

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, regulatory proceedings and corporate restructuring. He appears nationally in appellate and trial courts, domestic and international arbitral tribunals and commissions of inquiry. He has also acted as an expert pursuant to contractual expert determination procedures.

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 is Junior Vice-President of the NSW Bar Association and a Vice-President of the Australian Bar Association. He chairs a Professional Conduct Committee of the NSW Bar and is also a member of its Risk Committee and its Finance, Investment and Audit Committee.

He has previously served as Convenor of the Commercial Law Section of the New South Wales Bar and also as Treasurer of the New South Wales Bar Association.

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

- *Metal Manufactures Pty Ltd v WesTrac Pty Ltd* (NSWCA, reserved) – acting for WesTrac in appeal concerning a priority dispute under the PPSA arising out of retention of title arrangements in respect of solar panels
- *Catholic Metropolitan Cemeteries Trust v AG (NSW)* [2024] NSWCA 30: proceedings referred to the NSWCA to determine the existence and terms of a charitable trust over denominational land at the Rookwood Cemetery.
- *Environment Council of Central Queensland v Min for Environment* (2024) 309 FCR 91; [2024] FCAFC 56: acting for proponents in appeal concerning the operation of the EPBC Act in a case involving impacts on matters of national environmental significance of greenhouse gas emissions from coal mines in the Hunter Valley
- *Mangoola Coal Operations Pty Ltd v Muswellbrook Shire Council* (2023) 112 NSWLR 434: acting for Glencore entity in NSWCA appeal concerning the availability of restitution for overpaid rates following a recategorization of land.
- *Resilient Investment Group Pty Ltd v Barnett* (2023) 111 NSWLR 446: acting for FEG in NSWCA appeal concerning whether a right to a tax offset refund on account of R&D expenditure is personal property, and an account, within the meaning of the PPSA; and also concerning the identity of the “true employer” in a corporate group.
- *AgriWealth Capital Ltd v Australian Financial Complaints Authority* (2023) 299 FCR 319; [2023] FCAFC 118: acting for AFCA in appeal concerning jurisdiction of the Federal Court to determine challenges to an AFCA determination, and involving interpretation of the AFCA rules
- *Soulos v Pagonis* [2023] NSWCA 243; (2023) 416 ALR 181: appeal in oppression and *Succession Act* proceedings arising from bequests of shares in a family company holding valuable land in the Strathfield Triangle.
- *Spicer Thoroughbreds v Stewart* [2023] NSWCA 82: appeal concerning whether a share in a thoroughbred racehorse is an interest in a managed investment scheme under Chapter 5C of the Corporations Act
- *Walton v ACN 004 410 800 Ltd (formerly Arrium Ltd)* (2022) 275 CLR 508: acted for liquidators in High Court 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.
- *M & W Zaki Pty Ltd v MindChamps Preschool Ltd* [2022] NSWCA 266: acted for a purchaser in an appeal relating to breach of exclusivity provisions in a contract for the acquisition of a business operating a series of child care centres in NSW

- *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
- *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.

Commercial and corporations law

- *SMBC Leasing and Finance v Forum Enviro Pty Ltd* [2024] FCA 1176: acting for Sumitomo Mitsui Bank in proceedings to recover over \$100m paid to Forum Finance entities pursuant to receivables financing contracts procured by Bill Pappas.
- *Forex Capital Trading Pty Ltd v Invesus Group Ltd* [2024] NSWSC 867: Commercial List proceeding involving a \$43.6m claim on a Letter of Comfort
- *Re Heartland Group Pty Ltd* [2024] NSWSC 875: Corporations List proceedings for declarations concerning the validity of appointments of directors in a corporate group
- *ASIC v Santangelo* – acted for an auditor in proceedings in the Companies Auditors Disciplinary Board arising out of the audit of Greensill entities
- *JetMidwest v Regional Express Holdings Ltd* [2024] NSWSC 1343: acting for administrators of Rex in NSWSC Commercial List proceedings for conversion and delivery up of aircraft parts used in the Rex fleet
- *David Morgan Investments Pty Ltd v Maggie Beer Holdings Ltd* [2024] NSWSC 778: Commercial List proceedings concerning the interpretation of an expert determination clause in a contract for the sale of a business
- *Steller Developments v Smedley*: acting for a company in Federal Court proceedings claiming \$120m from various guarantors of a commercial loan note facility
- *Re Sun Cable Pty Ltd* [2023] NSWSC 1037: acting for Sun Cable in proceedings against Consolidated Pastoral Co Pty Ltd seeking specific performance of an obligation to consent to an assignment of a lease for the purposes of the AA PowerLink project for the delivery of electricity by undersea cable to Singapore.

