

# **JEREMY KIRK SC**

## **BARRISTER**

### **CURRICULUM VITAE**



#### **OVERVIEW**

Jeremy Kirk SC practises nationally, undertaking both trial and appellate work across a wide range of areas.

He obtained law and arts degrees at the Australian National University, receiving a University Medal for law along with 14 other prizes. He then attended the University of Oxford on a Rhodes Scholarship, obtaining a Masters degree (the BCL) and a doctorate. He was awarded the Vinerian Scholarship at Oxford for the top student in the BCL course. When coming to the bar, he received the Bar Association's prize for coming top of the bar exams.

He has published many articles on constitutional, administrative and tort law.

He has been included in the "Best Lawyers" list (published in the AFR) since its inception, is listed by Chambers & Partners in their barrister rankings, and is recommended as a leading commercial litigation senior counsel in Doyle's Guide.

His main practice areas include:

Appellate

Administrative law

Commercial and corporate law

Constitutional law

Environment and planning law

Industrial law

Professional liability

Public and private international law

Trade practices and competition law

## EXAMPLES OF RECENT LEADING CASES

### *High Court*

Jeremy has appeared in some 45 appeals or original jurisdiction matters in the High Court, including the following recent cases:

*Re Day (No.2)* [2017] HCA 14, and *Re Day (No.1)* (2017) 91 ALJR 262 – appearing for challenger, re whether Mr Bob Day was ineligible to be elected to the Senate

*Alqudsi v The Queen* (2016) 332 ALR 20 – whether constitutional requirement for a jury trial can be waived

*Commonwealth v Director, Fair Work Building Industry Inspectorate; CFMEU v Director, Fair Work Building Industry Inspectorate* (2015) 326 ALR 476 – re whether joint submissions can be made on penalties in pecuniary penalty matters (appearing for the CFMEU and CEPU)

*McCloy v New South Wales* (2015) 257 CLR 178 – constitutional law re restrictions on political donations (appearing for NSW)

*ICAC v Cunneen* (2015) 256 CLR 1 – statutory construction re “corrupt conduct” (appearing for ICAC)

*CEPU v Queensland Rail* (2015) 256 CLR 171 – constitutional and industrial law, re what a “corporation” is for constitutional purposes (appearing for the CEPU)

*ADCO Constructions Pty Ltd v Goudappel* (2014) 254 CLR 1 – workers compensation, affecting some \$350m worth of claims (appearing for WorkCover)

### *NSW Court of Appeal*

*Board of Studies, Teaching and Educational Standards v Vandenoovenkamp* [2016] NSWCA 268 – re effect of a joint parenting order on the ability of one parent to register a child for home schooling

*Botany Bay City Council v NSW* [2016] NSWCA 243 – acting for the State re local council amalgamation

*Willis Australia Group Services Pty Ltd v Mitchell-Innes* [2015] NSWCA 381 – re a contract claim for wrongful termination of employment, including damages issues and the “least burdensome performance rule”

*Waller v James* (2015) 90 NSWLR 634 – medical negligence in a “wrongful birth” case

*NSW v McMaster* (2015) 91 NSWLR 666 – appearing for NSW Police in a civil assault claim re a police shooting

*Cram Fluid Power Pty Ltd v Green* [2015] NSWCA 250, 13 DDCR 262 and 281 – re whether an injured worker can make more than one workers compensation claim (decision having implications for hundreds of millions worth of claims)

*Paul v Cooke* (2013) 85 NSWLR 167 – medical negligence re normative causation and inherent risk

*D’Amore v ICAC* (2013) 303 ALR 242 – challenge to findings by ICAC

*X v Sydney Children's Hospitals Network* (2013) 85 NSWLR 294 – re administration of blood transfusion to a minor who was a Jehovah’s Witness

### **Federal Court – Full Court**

*Chief of Defence Force v Gaynor* [2017] FCAFC 41 – appearing for the CDF re termination of an officer’s commission, raising administrative/constitutional law questions

