

ELEVEN WENTWORTH





## Tom O'Brien

Tom is a university medalist and former High Court Associate, who practices in a broad range of areas, with a particular focus upon commercial litigation.

**Contact details:**

11/180 Phillip Street  
Sydney NSW 2000  
DX 377 Sydney  
**t:** (02) 8228 7114  
**e:** [obrien@elevenwentworth.com](mailto:obrien@elevenwentworth.com)

**Admission to the Bar:**

2014

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## Principal areas of practice:

Tom accepts briefs in all areas, including:

- Administrative & public law
- Appellate practice
- Arbitration
- Commercial
- Corporations law
- Constitutional law
- Equity
- Insolvency & bankruptcy
- Professional liability
- Public & private international law
- Real property

## Publications:

O'Brien, "The Change of Position Defence: a note on *AFS v Hills industries*" [2014] HCA 14" (August 2014) *Bar News*

O'Brien, "Breach Ordinarily No Bar to Termination" (2014) 88 *Australian Law Journal* 38

O'Brien and Oreb, "Australian International Arbitration Act Held to be Constitutional" (March 2013) *ACICA News*

Mills, Morris and O'Brien, "Andrews v ANZ – the High Court and the Doctrine of Penalties", *KWM Client Alert*, 6 September 2012

O'Brien, "More on the Dispensation of Readiness and Willingness" (2011) 85 *Australian Law Journal* 539

## Qualifications:

Masters of Laws (University of Sydney) (2017)

Bachelor of Arts (History) / Bachelor of Laws (1<sup>st</sup> class Honours with the University Medal) (Macquarie University) (2009)

## Background:

**2010 – 2014:** Solicitor at King & Wood Mallesons.

**2009:** Associate to the Honourable WMC Gummow of the High Court of Australia

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## SELECTED APPEARANCES

### APPELLATE

*Hancock Prospecting Pty Ltd v Rinehart (No 3)* [2021] FCAFC 23 (for Mrs Rinehart, led by CN Bova SC, instructed by Speed & Stracey Lawyers)

*Rinehart v Rinehart* [2020] NSWCA 221 (Basten JA; Macfarlan and Meagher JJA) (for Mrs Rinehart, led by CN Bova SC, with D Reynolds, instructed by Speed & Stracey Lawyers)

*Hancock Prospecting Pty Ltd v Wright Prospecting Pty Ltd* [2020] WASCA 77(S) (Quinlan CJ and Vaughan JA) (for Mrs Rinehart, led by CN Bova SC, instructed by Speed & Stracey Lawyers).

*ACN 004 410 833 Ltd (formerly Arrium Limited) (in liq) v Michael Thomas Walton* [2020] NSWCA 157 (Bathurst CJ, Bell P and Leeming JA) (for the appellant, led by M Izzo SC, instructed by Arnold Bloch Liebler)

*Hancock Prospecting Pty Ltd v Wright Prospecting Pty Ltd* [2020] WASCA 77 (Quinlan CJ and Vaughan JA) (for Mrs Rinehart, led by S Finch SC and CN Bova SC, instructed by Speed & Stracey Lawyers).

*Commissioner of Taxation v Israel Discount Bank Ltd* [2020] FCAFC 71 (Perram, Gleeson and Lee JJ) (for the bank, led by Kirk SC, instructed by Arnold Bloch Liebler)

*Hancock Prospecting Pty Ltd v Wright Prospecting Pty Ltd* [2019] WASCA 141 (Quinlan CJ and Vaughan JA) (for Mrs Rinehart, led by CN Bova, instructed by Speed & Stracey Lawyers).

*Israel Discount Bank Limited v ACN 078 272 867 Pty Ltd (in liq)* [2019] FCAFC 90; (2019) 367 ALR 71 (Yates, Beach and Moshinsky JJ) (for the bank, led by Izzo SC, instructed by Arnold Bloch Liebler).

*Sanpoint Pty Ltd v V8 Supercars Holdings Pty Ltd* [2019] NSWCA 5; (2019) 134 ACSR 424 (Beazley P, Macfarlan and Leeming JJA) (for V8 Supercars Holdings Pty Ltd, led by P Braham SC, instructed by Deutsch Miller)

*Shellharbour City Council v Minister for Local Government* [2017] NSWCA 256 (Basten, Macfarlan JJA and Sackville AJA) (for the Minister for Local Government, unled, instructed by NSW Crown Solicitor).

