

Michael Christie SC

6 Selborne Wentworth Chambers

174 Phillip Street

Sydney 2000

Phone: +61 2 9221 7118

Email: mchristie@sixthfloor.com.au

Michael Christie is a Senior Counsel who practises primarily in commercial law. Michael has an extensive practice in complex contractual disputes, including those involving large infrastructure projects and the energy and resources sector. He has acted for major global corporations including Siemens, Shell, General Electric, Kawasaki Heavy Industries and ABB. He has appeared in landmark cases.

Michael has appeared in many appeals in construction related disputes, as well as in broader areas of commercial law, public law, industrial law and taxation law.

His areas of expertise include misleading and deceptive conduct, equity, restitution (unjust enrichment) and commercial, construction and employment contracts.

Michael is a graduate of the University of Sydney and Oxford University where he obtained the post-graduate degree of Bachelor of Civil Law (BCL) with First Class Honours (ranking first in his year amongst overseas graduates).

He has undertaken the Executive Education Program on Mediating Disputes at Harvard Law School.

He has appeared in various jurisdictions, including the High Court of Australia, the Federal Court of Australia, the Supreme Courts of New South Wales, Victoria, Queensland, South Australia, Western Australia and the Northern Territory and in commercial arbitrations and hearings conducted by Court-appointed referees. He has appeared in Singapore-seated international commercial arbitrations and is a Registered Foreign Lawyer, Singapore International Commercial Court. 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 Melbourne University Law School's Masters Program. He also taught taxation law (part-time) in the Department of Accounting in the University of Sydney. He has published articles in leading journals in England and Australia including the *Modern Law Review* (London) and the *Melbourne*

University Law Review, and is a contributor to *Principles of Equity* (2nd Ed., 2003) (edited by Professor P. Parkinson with a foreword by Sir Anthony Mason).

Michael is also a member of the New South Wales Legal Profession Admission Board's Examinations Committee.

Michael has been recognised by leading international legal directories, including Chambers and Partners Asia-Pacific, Who's Who Legal and Legal 500.

He is General Editor of the *Building and Construction Law Journal*, published by Thomson Reuters.

SELECTED SIGNIFICANT RECENT CASES (since 2014)

High Court of Australia

Probuild Constructions (Aust.) Pty Ltd v Shade Systems Pty Ltd (2018) 264 CLR 1 (contracts, administrative law).

Maxcon Constructions Pty Ltd v Vadasz (2018) 264 CLR 46 (contracts, judicial review).

Southern Han Breakfast Point Pty Ltd (in liq.) v Lewence Construction Pty Ltd (2016) 260 CLR 340 (contracts, statutory interpretation).

Court of Appeal of the Supreme Court of New South Wales

EnerMech Pty Ltd v Acciona Infrastructure Projects Australia Pty Ltd [2024] NSWCA 162 (performance bonds, security of payment).

Bhatt v YTO Construction Pty Ltd [2023] NSWCA 318 (misleading and deceptive conduct, meaning of "in trade or commerce").

Demex Pty Ltd v McNab Building Services Pty Ltd (2023) 113 NSWLR 282; [2023] NSWCA 261 (administrative law, security of payment legislation).

BSA Advanced Property Solutions (Fire) Pty Ltd v Ventia Australia Pty Ltd (2022) 108 NSWLR 350; [2022] NSWCA 82 (contracts, statutory interpretation, jurisdictional fact, security of payment legislation). The Court comprised a bench of 5 judges.

Pittmore Pty Ltd v Chan (2020) 104 NSWLR 62; [2020] NSWCA 344 (joint venture, ancillary liability for procuring breach of fiduciary duty, unconscionability, law of deeds).

Mistrina Pty Ltd v Australian Consulting Engineers Pty Ltd [2020] NSWCA 223 (misleading and deceptive conduct, causation and remoteness, loss of opportunity) (special leave refused by the High Court of Australia: *Australian Consulting Engineers Pty Ltd v Mistrina Pty Ltd* [2021] HCASL 52).

Seymour Whyte Constructions Pty Ltd v Ostwald Bros Pty Ltd (in liq) (2019) 99 NSWLR 317; 365 ALR 345; 133 ACSR 139; [2019] NSWCA 11 (company liquidation and insolvency, rectification of contract, election, construction industry security of payment legislation, constitutional law, statutory interpretation). The Court comprised a bench of 5 judges.

