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EXPERTISE:

David Thomas SC has over 20 years' experience acting in complex commercial and civil litigation across Australia. He is widely recognised as a leading senior counsel and appears at both trial and on appeal, including in the High Court. He has a particular interest in:

- Appeals
- Class Actions (consumer, superannuation, securities, product liability and industrial)
- Regulatory litigation
- Commercial matters
- Mergers & Acquisitions / Takeovers / Schemes of Arrangement
- Tax
- Constitutional Law

EDUCATION AND BACKGROUND:

David was awarded University Medals in both Law and History at the University of Sydney. David subsequently received a BCL (with Distinction) from the University of Oxford, while holding the Menzies Memorial Scholarship in Law. Prior to coming to the Bar, David was Associate to Justice William Gummow AC at the High Court of Australia and a solicitor at Mallesons Stephen Jaques (now Mallesons) in Sydney.

PROFESSIONAL RECOGNITION:

David is recognised as a leading senior counsel in multiple peer review publications across a wide variety of areas.

- ***Chambers & Partners***
    - Dispute Resolution: The Bar
        - "David is a rare silk that combines effective courtroom advocacy with intelligent decision-making, excellent written advocacy and user-friendliness"

Liability limited by a scheme under the professional standards legislation

- ***Best Lawyers in Australia***
    - Class Action Litigation (including recognition in 2022 and 2025 as Class Action Lawyer of the Year)
    - Commercial Law
    - Litigation
    - Tax Law
- ***Doyles Guide to Leading Barristers***
    - Leading Commercial Litigation & Dispute Resolution Senior Counsel
    - Leading Class Action Senior Counsel
    - Leading White Collar Crime and Regulatory Investigation Senior Counsel
    - Leading Tax Senior Counsel
- ***Lexology (formerly, Who's Who Legal)***
    - Leading Senior Counsel, Tax

PROFESSIONAL ROLES:

- Chair, Practice Development Committee, NSW Bar Association
- Co-Convenor, Commercial Law Section, NSW Bar Association
- Chair, Cyber Resilience Working Group, NSW Bar Association
- Member, Professional Conduct Committee, NSW Bar Association

SELECTED CURRENT AND COMPLETED MATTERS:

Appellate – High Court of Australia

David has appeared in numerous appeals, original jurisdiction matters and applications for special leave in the High Court of Australia. Matters include:

- *Brady v NULIS Nominees (Australia) Limited* (ongoing) – defending a superannuation trustee in the first class action to reach judgment concerning the duties of trustees under the SIS Act and general law

- *Chu v Lin* [2026] HCADisp 14 – acting for the respondents in proceedings alleging breaches of trust and fiduciary duty in connection with an SIV managed investment scheme

- *Driver v Botanical Water Technologies Pty Ltd* [2025] HCADisp 270 – acting for the respondent in proceedings concerning breach of fiduciary duty and alleged oppressive conduct

- *Atanaskovic v Birketu Pty Ltd* [2024] HCASL 117 – acting for the respondent in proceedings concerning the *Chorley* exception

- *Vanderstock v State of Victoria* [2023] HCA 30 – landmark proceedings concerning the constitutional validity of usage charges for zero and low emission vehicles

- *HSBC Bank Australia v Potts* [2023] HCA Trans 49 – acting for HSBC in the mammoth Dick Smith litigation

- *Comptroller of Customs v Zappia* [2018] HCA 54 – accessorial liability under the Customs Act

- *Sheahan v Crossman* [2017] HCATrans 75 – defending a claim for fraudulent misappropriation of trust assets

- *Air New Zealand v Australian Competition and Consumer Commission* [2017] HCA 21 – market definition in relation to alleged air cargo restrictive practices

- *Cunningham v Commonwealth of Australia* [2016] HCA 39 – constitutional validity of changes to parliamentary entitlements

- *Queensland Nickel v Commonwealth of Australia* [2015] HCA 12 – constitutional validity of the Commonwealth's carbon tax

- *Wellington Capital v Australian Securities and Investments Commission* [2014] HCA 43 – role of responsible entities under the managed investment scheme regime

- *Sidhu v van Dyke* [2014] HCA 19 – proprietary estoppel

- *Lee v Commonwealth of Australia* [2013] HCA 39 – examination orders under Proceeds of Crime legislation

- *Fortescue Metals Group v Commonwealth of Australia* [2013] HCA 34 – constitutional validity of the mining tax

- *Mills v Commissioner of Taxation* [2012] HCA 51 – franking credit anti-avoidance regime

- *Michael Wilson & Partners v Nicholls* [2011] HCA 48 – apprehended bias and breach of fiduciary duty