*Mosman Municipal Council v Minister for Local Government (No 2); North Sydney Council v Minister for Local Government (No 2)* [2017] NSWCA 255; (2017) 228 LGERA 38 (Basten, Macfarlan JJA and Sackville AJA) (for the Minister for Local Government, led by NC Hutley and JJ Hutton, instructed by NSW Crown Solicitor).

*Hunter's Hill Council v Minister for Local Government & Ors* [2017] NSWCA 188 (2016) 346 ALR 31; 224 LGERA 1 (Basten, Macfarlan JJA and Sackville AJA) (for the Minister for Local Government, led by NC Hutley and JJ Hutton, with D Birch, instructed by NSW Crown Solicitor).

*LCM Litigation Fund Pty Ltd v Coope* [2017] NSWCA 200 (Macfarlan, Simpson JJA and Emmett AJA) (led by A J Sullivan QC, instructed by Piper Alderman).

*Woollahra Municipal Council v Minister for Local Government* [2016] NSWCA 380; (2016) 95 NSWLR 620 (Bathurst CJ, Beazley P and Ward JA) (for Minister for Local Government, led by NC Hutley and JJ Hutton, instructed by Crown Solicitors Office).

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*Jabulani Pty Ltd v Walkabout II Pty Ltd* [2016] NSWCA 267 (Bathurst CJ, Leeming and Payne JJA) (for Walkabout, led by K Andronos SC).

*Wright Prospecting Pty Ltd v Hancock Prospecting Pty Ltd* [2016] WASCA 50; (2016) 49 WAR 476; 330 ALR 140 (McLure P, Newnes JA and Corboy J) (for HPPL, led by PJ Brereton SC and CN Bova, instructed by Jackson MacDonald).

*Prieston v Warwick John Williams Pty Ltd* [2017] NSWSC 1577 (Bellew J) (for the respondent, unled).

*Seymour v Jaeger* [2017] NSWSC 25 (Fagan J) (for Ms Jaeger, unled).

*Sargeant v HE & FE Campbell Agricultural Machinery Repairs* [2016] NSWSC 544 (for Sargeant, unled).

## GENERAL COMMERCIAL MATTERS

*Hancock v Rinehart* [2020] NSWSC 1853 (Ward CJ in Eq) (for Mrs Gina Rinehart, led by CN Bova SC, instructed by Speed & Stracey)

*Campbell v Campbell* [2020] NSWSC 1787 (Williams J) (unled for John Campbell, instructed by Resolve Litigation Lawyers)

*Binqld Finances Pty Ltd (In Liq) v Israel Discount Bank Limited; In the Matter of Binqld Finances Pty Ltd (In Liq) (No 2)* [2020] FCA 1208 (Foster J) (for the Bank, led by JK Kirk SC, with O Jones, instructed by Arnold Bloch Leibler)

*International Management Group of America Pty Ltd v Media Niugini Ltd t/a EMTV* [2020] NSWSC 559 (Stevenson J) (for the plaintiff, unled against silk, instructed by Marque Lawyers)

*Rinehart v Rinehart* [2020] NSWSC 235 (Ward CJ in Eq) (for Mrs Gina Rinehart, led by CN Bova SC, instructed by Jones Day)

*Rinehart v Rinehart* [2020] NSWSC 68 (Ward CJ in Eq) (for Mrs Gina Rinehart, led by P Brereton SC and CN Bova SC, instructed by Jones Day)

*Hancock v Rinehart* [2019] NSWSC 1451 (Ward CJ in Eq) (for Mrs Gina Rinehart, led by CN Bova SC, instructed by Speed & Stracey)

*Binqld Finances Pty Ltd (in liq) v Israel Discount Bank Limited* [2019] FCA 1186 (Foster J) (for the bank, unled against silk, instructed by Arnold Bloch Leibler)

*Birketu Pty Ltd v John Ljubomir Atanaskovic & Ors* (see [2019] NSWSC 1006) (for Deutsche Bank AG, led by P Wood, instructed by Herbert Smith Freehills)