*Animals Angels EV v Secretary, Dept of Agriculture* (2014) 228 FCR 35 – administrative law

*Financial Services Council Ltd v Industry Super Australia Pty Ltd* (2014) 222 FCR 455 – re whether Fair Work Commission inquiry into default super funds was properly constituted

*Channel Seven Adelaide Pty Ltd v Australian Communications and Media Authority* (2014) 223 FCR 65 – re fault element in criminal offence re tobacco advertising

### **ACT Full Supreme Court**

*Eastman v Director of Public Prosecutions (No.2)* (2014), 9 ACTLR 178, ACTSCFC 2 – Full Court determination re whether to quash a conviction, and whether to order retrial (appearing for ACT DPP)

*Eastman v Director of Public Prosecutions (No.1)* (2014) 9 ACTLR 163, [2014] ACTSCFC 1 – Full Court determination of validity/construction of provisions relating to an inquiry into criminal guilt

### **Federal Court – 1<sup>st</sup> instance**

*ACCC v ANZ and Macquarie Bank* [2016] FCA 1516 – appeared for the ACCC in obtaining pecuniary penalties against 2 banks for cartel conduct in relation to foreign exchange trades

*Humane Society International Inc v Kyodo Senpaku Kaisha Ltd* (2015) 238 FCR 209 – obtaining \$1.0 million contempt of court fine against Japanese whaling company

*Blairgowrie Trading Ltd v Allco Finance Group Ltd & Ors* (2015) 325 ALR 539 – acting for KPMG – Wigney J rejected a “common fund” application near the beginning of class action proceedings (see also *Blairgowrie Trading Ltd v Allco Finance Group Ltd (No 3)* [2017] FCA 330 re settlement of this Allco class action)

*Spencer v Commonwealth & NSW* (2015) 240 FCR 282 – appeared for NSW, successfully defending validity of State native vegetation clearing laws

*Sanofi-Aventis Australia Pty Limited v Minister for Health* (2012) 208 FCR 254 – successful challenge to validity of a regulation re the Pharmaceutical Benefits Scheme

### **NSW Supreme Court**

*Strata Plan 67246 v Oaks Hotels & Resorts (NSW) No.1 Pty Ltd* [2017] NSWSC 299 – appeared for defendant, successfully resisting substantial damages claim re operation of a serviced apartment business in two large strata buildings

*Kaldas v Barbour* [2016] NSWSC 1880 – appeared for both the current and former NSW Ombudsman, successfully resisting an interlocutory injunction re “Operation Prospect”

*Obeid v Ipp & Ors* [2016] NSWSC 1376, appearing for ICAC re claim for misfeasance in public office and breach of procedural fairness

*Metgasco Ltd v Minister for Resources and Energy* [2015] NSWSC 453 – re validity of suspension of an exploration licence

*Waller v James* [2013] NSWSC 497 – wrongful birth case (4 week hearing)

*Panthers Investment Corporation Pty Ltd v Chief Commissioner of State Revenue* (2013) 87 ATR 369 – land tax/trusts

*Re Estate of Edwards* (2011) 81 NSWLR 198 – appearing for NSW Attorney General as amicus curiae, re property interest in deceased husband’s sperm

### ***NSW Land and Environment Court***

Acted for Jemena Ltd in a long-running dispute with Barangaroo Delivery Authority with respect to remediation at Barangaroo – settled August 2016

*Darkinjung Local Aboriginal Land Council v Wyong Coal Pty Ltd (No 2)* (2014) 202 LGERA 223 – re whether a coal mine could proceed without consent of NSW Aboriginal Land Council

*Australians for Sustainable Development Inc v Minister for Planning (the Barangaroo Case)* (2011) 182 LGERA 370 – appeared for challenger to development at Barangaroo in Sydney

*Gwandalan Summerland Point Action Group Inc v Minister for Planning* (2009) 75 NSWLR 269 (the *Catherine Hill Bay case*) – establishing a bias claim against Minister for Planning re large Part 3A concept plan approval