- *Aid/Watch v Commissioner of Taxation* [2010] HCA 42 – rejection of the political objects doctrine for charitable trusts

- *Hogan v Australian Crime Commission* [2010] HCA 21 – confidentiality and non-disclosure orders

- *CGU Insurance v Porthouse* [2008] HCA 30 – coverage under 'known circumstance' insurance policies

Appellate - intermediate appellate courts

David has appeared in numerous intermediate appellate matters across Australia. Recent decisions include:

- *Zentree Investments Limited v North Limited* (Full Federal Court, ongoing) – acting for a subsidiary of Rio Tinto in an appeal concerning the Jabiluka uranium resource

- *ASIC v Sharp & Ors* (NSW Court of Appeal, ongoing) – acting for two non-executive directors of Rex airlines in an appeal concerning directors duties and continuous disclosure

- *Plus500AU Ltd v Aghaeirad* [2026] FCAFC 125 – acting for Plus500 Ltd in an appeal concerning the arbitrability of class actions

- *ASIC v HCF Life* [2026] FCAFC 81 – defending HCF Life in only the second appellate consideration of the unfair terms regime in connection with insurance contracts

- *Brady v NULIS Nominees (Australia) Limited* [2026] FCAFC 68 – defending a superannuation trustee in the first class action to reach judgment concerning the duties of trustees under the SIS Act and general law

- *Chu v Lin* [2025] FCAFC 130 – acting for the respondents in Full Federal Court proceedings alleging breaches of trust and fiduciary duty in connection with an SIV managed investment scheme

- *Driver v Botanical Water Technologies Pty Ltd* [2025] NSWCA 162 – acting for the respondent in the NSW Court of Appeal proceedings concerning breach of fiduciary duty and alleged oppressive conduct

- *Pesec v Zivko* [2024] ACTSC 325; [2025] ACTCA 37 – defending the CEO of a large construction company in oppression proceedings

- *Commissioner of Taxation v Hannover Life Re of Australasia Ltd* [2024] FCAFC 23 – acting for the appellant in a dispute concerning GST attributes of life insurance businesses

- *Atanaskovic v Birketu Pty Ltd* [2023] NSWCA 312 – acting for the appellant in the NSW Court of Appeal proceedings concerning the *Chorley* exception

- *HSBC Bank Australia v Potts* [2022] NSWCA 165 – acting for HSBC in the mammoth Dick Smith litigation

- *Hancock v Hancock Prospecting Pty Ltd* [2022] NSWCA 152 – acting for children of Gina Rinehart in a challenge to composition of an arbitral tribunal

- *Rinehart v Rinehart* [2022] NSWCA 66 – acting for children of Gina Rinehart in appeal concerning access to documents of the billion-dollar Hancock Trust

- *Commissioner of Taxation v Burswood Nominees* [2021] FCAFC 151 – acting for the appellant in a dispute concerning GST attributes of casino junkets

- *Rinehart v Rinehart* [2021] NSWCA 233; [2021] NSWCA 228; [2020] NSWCA 221 – acting for children of Gina Rinehart in multiple appeals concerning the billion-dollar Hancock Trust

- *TX Australia Ltd v Australian Competition and Consumer Commission* [2021] FCAFC 113 – acting for the appellant in appeal concerning the transmitter access regime

- *Maxi EFX Global v Australian Securities and Investments Commission* [2021] FCAFC 59 – acting for ASIC in a proceeding concerning compulsory access to documents

- *Augusta Ventures Limited v Mt Arthur Coal Pty Ltd* [2020] FCAFC 194 – acting for the respondent concerning the availability of security for costs in IR class actions

- *Greig v Commissioner of Taxation* [2020] FCAFC 25 – acting for the respondent in an appeal concerning the anti-avoidance regime

- *Network Ten v TX Australia* [2019] NSWCA 51; [2018] NSWCA 312 – acting for Australia's largest broadcast infrastructure company in proceedings concerning the compulsory buy-out of shares in TX

- *Deputy Commissioner of Taxation v Rennie Produce* [2018] FCAFC 38 – acting for the Commissioner in an appeal concerning the scope of the Harman principle

- *Sheahan v Crossman* [2016] NSWCA 200 – defending a claim for fraudulent misappropriation of trust assets in the High Court and NSW Court of Appeal

- *RinRim v Deutsche Bank AG* [2017] NSWCA 169 – acting for Primary Health Care in proceedings concerning the lawfulness of an Accelerated Renounceable Entitlement Offer

Class Actions

- *Johnston v Hyundai Motor Company Australia; Moroney v Kia Australia* (Victorian Supreme Court, ongoing) – defending Hyundai and Kia in separate proceedings alleging defective anti-lock braking systems