*CPB Contractors Pty Ltd v Celsus. Pty Ltd* (2018) 268 FCR 590 (Lee J) (for CPB Contractors, led by E Hyde, instructed by King & Wood Mallesons)

*Busways Blacktown Pty Ltd v Westbus Region 1 Pty Ltd* [2018] NSWSC 1590; [2018] NSWSC 1901; [2019] NSWSC 155 (Stevenson J) (for Busways, led by P Wood, instructed by HWL Ebsworth)

*CPB Contractors Pty Limited v Celsus Pty Ltd* (2017) 353 ALR 84 (Lee J) (for CPB Contractors, led by B Walker SC and E Hyde, instructed by King & Wood Mallesons)

*BCI Finances Pty Limited (in liq) v Binetter (No 5)* [2017] FCA 1524 (Gleeson J) (for an intervenor, led by AS Bell SC, instructed by Arnold Bloch Leibler)

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*Woolworths Limited v About life Pty Ltd* [2017] NSWSC 1117 (Emmett AJA) (for Harris Farm, led by P Wood, instructed by Arnold Bloch Leibler)

*V8 Supercars Holdings Pty Ltd v Sanpoint Pty Ltd* [2017] NSWSC 1043 (Robb J) (for V8 Supercars Holdings Pty Ltd, led by P Braham SC and M Izzo, instructed by Deutsch Miller)

*Hancock Prospecting Pty Ltd v 150 Investments Pty Ltd* [2017] FCA 250 (Yates J) (for HPPL, led by JC Giles SC and Colquhoun, instructed by Corrs Chambers Westgarth)

*Hancock v Rinehart (Freehills subpoena)* [2017] NSWSC 530 (Brereton J) (for HPPL, led by JC Giles SC, instructed by Corrs Chambers Westgarth)

*Morton v Bolinda Publishing Pty Limited* [2017] FCA 187 (Burley J) (for Bolinda Publishing, led by P Wood, instructed by Arnold Bloch Leibler)

*EDT Global Pty Ltd & Anor v Entire Building Solutions Pty Ltd & Anor* [2017] NSWDC 51 (Neilson DCJ) (for EDT Global, unled, instructed by Marque Lawyers)

*DM & Longbow Pty Limited v Registrar-General of NSW* [2016] NSWSC 1844 (2016) 18 BPR 36585 (Darke J) (for DM & Longbow and ors, led by M Richmond SC, instructed by Glass Goodwin Solicitors)

*LCM Litigation Fund Pty Ltd v Coope* [2016] NSWSC 1221 (for LCM, led by A Sullivan QC, instructed by Piper Alderman)

*Wright Prospecting Pty Ltd v Hancock Prospecting Pty Ltd (No 5)* [2016] WASC 58 (Le Miere J) (led by CN Bova, instructed by Jackson McDonald)

*Wright Prospecting Pty Ltd v Hancock Prospecting Pty Ltd (No 6)* [2016] WASC 218 (Le Miere J) (led by CN Bova, instructed by Jackson McDonald)

*Addenbrooke Pty Ltd v Duncan & Ors* (2015) 107 ACSR 600 (Foster J) (led by J Williams, instructed by TressCox Lawyers)

*British Marine PLC v Wollongong Coal Ltd & Anor* [2015] FCA 403 (Buchanan J) (led by EGH Cox, instructed by)

*V8 Supercars Holdings Pty Ltd v Lucas Dumbrell Investments Pty Ltd & Anor* [2014] NSWSC 1391 (Pembroke J) (led by P Braham SC and M Izzo)

*Banks v Alphonse Pty Ltd* [2014] NSWSC 1437 (Brereton J) (led by CN Bova, instructed by King & Wood Mallesons)

## **CORPORATIONS AND INSOLVENCY**

*Woodings as Liquidator of the Bell Group Ltd and the Bell Group Finance Pty Ltd v WA Glendinnings & Associates Pty Ltd* [2019] WASC 54 (Smith J) (led by D Sulan, instructed by Jones Day)

*In the matter of Pulse Interactive Pty Ltd (in liquidation)* (2019) 134 ACSR 461 (Rees J) (unled, instructed by Somerset Ryckmans)