### ***Victorian Supreme Court***

Retained for KPMG in *Bill Express Ltd v Pitcher Partners & Anor* – listed for 6 weeks hearing from February 2016, but settled December 2015

### ***Queensland Supreme Court***

*Groves v Groves* [2013] QSC 277 – forgery & equity claims re Citigroup margin loans entered by Eddy & LeNeve Groves (5 week trial)

### ***Fair Work Commission – Full Bench***

*CFMEU (Construction and General Division) v Port Kembla Coal Terminal Limited* [2015] FWCFB 4075, 251 IR 241 – upholding validity of drug/alcohol testing of employees’ urine & saliva

### ***Commissions of inquiry***

Appeared as counsel assisting in the Child Abuse Royal Commission in Case Studies No.38 and 46, re law reform and policy issues, with a particular focus on tendency/commission evidence and the criminal justice process

### ***Local Court criminal matters***

Appeared for Ms Amber Heard in the Southport Magistrates Court in the prosecution relating to the importation of the dogs owned by Ms Heard and Mr Johnny Depp (2016) – no conviction recorded

Appeared for Universal Dye Works Pty Ltd in the Downing Centre Local Court in the first prosecution brought by the EPA under the *Radiation Control Act 1990* (2016) – no conviction recorded

### ***Administrative Appeals Tribunal***

*Re Ego Pharmaceuticals Pty Ltd and Minister for Health and Ageing* [2012] AATA 210, (2010) 120 ALD 105, and (2010) 120 ALD 71 – overturning a TGA decision not to register a pharmaceutical product on the Therapeutic Goods List

### ***NSW Civil & Administrative Tribunal***

*Council of the NSW Bar Association v Breeze* [2015] NSWCATOD 152 – appeared for a barrister charged with professional misconduct

## **PUBLICATIONS**

‘Justiciability’, forthcoming 2017 in Cheryl Saunders and Adrienne Stone (eds), *Oxford Handbook of the Australian Constitution*, Oxford University Press.

‘The Concept of Jurisdictional Error’, in Neil Williams (ed), *Key Issues in Judicial Review*, 2014, Federation Press, Sydney.

‘The Entrenched Minimum Provision of Judicial Review’ (2004) 12 *Australian Journal of Administrative Law* 64.

‘Conflicts and Choice of Law in the Australian Constitutional Context’ (2003) 31 *Federal Law Review* 247.

‘Sports, Policy and Liability of Sporting Administrators’, co-written with Anton Trichardt, (2001) 75 *Australian Law Journal* 504.

‘Rights, Review and Reasons for Restraint’ (2001) 23 *Sydney Law Review* 19.

‘Constitutional Implications (II): Doctrines of Equality and Democracy’ (2001) 25 *Melbourne University Law Review* 24.

‘Constitutional Implications (I): Nature, Legitimacy, Classification, Examples’ (2000) 24 *Melbourne University Law Review* 645.

‘Administrative Justice and the Australian Constitution’, in Robin Creyke & John McMillan (eds), *Administrative Justice - The Core and the Fringe*, 2000, Australian Institute of Administrative Law, Canberra.

‘Constitutional Interpretation and a Theory of Evolutionary Originalism’ (1999) 27 *Federal Law Review* 323.

‘Constitutional Guarantees, Characterisation and the Concept of Proportionality’ (1997) 21 *Melbourne University Law Review* 1.

‘Still Standing: An Argument for Open Standing in Australia and England’, co-written with Elizabeth Fisher, (1997) 71 *Australian Law Journal* 370.

‘Constitutional Implications from Representative Democracy’ (1995) 23 *Federal Law Review* 37.

## **OTHER EXPERIENCE**

Director of Clonakilla Pty Ltd since 2006

Chairman of Eleven Wentworth Chambers, 2015

On the NSW Rhodes Scholarship Selection Committee 2009-2012 (being Chair of the Committee for the latter two years), and on the Australia-at-Large selection committee 2014