

## **MICHAEL IZZO SC**

### **Eleven Wentworth Chambers**

#### **Overview**

Michael Izzo SC has been at the Bar since 2005 and took silk in 2018. He has a broad-ranging practice in commercial and public law. His practice covers competition and consumer law, corporate law and insolvency, professional liability, banking, securities and financial services, insurance, property, trusts, and judicial review. He has particular expertise in class actions, corporate restructuring, and anti-dumping law. He appears nationally in appellate and trial courts, domestic and international arbitral tribunals and commissions of inquiry.

Michael is recognised in the current editions of *Best Lawyers Australia* (Litigation; Insolvency and Reorganisation Law), *Doyles Guide* (Commercial Litigation and Dispute Resolution; Insolvency and Restructuring) and *Chambers Asia-Pacific* (Restructuring and Insolvency).

Michael has been member of a Professional Conduct Committee of the New South Wales Bar Association since 2010. He was elected as a member of the Bar Council in 2017 and 2018.

He is currently the Convenor of the Commercial Law Section of the New South Wales Bar.

Before coming to the Bar, Michael worked as a solicitor in litigation and arbitration at Mallesons Stephen Jaques in Sydney and Herbert Smith in London. In 2003, he was Associate to Chief Justice Murray Gleeson at the High Court of Australia. From 2000-2002, he attended Oxford University on a Rhodes Scholarship for Australia-at-Large. He has a BCL and MPhil from Oxford and a BA and LLB from Sydney University.

Michael has previously held lectureship positions teaching Equity and Constitutional Law at Sydney University; and Torts and Trusts at Oxford University.

## Selection of recent cases

### *Appellate*

- *ACN 004 410 800 Ltd (formerly Arrium Ltd) v Walton* (NSWCA, judgment reserved): appeal seeking to have dismissed as an abuse of process an examination summons obtained by representative claimants to assist them to bring a shareholder class action against the directors and auditors of the Arrium group.
- *Caron v Jahani and McInerney as liquidators of Courtenay House Pty Ltd* (NSWCA, judgment reserved): appeal concerning the manner of distribution of a deficient mixed fund of \$21m comprising deposits made by some 630 investors in a Ponzi scheme.
- *Israel Discount Bank Ltd v ACN 078 272 867 Pty Ltd* [2019] FCAFC 90; (2019) 367 ALR 71: acted for two Israeli Banks in appeal from decision refusing to set aside service out of the jurisdiction in respect of claim for accessory liability for breach of fiduciary duty.
- *Midland Metals Overseas Pte Ltd v Australian Cablemakers Association Ltd* [2019] NSWCA 78: acted for Australian industry association in appeal relating to alleged misleading and deceptive conduct concerning the safety of imported electrical cable.
- *Dowling v Prothonotary of the Supreme Court of NSW* [2018] NSWCA 340; (2018) 99 NSWLR 229: acted as amicus curiae in appeal against conviction and sentence for contempt of court.
- *Racing NSW v Lewin* [2018] NSWCA 93; (2018) 97 NSWLR 694: acted for State of NSW in appeal concerning the construction and validity of part of the Racing Appeals Tribunal Regulation which purported to restrict a bookmaker's rights to appeal from a decision of Racing NSW refusing him a licence.
- *Snowside Pty Ltd v Re Boart Longyear Ltd* [2017] NSWCA 215; (2017) 122 ACSR 291: acted for scheme company in appeal from orders approving two interconditional creditors' schemes of arrangement at the second court hearing. The appeal concerned the power of the court to amend a scheme after its approval at the scheme meeting.
- *First Pacific Advisors LLC v Boart Longyear Ltd* [2017] NSWCA 116; (2017) 320 FLR 78; 121 ACSR 136: acted for scheme company in appeal from orders convening scheme meetings for two creditors' schemes of arrangement. This is now the leading Australian authority on class constitution in schemes of arrangement.

### *Class Actions*

- *TW McConnell Pty Ltd v Surfstitch Group Ltd*: acting for respondent to two securities class actions in the NSW Supreme Court alleging continuous disclosure breaches. The case has raised novel questions as to the ability to dispense with opt out ((2018) 133 ACSR 98; [2018] NSWSC 1749) and the voting and acceptance of proofs of class action claimants in an administration ((2018) 124 ACSR 235; [2018] NSWSC 164).

