

Kate Williams SC

Kate is an experienced advocate who has practised as a barrister for sixteen years.

Kate has appeared and advised in a wide range of commercial and equity matters, including *Corporations Act* matters, *Competition and Consumer Act* matters, contractual disputes, professional liability claims, disputes relating to the enforcement of guarantees and mortgages, restraint of trade disputes and matters arising under the *International Arbitration Act* and *Commercial Arbitration Act*. She appears regularly in the Federal Court of Australia and the Supreme Court of New South Wales and frequently represents clients at mediation.

Kate has appeared for the Council of the New South Wales Bar Association in professional disciplinary matters concerning barristers, and is frequently called on to advise solicitors in relation to ethical and regulatory issues arising in the course of their practice.

Kate is also an experienced advocate in the Independent Commission Against Corruption.

Contact details:

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Admission to the Bar:

2001

Appointed Senior Counsel:

2016

Principal areas of practice:

- Commercial law & equity
- Professional disciplinary proceedings
- Commissions of Inquiry
- Appellate practice
- Alternative dispute resolution

Commercial law & equity practice

Selected **contractual disputes** in which Kate has appeared or advised include:

- Represented the plaintiff (led by Bret Walker SC and Michael Jones SC, with Christian Bova and Louise Hulmes) in a claim for indemnity under a professional indemnity insurance contract arising out of the design and construction of ships for the New Zealand Navy: *Tenix Holdings Pty Ltd v Olis Insurance Pte Ltd*, no. 2013/381728. The matter was listed for hearing in the Commercial List of the Supreme Court for eight weeks commencing in October 2016 and settled immediately prior to the commencement of the hearing.
- Appeared for the plaintiff in Supreme Court proceedings concerning the construction of an insurance contract and the insurer's liability to pay interest under s 57 of the *Insurance Contracts Act 1984 (Cth)* (led by Andrew Coleman SC): *Ransley v Chubb Insurance Company of Australia Ltd* [2015] NSWSC 1350.
- Appeared for the plaintiff in Supreme Court proceedings claiming damages for breach of contract, negligence and misleading or deceptive conduct. The proceedings settled following a contest about amendments to pleadings: *Omega Air Inc v CAE Australia Pty Limited* [2015] NSWSC 802.
- Advised in relation to the construction of a contract relating to the provision of and payment for health services, in the context of the legal and regulatory arrangements for public funding of local health districts (led by Ian Pike SC).
- Advised in relation to potential claims arising from alleged breaches of a long-term contract for the design, supply and commissioning of complex equipment, and potential claims for alleged pre-contractual misleading or deceptive conduct (led by Alan Sullivan QC).
- Advised in relation to claims in respect of alleged breaches of a long-term contract for the design, construction, testing and implementation of a complex IT system (led by Alan Sullivan QC).
- Advised a public authority in relation to the construction of a long-term lease.
- Appeared for the defendant in Supreme Court proceedings involving the proper construction of a partnership deed and the price payable by the defendant on the exercise of his option to purchase the retiring partner's interest. The proceedings settled at mediation following an interlocutory hearing about pleading and evidential issues: *McLeod v McKendry* [2012] NSWSC 1646.

Selected matters involving allegations of **misleading or deceptive conduct** and/or **unconscionable conduct** in contravention of the *Corporations Act*, the *ASIC Act* and/or the *Competition and Consumer Act* include:

- Advised and appeared for the former company secretary and general counsel of a listed company in Supreme Court proceedings involving alleged misleading representations said to have been relied on by the plaintiff in underwriting the issue of a prospectus for \$600m convertible unsecured notes (led by David Williams SC). The matter settled following interlocutory hearings in relation to the pleadings (*Commonwealth Bank of Australia Limited v ZYX Learning Centres Limited* (2014) 103 ACSR 476, [2014] NSWSC 1676).
- Advised and appeared for the Commonwealth Bank in proceedings to enforce a guarantee and mortgage, in which the defendant guarantor alleged that the bank had acted unconscionably contrary to the *ASIC Act* and/or the *Competition and Consumer Act* in the manner in which it

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had applied payments made by the defendant's co-guarantor to various different loans. The matter settled in December 2014 following mediation.

- Advised and appeared for a cross-respondent in Federal Court proceedings relating to the Clem 7 tunnel in Brisbane (with Ian Pike SC). The cross-claim was a claim for contribution in respect of any liability the respondent may have for misleading or deceptive conduct or negligence in relation to a traffic forecast. The cross-respondent successfully applied to strike out the cross-claim in July 2014: *RiverCity Motorway Finance Pty Limited (Administrators Apptd) (Rcvrs and Mgrs Apptd) v AECOM Australia Pty Limited (No. 2)* [2014] FCA 713.
- Advised and appeared for a cross-defendant in proceedings in the Supreme Court of New South Wales involving the Lane Cove Tunnel. The proceedings were stayed as against that cross-defendant and the whole of those proceedings subsequently settled: *AMP Capital Investors Limited v Parsons Brinckerhoff Australia Pty Limited; Retail Employees Superannuation Pty Limited v AMP Capital Investors Limited* [2013] NSWSC 1633.