- *HGG26 v Fortescue Limited* (Federal Court, ongoing) – defending Fortescue in claims under the sex discrimination regime

- *Torley v Hyundai Motor Company Australia Ltd*; *Schleehauf v Kia Australia Pty Ltd & Anor* (Federal Court, ongoing) – defending Hyundai and Kia in separate proceedings alleging defective engine systems

- *DA Lynch v Star Entertainment Group* (Victorian Supreme Court, ongoing) – defending Star in a securities class action arising from the Bell inquiry

- *Tippett v Premoso Pty Ltd & Ors* (Federal Court, ongoing) – defending GM in an allegedly defective vehicles product liability class action

- *Holt v Mitsubishi Motors Corporation* (Federal Court, ongoing) – defending Mitsubishi in an allegedly defective vehicles product liability class action

- *Aghaeirad v Plus500AU Pty Ltd & Ors* (Federal Court, ongoing) – defending a class action brought against several entities within the Plus500 CFD provider

- *Ridgewell v Rebel Sport Limited* (Federal Court, ongoing) – defending Rebel in an alleged underpayment class action

- *Bain v International Capital Markets* (Federal Court, ongoing) – defending a consolidated class action brought against an Australian provider of CFD products

- *Greentree v Jaguar Land Rover Australia & Anor* (Federal Court, ongoing) – defending Jaguar Land Rover UK in a product liability class action concerning alleged defects in vehicle exhaust filtration systems

- *Alford v AMP Superannuation Limited & Ors* (Federal Court, settled in 2025 after a six week trial) – defending administration entities within the AMP Group in a class action concerning alleged breaches of statutory and general law duties

- *Fox v Westpac Banking Corporation* (Victorian Supreme Court, settled in 2025 after a six week trial) – defending Westpac and St George Bank in a class action concerning the lawfulness of automotive flex commissions

- *Anderson-Vaughan v AAI Limited* (Victorian Supreme Court, settled in 2025 shortly before trial) – defending Suncorp in a class action concerning the lawfulness of add-on insurance

- *Brady v NULIS Nominees (Australia) Limited* [2022] FCA 224; [2021] FCA 999; [2021] FCA 1517; [2024] FCA 1374 – defending a superannuation trustee in the first class action to reach judgment concerning the duties of trustees under the SIS Act and general law

- *Boulos v MRVL Investments Pty Ltd* [2024] FCA 1377 – defending the Merivale Group in an industrial relations class action concerning wage entitlements

- *Fisher v BT Funds Management* [2024] FCA 1340 – defending two superannuation trustees in a class action alleging breaches of the SIS Act and general law

- *Kemp v Westpac Banking Corporation* [2023] FCA 830; [2021] FCA 1366; [2020] FCA 1392 – defending Westpac in a class action concerning the lawfulness of certain consumer credit insurance products

- *Turner v TESA Mining (NSW) Pty Ltd* [2022] FCA 435 – defending a subsidiary of BHP in an industrial relations class action concerning outsourcing and casual employees

- *Clark v National Australia Bank* [2020] FCA 652; [2019] FCA 933 – defending NAB in the first class action brought arising out of the Banking Royal Commission

- *Asirifi v Swann Insurance* [2020] FCA 1885; [2021] FCA 459 – defending Swann in a Federal Court class action concerning the lawfulness of add-on motor vehicle insurance

- *Clurname v McGraw Hill* [2018] FCA 1289 – amicus curiae in multiple Federal Court class actions concerning collateralised debt obligations and the then largest funder commission in Australian history

- *Dillon v RBS Group* [2018] FCA 395; [2017] FCA 896 – defending RBS in a Federal Court class action concerning rolling warrants

- *Pathway Investments Pty Ltd v National Australia Bank* [2012] VSC 72; [2012] VSC 97 – defending NAB in a $450m class action arising out of the valuation of various collateralised debt obligations (CDOs)

- *Brookfield Multiplex Limited v International Litigation Funding Partners Pte Ltd* (2009) 180 FCR 11 – acting for defendants in a landmark class action that found litigation funded proceedings were illegal managed investment schemes

Regulatory litigation and inquiries

- *ASIC v Equity Trustees Superannuation Limited* (Federal Court, ongoing) – defending Equity Trustees in proceedings flowing from the collapse of the Shield Master Fund

- *ASIC v Netwealth Investments Limited* [2026] FCA 1186 – defending Netwealth in proceedings flowing from the collapse of First Guardian Master Fund

- *ASIC v AustralianSuper* (Federal Court, ongoing) – defending AustralianSuper in proceedings alleging failures in death benefit claims