- *Excel Texel Pty Ltd v Quintis Ltd*: acting for applicants in Federal Court shareholder class action brought against Quintis Ltd alleging continuous disclosure breaches.
- *Choi v Hodgson Faraday Pty Ltd*: acting for applicants in Federal Court class action by investors in alleged Ponzi scheme marketed to individuals in South Korea.
- *Re Banksia Securities Ltd* [2019] NSWSC 136: appeared as contradictor on special purpose receivers' application for remuneration in connection with settlement of class action brought by debenture holders in Banksia Securities Ltd in Victoria.
- *HFPS Pty Ltd v Tamaya Resources Ltd* [2017] FCA 650: acted for executive chairman and four directors of company sued in a shareholder class action and liquidator's action in relation to a failed investment in a gold mine in Armenia. The case gave rise to a leading appellate decision on amendments to pleadings (*Tamaya Resources Ltd v Campbell Wilson* (2016) 332 ALR 199; [2016] FCAFC 2)).
- *Waimoana Pty Ltd v Centuria Strategic Property Ltd* [2017] NSWSC 1091: acted for defendants in closed class action brought by unitholders who alleged they had lost over \$15m as a result of subscribing for units in an unlisted property trust.
- *Jones v Treasury Wine Estates Ltd*: acted for TWE in a Federal Court shareholder class action alleging that TWE had breached its continuous disclosure obligations by failing to disclose the holding of excess inventory by its US distributors, leading to a write down of \$190m in its 2013 accounts.

#### ***Commercial and corporations law***

- *Bega Cheese Ltd v Mondelez Global LLC*: acted for Mondelez in Federal Court proceedings alleging breach of warranty and misleading and deceptive conduct in connection with the \$460m sale of the Bega Cheese business.
- *Glencore Coal Queensland Pty Ltd v Queensland*: acting for Glencore in Qld Supreme Court claim to recover royalties paid in respect of the Rolleston Coal Mine.
- *Noni B Ltd v City Chic Collective Ltd*: acted for City Chic (formerly Specialty Fashion Group) in NSWSC Commercial List proceedings defending a challenge to an expert determination given in respect of a dispute concerning the contents of a completion statement under a \$31m share sale agreement.
- *Re Cromwell Property Securities Ltd*: acting for ARA Real Estate Investors, the major securityholder in the ASX listed Cromwell Diversified Property Trust, in proceedings seeking to challenge the election of directors at the 2019 AGM. Also acted in earlier proceedings where ARA sought access to proxies in advance of the AGM: [2019] NSWSC 1608.
- *Almona Pty Ltd v Parklea Corporation Ltd* [2019] NSWSC 1868: acting for Perpetual as Security Trustee in proceedings relating to a \$150m debt due under a loan notes facility granted to fund the acquisition and development of the Parklea Markets site.

- *Re Tiaro Coal Pty Ltd*: acted for CFO of formerly listed entity in NSW Supreme Court proceedings alleging breaches of directors duties in the acquisition of exploration permits for coal.
- *Abod Pty Ltd v Kingston Finance Pty Ltd* [2019] NSWSC 242: Equity Division proceedings seeking declarations relating to status of \$36m in intercompany loans.
- *Corion Pty Ltd v Steadfast Underwriting Pty Ltd*: Acting in oppression proceedings between parties to a shareholders agreement pursuant to which subsidiaries of Munich Re and Steadfast undertook a joint venture to underwrite builders warranty insurance.
- *Cubelic Holdings Pty Ltd v Angas Securities Ltd*: acted for plaintiff in NSWSC Commercial List proceedings relating to an agreement to market biodiversity credits in respect of a property development in Western Sydney.
- *Bisley Sales Pty Ltd v Gazal Apparel Pty Ltd*: acted in NSWSC Commercial List proceedings concerning the validity of notices served pursuant to a \$35m business sale agreement, and the identification of disputes required under the agreement to be referred to expert determination.
- *Validus Advisory Group Pty Ltd v Consolidated Tin Mines Ltd* [2018] NSWSC 417: acted for a listed company in Commercial List proceedings seeking the return of money it had paid to a corporate advisor in connection with a \$34m capital raising.
- *Lanco Resources Australia Pty Ltd v Griffin Energy Group Pty Ltd*: acted for Lanco in the WA Supreme Court in \$520m damages claim against administrators of the Griffin Coal Mining Company and their employer, KordaMentha, arising from the sale to Lanco of the Griffin Coal Mine for \$740m.

