

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 over 40 appeals or original jurisdiction matters in the High Court, including the following recent cases:

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) 325 ALR 15 – 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] NSWCA 228 – 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

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 – 1st instance

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

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

NSW Supreme Court

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 – 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 Study No.38, re law reform and policy issues, with a particular focus on tendency/commission evidence

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