- *Northwest Healthcare Australia Re Ltd v Australian Unity Funds Management Ltd*: acted for Dexus Funds Management Ltd in NSW Supreme Court proceedings arising out of a \$2.8billion hostile takeover of Australian Unity Healthcare Property Trust
- *Probis Financial Services Pty Ltd v Kong* [2023] FCA 1398: \$USD38m claim against director of a liquidity provider in respect of funds provided for execution of trades
- *Expert Group International Pty Ltd v Transaction Solutions Ltd* [2023] NSWSC 543 – proceedings involving interpretation of earn out provisions and expert determination clause in contract for the sale of a business.
- *Synergy Scaffolding Holdings Pty Ltd v Goodman Funds Management Australia Ltd* [2023] NSWSC 538 – acted for Goodman in proceedings for relief against forfeiture relating to industrial property at Moorebank.
- *ASIC v MobiSuper Pty Ltd* [2022] FCA 990: acted for defendants in civil penalty proceedings alleging misleading and deceptive conduct and breaches of statutory obligations of financial services licensees under the Corporations Act.
- *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 Dylam Group to secure \$354m in debt.
- *Forge Group Ltd v KPMG*: represented 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* [2022] QSC 240; (2022) 12 QR 295: acting for joint venturers in proceedings seeking recovery of \$54m in royalties paid to the State in respect of coal mined from the Rolleston Coal Mine
- *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.

Insolvency, restructuring and schemes of arrangement

- *Re St Andrew's Insurance Australia Pty Ltd* [2024] FCA 881: dual schemes under the *Life Insurance Act 1995* and the *Insurance Act 1973* for the transfer of businesses of a life insurer and a general insurer
- *Re Goal Group Ltd* [2024] FCA 1043 – acting for administrators of companies which managed litigation recoveries for institutional clients in securities class actions in proceedings involving identification and distribution of client funds held in trust
- *Re Genex Power Ltd* [2024] NSWSC 752– acting for J-POWER as bidder in \$351m takeover by simultaneous scheme of arrangement and off market takeover offer
- *Re Centro Electric Group Ltd* [2024] NSWSC 180 – acting for proponent in scheme to effect redomiciliation of company from Australia to the United States
- *Re Estia Health Ltd* [2023] NSWSC 1256 – acting for target residential aged care provider in \$837m acquisition by Bain Capital entities by scheme of arrangement
- *Re Jewell of India Holdings Pty Ltd* (2022) 160 ACSR 429; [2022] NSWSC 356: successfully resisted application to set aside examination summonses issued against liquidators of a company by its former director and principal shareholder
- *Re HIH Insurance Ltd*: acting for the liquidators of HIH Insurance in NSWSC proceedings concerning issues arising in the finalisation of the liquidation.
- *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 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.

Class Actions

- *Tham v Australian Capital Territory* - acting for Calvary Health care in class action brought by junior doctors alleging underpayment in ACT Hospitals
- *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.
- *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).

- *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.
- *Waimoana Pty Ltd v Centuria Strategic Property Ltd* [2017] NSWSC 1091: acted for defendants in closed class action brought by unitholders 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.
- *Johnston v Endeavour Energy* – acting for defendant electricity provider in class action involving damage to properties in the Blue Mountains following a bushfire

Administrative and public law

- *Electra Cables v Minister for Science* - acting for Electra Cables in Federal Court proceedings for judicial review of dumping duties imposed on electrical cables imported from China
- *Press Metal Aluminium (Australia) Pty Ltd v Minister for Energy*: Acting for Press Metal in Federal Court proceedings for judicial review of dumping duties imposed on aluminium extrusions imported from Malaysia
- *Mazepin v Minister for Foreign Affairs*: acting for applicant in Federal Court proceedings seeking judicial review of sanctions imposed on Russian citizen under the *Autonomous Sanctions Act 2011*
- *Winatawari Guruma Aboriginal Corporation v Registrar of Aboriginal and Torres Strait Islander Corporations* – acting for a registered native title corporation in AAT review of a decision to refuse to register an amended rulebook of the RNTC
- acting for a solicitor against the Law Society of NSW in an NCAT review of a decision cautioning the solicitor under the *Legal Profession Uniform Law*
- 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.
- 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*