- *ASIC v Fiducian Investment Management Services Limited* [2026] NSWSC 959 – defending Fiducian in alleged greenwashing contraventions

- *ASIC v Regional Express Airlines (Rex) Limited* [2026] NSWSC 756 – defending non-executive directors in proceedings concerning alleged breach of directors duties

- *ASIC v ASX Limited* [2026] FCA 862 – acting for ASIC in proceedings alleging misleading and deceptive conduct by the operator of Australia's primary securities exchange arising out of its CHESS replacement project

- *ASIC v Nuix Limited* [2026] FCA 490 – defending the former CEO of Nuix in proceedings concerning the accuracy of market disclosures

- *ASIC v National Australia Bank* [2025] FCA 947 – defending NAB in proceedings brought by ASIC under the National Consumer Code

- *ASIC v Macquarie Bank* [2024] FCA 416 – defending Macquarie in Federal Court proceedings concerning fraud systems and controls in its cash management product suite

- *ASIC v PayPal Australia* [2024] FCA 762 – defending PayPal in proceedings concerning the alleged unfairness of contract terms

- *ASIC v HCF Life* [2024] FCA 1240 – defending HCF Life in test case proceedings concerning the alleged unfairness of pre-existing condition clauses in accident insurance

- *ASIC v MLC Limited* [2023] FCA 539 – defending MLC Insurance in Federal Court proceedings concerning three challenges to certain life insurance products.

- *ASIC v Westpac Banking Corporation (Omnibus)* [2022] FCA 515 – defending Westpac in Federal Court proceedings concerning duplicate policies of insurance

- *ASIC v Westpac Banking Corporation (The Consumer Credit Insurance Case)* [2022] FCA 359 – defending Westpac in Federal Court proceedings concerning the lawfulness of its consumer credit insurance product suite

- *ASIC v Rio Tinto* [2022] FCA 184 – defending Rio Tinto in Federal Court proceedings concerning market disclosures arising from the multi-billion dollar Mozambique Riversdale acquisition

- *ASIC v Aware Financial Services* [2022] FCA 146 – defending Aware in fees for no service proceedings

- *ASIC v National Australia Bank* [2021] FCA 1013 – defending NAB in Federal Court proceedings concerning the lawfulness of ongoing fee arrangements

- *ASIC v Union Standard International Group* [2020] FCA 603; [2020] FCA 1871; [2020] FCA 1263 – acting for ASIC in Federal Court proceedings concerning margin FX products

- *ASIC v MLC Nominees* [2020] FCA 1306 – defending Australia's largest retail superannuation trustee in the first 'fee for no service' proceedings arising out of the Banking Royal Commission

- *Banking Royal Commission* (2018 – 2019) – acting for National Australia Bank

- *ASIC v National Australia Bank* [2017] FCA 1338 – defending NAB in Federal Court proceedings concerning alleged market misconduct in the operation of Bank Bill Swap Rate (BBSW)

- *Independent Commission Against Corruption v Kinghorn* [2015] NSWCA 342 – overturning adverse findings of ICAC, in the first such successful challenge in almost 25 years

General commercial matters

- *Greensill Bank v IAL* (Federal Court, ongoing) – defending IAL in multiple proceedings worth around $7 billion arising from the collapse of the Greensill Group of companies

- *In the matter of North Limited and ERA* [2026] FCA 695 – acting for a subsidiary of Rio Tinto in contested compulsory acquisition proceedings concerning the Jabiluka uranium resource

- *Driver v Botanical Water Technologies Pty Ltd* [2024] NSWSC 1409; [2025] NSWCA 162 – acting for the plaintiff in wide-ranging proceedings concerning valuable water technology and alleged oppressive conduct

- *Pesec v Zivko* [2024] ACTSC 325; [2025] ACTCA 37 – defending the CEO of a large construction company in oppression proceedings

- *Firmtech Aluminium v Xie* [2024] NSWSC 1293 – acting for the plaintiff in proceedings alleging oppressive conduct and breach of duties by a co-venturer

- *Chu v Lin* [2024] FCA 766; [2025] FCAFC 130 – acting for the plaintiffs in proceedings alleging breaches of trust and fiduciary duty in connection with an SIV managed investment scheme

- *Tyro Payments Ltd v Kounta Pty Ltd* [2023] NSWSC 1384 – acting for the plaintiff in proceedings enforcing a contractual restraint of trade concerning point of sale terminals and software

- *National Australia Bank v Human Group* [2023] NSWSC 360; [2023] NSWSC 28; [2020] NSWSC 1900; [2019] NSWSC 1404 – acting for NAB in proceedings alleging substantial fraud within the office of the CEO

