

## **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*, *Doyles Guide*, *Chambers Asia-Pacific* and *Who's Who Legal: Restructuring and Insolvency*.

Michael has been member of a Professional Conduct Committee of the New South Wales Bar Association since 2010 and is also a member of the Bar Council.

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*

- *Walton v ACN 004 410 800 Ltd (formerly Arrium Ltd)* (HCA, reserved): acted for liquidators in appeal concerning whether it is an abuse of process for representative claimants to obtain an examination summons to assist them to bring a shareholder class action against directors and auditors of the Arrium group.
- *Almona Pty Ltd v Parklea Corporation Ltd* (2021) 392 ALR 457; [2021] NSWCA 171: acting for Perpetual as security trustee in appeal relating to a \$150m debt under a loan note facility granted to fund the acquisition of the Parklea Markets site.
- *Central Coast Council v Norcross Pictorial Calendars Pty Ltd* (2021) 391 ALR 157; [2021] NSWCA 75: acted for Council in appeal arising from alleged breaches of obligations under a joint venture agreement with a property developer
- *Glencore Coal Pty Ltd v Franks* [2021] FCAFC 61: acted for Glencore in appeal from refusal to release it from the *Harman* undertaking in native title proceedings
- *Qantas Airways Ltd v Rohrlach* [2021] NSWCA 48: acted for Qantas in appeal concerning the scope of a Singapore exclusive jurisdiction clause in an employment agreement and a claim for an anti-suit injunction to restrain foreign proceedings.
- *Caron v Jahani* [2020] NSWCA 117; (2020) 102 NSWLR 537: 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.

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

- *SMBC Leasing and Finance v Forum Enviro Pty Ltd*: acting for Sumitomo Mitsui Banking Corp in Federal Court proceedings to recover over \$100m paid to Forum Finance entities pursuant to receivables financing contracts procured by Bill Pappas.
- *Northwest Healthcare Australia Re Ltd v Australian Unity Funds Management Ltd*: acting for Dexus Funds Management Ltd in NSWSC Corporations List action to set aside transactions entered into by trustee of unlisted property trust.
- *Community Work Pty Ltd v Bijkerk*: acting for former director in Commercial List proceedings brought by liquidator to recover \$22m in management fee payments allegedly made in breach of common law and fiduciary duties.
- *Becl Strategy Holding Pty Ltd v Persephone Company Pty Ltd*: acting for second mortgagees in Real Property List proceedings concerning enforcement of mortgages given by project development vehicles in the Dyldam Group to secure \$354m in debt.
- *Forge Group Ltd v KPMG*: representing KPMG in NSWSC Commercial List proceedings alleging auditors' negligence in connection with the liquidation of the formerly ASX-listed Forge Group in 2014.
- *Swift Media v DXC Technology*: acted for Swift in commercial arbitration before Kevin Lindgren AM QC concerning obligations under a reseller agreement.
- *Haileybury v KPMG*: acting for KPMG in Northern Territory Supreme Court proceedings concerning consulting services provided by KPMG to the Northern Territory Government and to a national operator of non-government schools.
- *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 joint venturers in Queensland Supreme Court proceedings seeking recovery of \$54m in royalties paid to the State in respect of coal mined from 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*: acted 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 application by ARA for access to proxies in advance of the AGM: [2019] NSWSC 1608; (2019) 101 NSWLR 559.
- *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 Australian Leisure and Entertainment Property Management Ltd* [2021] NSWSC 1421: acting for Charter Hall entities in \$736m trust and company scheme for acquisition of portfolio of freehold pubs
- *Re Vitalharvest Freehold Trust* [2021] NSWSC 838: acting for Macquarie Infrastructure fund in connection with \$193m trust scheme for acquisition of units in Vitalharvest trust.
- *Re HIH Insurance Ltd*: acting for the liquidators of HIH Insurance in NSWSC proceedings concerning issues arising in the finalisation of the liquidation.

- *Re PJM Fleet Management Pty Ltd*: acting for BMW Australia Finance in Corporations List proceedings arising from priority dispute with Nissan Financial Services Australia concerning PPSA leases over a fleet of financed motor vehicles.
- *Re Wameja Ltd* [2021] FCA 1130: acting for Mastercard in a scheme of arrangement for the acquisition of shares in a joint venturer in the HomeSend global payment hub.
- *Re Virgin Australia Holdings Ltd*: acting for Bain Capital in connection with its successful bid to purchase the assets of the Virgin Australia companies following their entry into voluntary administration e.g. [2020] FCA 986.
- *Re Branded Media Holdings Pty Ltd* [2020] NSWSC 557: acted for Attorney General for the Commonwealth in proceedings brought by a liquidator of two companies to determine the identity of the employer of certain specified employees for the purposes of distribution on a winding up of the companies.
- *Re Champion Iron Ltd* [2020] FCA 81: acted for iron ore explorer and producer in a scheme for the redomiciliation of the company to Canada.
- *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 Sundance Energy Australia Ltd* [2019] FCA 1944: acted for oil and gas producer in a scheme for the redomiciliation of the company to the United States.
- *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; [2020] NSWSC 780; (2020) 147 ACSR 1: 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 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 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 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.
- *Re Bell Group NV* [2017] FCA 927; (2017) 122 ACSR 418: acted for Administrator of the Bell WA Companies Administrator Authority in a successful application to set aside examination summonses issued by the liquidator of a Bell Group company.

### *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 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.

### ***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” under 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 from China.

### ***Administrative and public law***

- Acting for Catholic Metropolitan Cemeteries Trust in connection with judicial review of decision to appoint administrator to reserve trust under the *Crown Lands Act 1989*.
- Acting for Glencore Coal Pty Ltd in connection with an application under s 10 of the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth) to declare parts of the Hunter Valley a significant Aboriginal area.
- *UPM Asia Pacific Pte Ltd v Minister for Science* (2018): Acted for UPM in a Federal Court application for judicial review of dumping duties on A4 copy paper imported from China.
- *Stemcor (SEA) Pte Ltd v Commissioner, Anti-Dumping Commissioner* (2018): Acting for Stemcor in a Federal Court application for judicial review of a decision to reject an application for variation of a duty assessment in respect of dumping duties imposed on zinc coated galvanized steel from China.
- *Rio Tinto Aluminium (Bell Bay) Pty Ltd v Assistant Minister for Science* [2016] FCA 681: Acted for Rio Tinto subsidiary in a Federal Court application for judicial review of countervailing duties imposed on silicon metal from China.
- *Dalian Steelforce Hi-Tech Co v Min for Home Affairs* (2015) 243 FCR 190: Acted for Dalian in Federal Court application for judicial review of dumping duties imposed on hollow steel sections imported from China.
- *Independent Commission Against Corruption: Operation Spicer* (August 2016): Appeared for Darren Williams of Buildev Pty Ltd in ICAC’s inquiry into alleged breaches of the *Electoral Funding Expenditure and Disclosures Act 1981* (NSW).