#### ***Insolvency, restructuring and schemes of arrangement***

- *Re Tiger Resources Ltd* [2019] FCA 2186; (2019) 141 ACSR 203; [2020] FCA 266: acted for the International Finance Corporation in a challenge a creditors' scheme seeking to compromise \$250m in senior debt under an English law facility provided to the operator of a copper mine in the Congo and guaranteed by an ASX listed entity.
- *Re NetComm Wireless Ltd* [2019] FCA 795; (2019) 137 ACSR 429: acted for US bidder, Casa Systems Inc, in members' scheme for acquisition of an Australian telco.
- *Re University Co-op Bookshop Ltd* [2019] NSWSC 1898: acted for administrators of the Co-op Bookshop in connection with issues arising in the application of the Insolvency Practice Schedule and Insolvency Practice Rules to a co-operative.
- *Re Courtenay House Capital Trading Group Pty Ltd* [2018] NSWSC 404; (2018) 125 ACSR 149; [2019] NSWSC 1113; (2019) 139 ACSR 439: acted for a representative creditor in a series of cases concerning the trust status, and manner of distribution, of funds subscribed by investors in a Ponzi scheme relating to foreign exchange trading.

- *Re Wiggins Island Export Coal Terminal Pty Ltd* [2018] NSWSC 1342; [2018] NSWSC 1434: acted for proponent in amend and extend creditors' scheme for restructuring of \$2.6 billion debt.
- *Re BIS Finance Ltd* [2018] NSWSC 3; [2017] NSWSC 1713: acted for 75% supporting PIK noteholders in two creditors' schemes of arrangement to effect a \$1.2 billion debt for equity restructuring of the BIS resources and logistics group.
- *Re Sunderland Marine Insurance Ltd* [2018] FCA 565: acted for proponent in Insurance Act scheme for the transfer of a \$17.8 million book of Australian marine insurance business as part of an intra-group cross-border reorganization.
- *Atlas Construction Pty Ltd; Fitz Jersey Pty Ltd v Fraser* [2018] NSWSC 1189; (2018) 129 ACSR 238: acting for incumbent liquidators in application by creditor to have them removed and replaced with a fresh liquidator
- *Re Ten Network Holdings Ltd* [2017] NSWSC 1529; (2017) 123 ACSR 253: acted for administrators in contested application under s 444GA of the Corporations Act to transfer of the shares in the listed holding company of the Ten Network to a nominee of CBS, as part of a DOCA pursuant to which CBS acquired control of Ten.
- *Trevor; Re Bell Group NV* [2017] FCA 927; (2017) 122 ACSR 418: acted for former Administrator of the Bell WA Companies Administrator Authority in a successful application to set aside examination summonses issued by the liquidator of a former Bell Group company.

### ***Regulatory***

- *ASIC v MobiSuper Pty Ltd*: acting for defendants in Federal Court civil penalty proceedings alleging misleading and deceptive conduct and breaches of statutory obligations of financial services licensees under the Corporations Act.
- *ASIC v Westpac Securities Administration Ltd* [2018] FCA 2078; (2018) 133 ACSR 1: acted for Westpac and BT in civil penalty proceedings alleging superannuation consultants were giving "personal advice" within the meaning of s 766B of the Corporations Act.
- *ACCC v Jetstar Airways Pty Ltd* [2017] FCA 205: acted for Jetstar in proceeding seeking civil penalty orders against Jetstar and Virgin for alleged breaches of prohibitions against misleading and deceptive conduct in the ACL.

### ***Customs and dumping***

- Acting for Glencore Coal Assets Australia in connection with a review by the Anti-Dumping Review Panel of dumping duties imposed on ammonium nitrate imported from Thailand, Sweden and China.
- *UPM Asia Pacific Pte Ltd v Minister for Science*: Acted for UPM in a Federal Court claim for judicial review of dumping duties on A4 copy paper imported from China.