared for PTTEP AA at the initial trial in 2019
<i>Giabal Pty Ltd v Gunns Plantations Ltd (in liq)</i> [2020] NSWSC 1070 , [2022] NSWSC 1557 , [2023] NSWSC 184 and [2023] NSWSC 201	Appeared for the auditors in a class action alleging professional negligence in the conduct of certain compliance plan audits of forestry schemes
<i>Goodwin v HBCA Pty Ltd</i> [2022] FCAFC 166	Appeared for the appellants in relation to security for costs orders made in a class action brought by Hog’s Breath Cafe franchisees
<i>Sanda v PTTEP Australasia (Ashmore Cartier) Pty Ltd (No 1)</i> [2017] FCA 14 ; (No 2) [2017] FCA 644 ; (No 3) [2017] FCA 1272 ; (No 4) [2018] FCA 74 ; (No 5) [2019] FCA 932 ; (No 6) [2019] FCA 1853 ; (No 7) [2021] FCA 237 and (No 8) [2021] FCA 1291	Appeared for PTTEP AA in a class action brought by Indonesian seaweed farmers arising from an oil spill in 2009 at the Montara oil well