Goodwin Street Developments Pty Ltd v DSD Builders Pty Ltd (2018) 98 NSWLR 712 (good faith in administrative law, statutory interpretation).

Cockram Constructions Ltd v Fulton Hogan Construction Pty Ltd (2018) 97 NSWLR 773 (administrative law, scope of the duty to give reasons, statutory function of adjudicators).

Kawasaki Heavy Industries Ltd v Laing O'Rourke Australia Construction Pty Ltd (2017) 96 NSWLR 329 (performance bonds, injunctions, international commercial arbitration).

Shade Systems Pty Ltd v Probuild Constructions (Aust.) Pty Ltd (No. 2) (2016) 95 NSWLR 157 (contracts, administrative law, principle of legality). The Court comprised a bench of 5 judges.

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 (first instance)

G&S Engineering Services Pty Ltd & anor v MACH Energy Australia Pty Ltd (\$740m cross-claim for alleged misleading and deceptive conduct in connection with a contract to construct a coal processing plant; matter set down for hearing in the Supreme Court of NSW (Stevenson J) from August to November 2024 – settled after 3 weeks of hearing).

Ganghui Pty Ltd v YTO Construction Pty Ltd [2023] NSWSC 729 (dispute about alleged outstanding payment and alleged misleading and deceptive conduct in relation to \$32m construction project).

Fitz Jersey Pty Ltd v Atlas Construction Group Pty Ltd (in liq) (2021) 39 ACLC ¶21-067; [2021] NSWSC 1692 (directors' duties, law of dividends, voidable transactions, tracing; dispute concerning \$180m construction contract).

G&S Engineering Services Pty Ltd & anor v MACH Energy Australia Pty Ltd (No 3) [2020] NSWSC 1721 (contractual limits to liability for alleged misleading and deceptive conduct).

Federal Court of Australia

CPB Contractors Pty Limited v Celsus Pty Limited (formerly known as SA Health Partnership Nominees Pty Ltd) (No 2) (2018) 268 FCR 590; (2018) 133 ACSR 106;

[2018] FCA 2112 (commercial arbitration, constitutional law, court-appointed referees (claim in excess of \$700m)).

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

New Standard Energy PEL 570 Pty Ltd v Outback Energy Hunter Pty Ltd (2019) 135 SASR 469; [2019] SASFC 132 (Full Court); *Outback Energy Hunter Pty Ltd v New Standard Energy PEL 570 Pty Ltd* [2018] SASC 8 (oil and gas joint venture dispute) (special leave refused by the High Court of Australia; *New Standard Energy PEL 570 Pty Ltd v Outback Energy Hunter Pty Ltd* [2020] HCASL 81).

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).

International Commercial Arbitration

International arbitration pursuant to the rules of the International Chamber of Commerce with the seat in Singapore (private hearing before a panel of three international arbitrators in relation to one of the world's largest natural gas projects). (Current).

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).

OTHER SIGNIFICANT CASES AND MATTERS

Further information about significant cases and matters can be provided on request.

SELECT PUBLICATIONS

Commercial and Corporations Law and Equity

Contributing author of *Principles of Equity* (Lawbook Co., 2nd Ed., 2003 (edited by Professor P. Parkinson, with a foreword 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.

Construction Contracts and Commercial Arbitration

Book review of *Arbitration in Singapore – A Practical Guide* by the Honourable Chief Justice Sundaresh Menon (Editor-in-Chief) (Sweet & Maxwell, 2nd Ed., 2018), in (2019) 35 *Building and Construction Law Journal* 4.

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

“The Relationship between Security of Payment Laws and Insolvency” (co-authored with David Hume) (a paper presented to the Society of Construction Law Australia Annual Conference, Melbourne, 15 June 2024).

Book review of *Commercial Arbitration in Australia under the Model Law* (3rd Ed.), by Doug Jones AO and Janet Walker CM in (2023) 39 *Building and Construction Law Journal* 138.

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* (12th Ed., 2010) in (2011) 27 *Building and Construction Law Journal* 144.

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.

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

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

General Editor, *Building and Construction Law Journal* (published by Thomson Reuters).

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

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

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).

Formerly secretary, Company Law Discussion Group, Sydney.

Member, Selden Society.

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