*In the matter of ACN 005 410 833 (formerly Arrium Limited) (subject to deed of company arrangement) & ors* [2018] NSWSC 747 (led by PM Wood, instructed by Arnold Bloch Leibler)

*In the matter of SG Capricorn Investments Pty Ltd & Ors* [2018] NSWSC 214 (Black J) (unled against silk, instructed by Arnold Bloch Leibler)

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*In the matter of SG Capricorn Investments Pty Ltd & Ors* [2018] NSWSC 12 (Black J) (unled against silk, instructed by Arnold Bloch Leibler)

*In the matter of ABI Australia Holdings Pty Ltd* [2017] NSWSC 1822 (Black J) (for ABI Australia & Ors, unled, instructed by Clifford Chance)

*In the matter of Eastmark Holdings Pty Ltd* (2015) 109 ACSR 116 (Brereton J) (led by NC Hutley SC, instructed by Jones Day)

*In the matter of Eastmark Holdings Pty Ltd* [2015] NSWSC 2070 (led by CRC Newlinds SC, instructed by Jones Day)

*In the matter of Eastmark Holdings Pty Ltd* [2015] NSWSC 2071 (led by CRC Newlinds SC, instructed by Jones Day)

*In the matter of Eastmark Holdings Pty Ltd* [2015] NSWSC 2075 (unled, instructed by Jones Day)

*In the matter of Kata-Lyn Pty Ltd* [2014] NSWSC 1246 (Black J) (unled, instructed by Yeldham Price O'Brien and Lusk)

*In the matter of U&D Coal Limited* [2014] NSWSC 1128 (Brereton J) (led by AS Bell SC, instructed by Jones Day)

Various examinations for external administrators and examinees.

## **CLASS ACTIONS**

*Lesley Coatman v Colonial First State Investments Limited (ACN 002 348 352) & Anor* (led by Brereton SC, instructed by HSF) (class action concerning superannuation fees)

*Tredrea v KPMG (No 2)* [2019] NSWSC 640 and *Tredrea v KPMG (No 3)* [2019] NSWSC 871 (led by JC Giles SC, with E Ball, instructed by Piper Alderman) (shareholder action concerning independent expert report issued by defendant in relation to an off-market takeover bid received by a company)

*Davis v Quintis Limited & Ors* (led by JC Giles SC, instructed by Piper Alderman) (shareholder action concerning financial statements)

*Hudson v Commonwealth of Australia* (led by WAD Edwards, instructed by Shine Lawyers) (class action concerning PFAS contamination)

## **ADMINISTRATIVE LAW**

*Randwick City Council v Minister for Local Government* (Moore J) (led by R Lancaster SC, instructed by NSW Crown Solicitor)

*Re WS* [2017] NSWSC 745 (Lindsay J) (unled, instructed by NSW Crown Solicitor)

*Woollahra Municipal Council v Minister for Local Government* (2015) 218 LGERA 65 (Preston CJ) (led by NC Hutley and JJ Hutton, instructed by NSW Crown Solicitor).

*Walcha Council v Minister of Local Government* [2016] NSWLEC 60 (Preston CJ) (led by NJ Williams SC and JJ Hutton, instructed by NSW Crown Solicitor).

*Hunter's Hill Council v Minister of Local Government* [2016] NSWLEC 124 (Moore J) (led by NC Hutley and JJ Hutton, instructed by NSW Crown Solicitor).

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*Oberon Council v v Minister of Local Government* [2016] NSWLEC 131 (Preston CJ) (led by NC Hutley and JJ Hutton, instructed by NSW Crown Solicitor).

*North Sydney Council v Minister for Local Government* [2016] NSWLEC 161 (Robson J) (unled, instructed by NSW Crown Solicitor).

*CHR v Children's Guardian* [2016] NSWCATAD 188 (Higgins M) (unled).

## **OTHER**

*ICC Arbitration in Paris, concerning a contractual dispute in relation to an oil pipeline* (unled, instructed by Gilbert & Tobin)

*Reynolds v Highfields* [2016] FWC 1187 (Roberts Cmr) (unled, instructed by Corrs Chambers Westgarth) (unfair dismissal application).

Various other arbitrations and expert determinations.