Selected **matters arising under the *Corporations Act* and the *ASIC Act*** include:

- Representing ASIC in two matters arising from banning and disqualification orders made following the collapse of Provident Capital Limited. The decision of the Administrative Appeals Tribunal in one matter is reserved and the second matter will proceed to hearing in the second half of 2017.
- Appeared for the plaintiff in a successful application to wind up a company in insolvency, after successfully resisting a secured creditor's application to adjourn the winding up proceedings to allow creditors to consider a proposed deed of company arrangement: *In the matter of Denham Constructions Pty Ltd* [2016] NSWSC 1425.
- Represented employees of different financial institutions in connection with ASIC's investigation into alleged manipulation of the BBSW rate.
- Advised and appeared for defendant directors in Supreme Court proceedings successfully resisting an application for interim injunctions under s 1324 of the *Corporations Act* to restrain alleged breaches of directors' duties (led by Peter Braham SC): *In the matter of Ikon Group Limited* [2015] NSWSC 980.
- Advised and appeared for the responsible entity of a registered managed investment scheme in Supreme Court proceedings involving alleged breaches of duty by the responsible entity in relation to amendments to the scheme constitution (led by Alan Sullivan QC). The proceedings settled in April 2014 prior to final hearing.
- Advised a former director of multiple companies in liquidation in relation to steps taken by ASIC under s 206F of the *Corporations Act* to disqualify him from managing a corporation (led by Andrew Bell SC). The matter concluded in November 2013 without the former director being disqualified.
- Appeared for liquidators in an application for directions approving a deed of release settling claims against the company in liquidation: *Re PM Sulcs & Associates (in liq)* [2012] NSWSC 689.
- Appeared for the liquidators of HIH Insurance Limited in proceedings in which a shareholder unsuccessfully sought to set aside the rejection of its proof of debt relating to damages for alleged misleading or deceptive conduct in the company's ASX announcements and accounts prior to liquidation: *DeBortoli Wines Pty Ltd v HIH Insurance (in liq)* [2012] FCAFC 28 and (2011) 200 FCR 253 ([2011] FCA 645) (led by Fabian Gleeson SC, as he then was, at first instance and on appeal).

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- Appearing for ASIC in the application by Seven Network Limited for approval of a scheme of arrangement: *Re Seven Network (No. 2)* [2010] FCA 355; *Re Seven Network Ltd (No. 3)* [2010] FCA 400.
- Appeared for the court-appointed liquidator of two related unregistered managed investment schemes in relation to the distribution of funds to investors and other matters arising in the course of the winding up: *Australian Securities and Investments Commission v Idylic Solutions Limited* (2009) 76 ACSR 129; *Australian Securities and Investments Commission v PJCB International Limited* [2009] NSWSC 1200 (led by Fabian Gleeson SC, as he then was).
- Advised in matters concerning unregistered managed investment schemes and trust schemes of arrangement.
- Advised and appeared in various matters arising in the course of administration and winding up, including advising about the validity and operation of deeds of company arrangement, appearing on applications to set aside statutory demands, appearing at liquidators' examinations, and applications to reinstate companies to the register.

Kate is the co-author with the Hon. Kevin Lindgren AM QC of Chapter 27, "Guarantees", in *Vermeesch and Lindgren's Business Law in Australia* (12th ed, 2011). Selected matters relating to the enforcement of **guarantees and mortgages** include:

- Advised the Commonwealth Bank of Australia in proceedings to enforce a guarantee and mortgage (referred to above).
- Appeared for a mortgagee in Supreme Court proceedings in a successful application for an order for possession in circumstances where the defendant mortgagor/guarantor claimed that her signatures on the mortgage and guarantee were forged: *MDN Mortgages Pty Ltd v Caradonna* (2010) 15 BPR 29,145 ([2010] NSWSC 1298) (led by Fabian Gleeson SC, as he then was).

Kate accepts briefs in arbitrations and has appeared in litigation arising from **arbitrations** and arbitration agreements, including:

- Appeared for defendants in Supreme Court proceedings on a successful application for a stay of the proceedings and referral to arbitration pursuant to ss 7 and 16 of the *International Arbitration Act 1974* (Cth) (led by Peter Braham SC): *In the matter of Ikon Group Ltd (No. 2)* [2015] NSWSC 981.
- Successfully resisted an application to appeal an arbitration award under s 34A of the *Commercial Arbitration Act 2010* (NSW): *Ashjal Pty Ltd v Elders Toepfer Grain Pty Ltd* [2012] NSWSC 545.

