

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 and chapters on constitutional, administrative and tort law, and on class actions.

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

BMW Australia Ltd v Brewster (2019) 94 ALJR 51 – validity of common fund orders in class actions

New South Wales v Robinson (2019) 266 CLR 619 – powers of arrest of NSW police officers

Spence v Queensland (2019) 93 ALJR 643 – validity of Queensland political donation laws

Re Day (No.2) (2017) 263 CLR 201, and *Re Day (No.1)* (2017) 91 ALJR 262 – appearing for challenger, re whether Mr Bob Day was ineligible to be elected to the Senate

Alqudsi v The Queen (2016) 258 CLR 203 – 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) 258 CLR 482 – 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) 257 CLR 178 – 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

Attorney General for New South Wales v Melco Resorts and Entertainment Ltd (2020) 102 NSWLR 47 – re whether the Bergin Commission of Inquiry into Crown Casinos could require production of legally privileged material

Gardiner v Laing O'Rourke Australia Construction Pty Ltd (2020) 298 IR 273 – re construction and effect of a settlement deed as regards workers compensation and damages claims

Haselhurst v Toyota Motor Corp Australia Ltd (2020) 101 NSWLR 890 – re class closure orders in class actions

Ku-ring-gai Council v Bunnings Properties Pty Ltd [2019] NSWCA 28, 236 LGERA 3 – re permissibility of “amber light” orders in planning cases in the Land and Environment Court

Hunter Quarries Pty Ltd v Alexandra Mexon (2018) 98 NSWLR 526 (5 member bench) – re relationship between “permanent impairment” and death

Elzahed v NSW (2018) 97 NSWLR 898 – re witness giving evidence in a niqab

Kaldas v Barbour (2017) 350 ALR 292 – appearing for the NSW Ombudsman successfully resisting the challenge of the former Deputy Police C’ner to the “Operation Prospect” report

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) 91 NSWLR 666 – 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

Rockment Pty Ltd t/as Vanilla Lounge v AAI Ltd t/as Vero Insurance [2020] FCAFC 228 – re construction of a biosecurity exclusion clause in a Suncorp business interruption insurance policy

Qantas Airways Ltd v Flight Attendants' Association of Australia [2020] FCAFC 227 – re construction and effect of minimum payment guarantee re JobKeeper payments

Spencer v Commonwealth and NSW (2018) 262 FCR 344 – appearing for NSW successfully defending a constitutional challenge to native vegetation clearing laws

Valve Corp v ACCC (2017) 258 FCR 190 – re application of the *Competition and Consumer Act 2010* to an American company engaged in internet commerce

Chief of Defence Force v Gaynor (2017) 246 FCR 298 – appearing for the CDF re termination of an officer’s commission, raising administrative/constitutional law questions (special leave successfully resisted)

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 Supreme Court

R v Collaery (No 7) [2020] ACTSC 165 – acting for the Cth Attorney-General re what information affecting national security can be made public in the context of the prosecution of Mr Collaery

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

ACCC v ANZ and Macquarie Bank (2016) 118 ACSR 124 – appeared for the ACCC in obtaining pecuniary penalties against 2 banks for cartel conduct in relation to foreign exchange trades

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 (see also *Blairgowrie Trading Ltd v Allco Finance Group Ltd (No 3)* [2017] FCA 330 re settlement of this Allco class action)

Spencer v Commonwealth & NSW (2015) 240 FCR 282 – appeared for NSW, successfully defending validity of State native vegetation clearing laws

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

NSW Supreme Court

Pacific Equity Partners Pty Ltd v Kerwick [2017] NSWSC 1302, 273 IR 318 – successfully resisting an application for preliminary discovery by a private equity firm

Strata Plan 67246 v Oaks Hotels & Resorts (NSW) No.1 Pty Ltd [2017] NSWSC 299 – appeared for defendant, successfully resisting substantial damages claim re operation of a serviced apartment business in two large strata buildings

Kaldas v Barbour [2016] NSWSC 1880 – appeared for both the current and former NSW Ombudsman, successfully resisting an interlocutory injunction re “Operation Prospect”

Obeid v Ipp & Ors (2016) 338 ALR 234, 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

Minister Administering the Crown Lands Act 1989 v New South Wales Aboriginal Land Council (2018) 231 LGERA 145 – successfully upholding the ability of the NSW Aboriginal Land Council to make generic land claims for unused Crown land in the whole of the NSW South Coast

Upper Hunter Sustainable Industries Association Inc v Mach Energy Australia Pty Ltd (No 2) (2017) 224 LGERA 361 – successfully resisting an attempt to injunct the development of a coal mine in the Hunter Valley

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)

NT Supreme Court and NT Legal Practitioners Disciplinary Tribunal

Law Society Northern Territory v Legal Practitioners Disciplinary Tribunal [2020] NTSC 79 – re parliamentary privilege

Law Society Northern Territory v Alistair Wyvill SC – NT Legal Practitioners Disciplinary Tribunal, decision of 11 December 2020 re Applications No 1 and 2 of 2019 – acting for Mr Wyvill SC, with the applications against him being dismissed

Fair Work Commission

Flight Attendants' Association of Australia v Qantas Airways Limited [2020] FWC 6392 – re redundancy pay obligations of Qantas, in the context of COVID redundancies

CFMEU (Construction and General Division) v Port Kembla Coal Terminal Limited [2015] FWC 4075, 251 IR 241 – upholding validity of drug/alcohol testing of employees' urine & saliva

Commissions of inquiry

Appeared for Suncorp Bank/Insurance in the Banking Royal Commission

Appeared as counsel assisting in the Child Abuse Royal Commission in Case Studies No.38 and 46, re law reform and policy issues, with a particular focus on tendency/commission evidence and the criminal justice process

Appeared for the national CEPU/ETU in the Trade Union Royal Commission

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

Nexdius Pty Ltd and Minister for Health [2017] AATA 2295 – appeared in challenge, which succeeded in substance, to a TGA advertising ban in relation to sun screen advertising

Hospira Pty Ltd and Minister for Health [2017] AATA 2719 – appeared for Hospira and Pfizer in successfully upholding product information approved for a new biosimilar biological medicine, resisting a challenge from Janssen-Cilag

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

Law Society of New South Wales v Maharaj [2017] NSWCATOD 79 – appeared for a solicitor charged with professional misconduct

Council of the NSW Bar Association v Breeze [2015] NSWCATOD 152 – appeared for a barrister charged with professional misconduct

PUBLICATIONS

‘Section 92 in its Second Century’, in John Griffiths and James Stellios (eds), *Current Issues in Australian Constitutional Law – Tributes to Professor Leslie Zines*, 2020, Federation Press

‘The Federal Trajectory of Australian Law’, in Pauline Ridge and James Stellios (eds), *The Federal Court’s Contribution to Australian Law: Past, Present and Future*, 2018, Federation Press

‘The Case for Contradictors in Approving Class Action Settlements’ (2018) 92 *Australian Law Journal* 716

‘Justiciability and Relief’, in Cheryl Saunders and Adrienne Stone (eds), *The Oxford Handbook of the Australian Constitution*, 2018, Oxford University Press.

‘The Concept of Jurisdictional Error’, in Neil Williams (ed), *Key Issues in Judicial Review*, 2014, Federation Press.

‘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