- *HSBC Bank Australia v Potts* [2022] NSWCA 165; [2023] HCA Trans 49 – acting for HSBC in High Court and NSW Court of Appeal litigation concerning the financial performance of the Dick Smith Group in obtaining loan finance

- *Rinehart v Rinehart* (multiple matters) – acting for the Trustee of the billion dollar Hope Margaret Hancock Trust in numerous interlocutory and final proceedings, and appeals, against Gina Rinehart and Hancock Prospecting

- *Perpetual Investment Management Limited v RBC Investor Services Trust* (NSW Supreme Court, ongoing) – acting for RBC in proceedings concerning an alleged breach of a custody agreement

- *Seven Network (Operations) Limited v Gravity Media (Australia)* (NSW Supreme Court, settled on eve of trial) – acting for Seven in proceedings alleging breaches of an Umbrella Turnkey Deed executed in connection with Olympic broadcast coverage.

- *Katz v Epoch Systems Development* (NSW Supreme Court, settled prior to trial) – acting for Epoch in proceedings alleging breaches of employment and trust agreements

- *Seven Network v Cricket Australia* [2022] FCA 1290; [2021] FCA 1031; [2021] FCA 1032 – acting for Seven in multiple proceedings against Cricket Australia for alleged non-performance of a media rights agreement

- *In the matter of TEN Network Holdings* [2017] NSWSC 1359; [2017] NSWSC 1247 – acting for WIN in proceedings arising from the collapse of Network Ten

- *RBC Investor Services v Brickworks Limited* [2017] FCA 756 – acting for Brickworks in landmark oppression proceedings arising from listed cross-shareholding

- *Bell v Westpac Banking Corporation & Ors* (multiple hearings in the WA Supreme Court, Court of Appeal and High Court) – defending 20 domestic and international banks in Australia's largest commercial dispute

Mergers and Acquisitions

David represents both bidders and targets in many of Australia's largest and most complex acquisitions, including numerous schemes of arrangement. Publicly disclosed clients include *Macquarie Bank*, *Magellan Asset Management, Australian Unity, Pfizer*, *Westfield Corporation*, *Crestone*, *Novomatic*, Cheung *Kong Group*, *Fairfax Media*, *David Jones*, *Alinta*, *Investa*, *Ontario Teachers Pension Plan*, *KKR*, *Cooke Group*, *Spark Infrastructure*, *CSR* and *Cooke Inc.*

Tax

- *McConaghy v Commissioner of Taxation* (Federal Court, settled) – acting for the taxpayers in an alleged imputation scheme

- *Campbelltown Central 2 Pty Ltd v Chief Commissioner of State Revenue* [2025] NSWSC 1568 – acting for the taxpayer in substantial stamp duty proceedings

- *Whitehaven Coal Mining Ltd v Chief Commissioner of State Revenue* [2025] NSWSC 488 – acting for the taxpayer in respect of over $100 million in mining royalty payments – characterisation questions concerning royalty assessments and preclusive doctrines

- *Hannover Life Re of Australasia v Commissioner of Taxation* [2023] FCA 680; [2024] FCAFC 23 – GST treatment of acquisition supplies in a life insurance business

- *Tabcorp Holdings v Commissioner of Taxation* (Federal Court, settled at trial) – tax characterisation of almost $1 billion in payments made to acquire gambling and wagering licences

- *Commissioner of Taxation v Wood* [2023] FCA 574 – acting for the taxpayer in proceedings concerning the tax characterisation of settlement amounts

- *Leppington Pastoral Co v Chief Commissioner of Revenue* [2023] NSWSC 463 – acting for the taxpayer in proceedings concerning the dutiable status of call options and step-in rights

- *Crown Melbourne v Commissioner of Taxation* [2022] HCA Trans 93; [2021] FCAFC 151 – GST characterisation of casino junkets

- *Greig v Commissioner of Taxation* [2020] FCAFC 25 – tax characterisation of share acquisitions under the 'principle' in *Myer Emporium*

- *Deputy Commissioner of Taxation v Rennie* [2018] FCAFC 38 – scope of the Harman principle in tax proceedings

- *Uber BV v Commissioner of Taxation* [2017] FCA 110 – GST treatment of uberX ride services

- *Oswal v Commissioner of Taxation* [2016] FCA 762 – multiple proceedings arising out of the business affairs of the Oswal family

Constitutional law

David has acted for the Commonwealth in several important constitutional matters, including successfully defending challenges to the mining tax, carbon tax, and reform of parliamentary pension entitlements. David also recently acted in the first s 90 High Court challenge since *Ha*.

November 2026