Kate is also experienced in **restraint of trade matters**, including *Veda Advantage (Australia) Pty Ltd v de Beer* [2016] NSWSC 37 (led by Andrew Bell SC).

Kate presented a paper to the New South Wales State Legal Conference in August 2014 on the subject of legal practitioners' penumbral duty of care. Kate frequently advises and appears for solicitors defending claims of **professional negligence**, breach of retainer and/or misleading or deceptive conduct. Selected matters include:

- Advised and appeared for a solicitor who was a cross-respondent in Supreme Court proceedings involving alleged negligence and breach of retainer in failing to provide certain advice about the terms of a contract for sale of business. The matter settled on the first day of the trial in March 2016.
- Advised and appeared for a solicitor in Supreme Court proceedings involving alleged negligence and breach of retainer in advising about certain special conditions in a contract for

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sale of land. The matter settled shortly before hearing in 2014 after successfully resisting the plaintiffs' application to make extensive amendments to their pleadings.

- Appeared for a solicitor in proceedings involving allegations of negligence, breach of retainer and misleading or deceptive conduct in failing to give certain advice about proceedings being conducted for the client by other solicitors: *Pritchard v DJZ Constructions Pty Ltd* (2012) 16 BPR 31,141 ([2012] NSWCA 196) (led by Dr Andrew Bell SC) and at first instance [2010] NSWSC 1024.

Professional disciplinary matters & ethical issues

Kate has been a member of a Professional Conduct Committee of the Bar Council since 2010 and frequently appears for and advises the Council of the New South Wales Bar Association in matters concerning the **professional conduct** of barristers. Selected matters in which Kate has appeared for the Bar Council include:

- *BRJ v Council of the New South Wales Bar Association* [2016] NSWSC 146 (and in the Tribunal below [2015] NSWCATOD 73 and [2015] NSWCATOD 140).
- *Council of the New South Wales Bar Association v Dwyer* [2015] NSWCA 302.
- *Council of the New South Wales Bar Association v Harkin* [2015] NSWCATOD 111.
- *Council of the New South Wales Bar Association v Hart* [2011] NSWCA 64 (led by Christine Adamson SC, as she then was).
- *Council of the New South Wales Bar Association v Miller* [2011] NSWADT 297 and [2012] NSWADT 129.

Kate also advises solicitors in relation to **ethical and regulatory issues** arising in the course of their practice, such as undertakings and obligations to the court, alleged conflicts of interest, obligations of confidentiality to former clients, and matters relating to fees and trust funds.

Commissions of inquiry

Kate is an experienced advocate in the **Independent Commission Against Corruption**, having appeared at the following public inquiries:

- Operation Credo (2014) – appeared for a director of Australian Water Holdings Limited.
- Operation Acacia (2013) – appeared for a former director of Doyles Creek Mining Pty Limited.
- Operation Drake (2012) – appeared as counsel assisting the Commission. The inquiry concerned the alleged smuggling of contraband by a correctional officer into the Long Bay Correctional Facility.
- Operation Crusader (2012) – appeared as counsel assisting the Commission at an inquiry involving alleged corrupt conduct by an employee of the University of New England.
- Operation Vesta (2011) – appeared for the Sydney Harbour Foreshore Authority at an inquiry involving alleged corruption by an officer of that Authority.
- Operation Churchill (2011) – appeared as counsel assisting the Commission at any inquiry involving alleged corrupt conduct by a building inspector of Willoughby City Council.

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- Operation Kanda (2010) - appeared as counsel assisting the Commission at an inquiry involving alleged corrupt conduct by an employee of the University of Sydney.

Selected other matters

- Appearing for the State of New South Wales defending a claim for damages for alleged assault and false imprisonment arising out of an arrest made by police officers. The matter is part heard.
- Advised and appeared for the Minister for Education and Training in proceedings in the Administrative Appeals Tribunal in which Malek Fahd Islamic School Limited applied for review of the Minister's decision to revoke its approved authority status under the *Australian Education Act 2013* (Cth). The school sought to set aside or vary the decision so as to continue to be eligible to receive Commonwealth funding in the order of approximately \$20 million annually. The Minister's decision was affirmed: *Malek Fahd Islamic School Limited v Minister for Education and Training* [2016] AATA 1087.
- Advised and appeared for the Commissioner of the Australian Federal Police in 2016 in proceedings in the Supreme Court in which the plaintiff was suing the Commonwealth and the State of New South Wales for alleged breach of duty of care, trespass and malicious procurement of a search warrant: *CH v Commonwealth of Australia*, no. 2014/356440. After the Commonwealth filed a defence that included a detailed account of what had occurred, the plaintiff's claims against the Commonwealth were resolved.

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