Peter Gaffney

PROFESSIONAL EXPERIENCE

2015 - Present

Barrister

I practise as a commercial barrister. The areas in which I have expertise include corporations law, contract and trade practices, trusts and fiduciary obligations, Constitutional and administrative law, the law of employment, anti-money laundering regulation, auditor's negligence, and the law of gambling.

Selected cases in courts and tribunals are set out below.

Contract, trade practices and torts

- *Wilson & Ors v QBT Pty Limited* [2024] NSWCA 114
  (unled at first instance, led by Perry Herzfeld SC on appeal) – construction of share sale agreement and claim for unconscionable conduct and breach of contract.

- *Epoch Group v Katz* (settled)
  (led by James Lockhart SC) – Federal Court proceedings regarding alleged breach of employee confidentiality obligations.

- *Horizon v Insurance Australia Limited and related matter* (ongoing)
  (unled) – Supreme Court proceedings regarding alleged failure to pay assignee of rights under an insurance policy.

- *Moussa v SMEC Testing Pty Ltd* (ongoing)
  (unled) – Supreme Court class action regarding alleged failures in relation to geotechnical engineering in relation to a residential real estate development.

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- *Elecnor Australia Pty Ltd v Neoen Australia Pty Ltd* **(ongoing)**
  (led by Jeremy Giles SC) – Supreme Court proceedings alleging misleading or deceptive conduct in relation to the construction of a wind farm.

- *Montu v the NSW Department of Health*
  (led by Jodi Steele SC) – successfully resisted an urgent application for an injunction, on behalf of the Department of Health.

- *A confidential 2023 arbitration*
  (led by Jeremy Giles SC) – construction of contract; rectification of contract.

- *Hudson v Commonwealth* **and related matters (settled)**
  (led by William Edwards and Ryan May) – multiple sets of class actions against the Commonwealth in relation to PFAS chemicals. Together, these were settled for hundreds of millions of dollars.

- *Richmond Valley Council v JLT Risk Solutions Pty Ltd* **[2022] NSWSC 1761**
  (led by Christopher Withers SC, Darrell Barnett and Robert Yezerski) – class action in relation to insurance brokerage.

- *VISA v TCL* **(settled)**
  (led by Nick Kidd SC) – Supreme Court proceedings regarding allegedly defective pavement design.

- *Acciona Infrastructure Australia Pty Ltd v Transport for NSW* **(settled)**
  (led by Jeremy Giles SC and James Arnott) – claim for alleged misleading and deceptive conduct in relation to the Sydney Light Rail.

- *TP ICAP Australia Pty Ltd v GFI Australia Pty Ltd & Ors* **[2021] NSWSC 656**
  (led by James Lockhart SC) and related cases – claim

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for alleged breaches of restraint of trade provisions and related duties.

- *ACCC v Cascade Coal Pty Ltd & Ors* [2018] FCA 1019 (led by Cameron Moore SC, Michael O'Meara and Robert Yezerski) – claim for alleged contravention of anti-bid rigging legislation.

- *Kallin Pty Ltd v ACN 107 851 847 Pty Ltd* [2018] NSWSC 124
  (led by Anne Horvath) – claim for breach of warranty and misleading and deceptive conduct in relation to a sale of business.

Representative proceedings

- *Hudson v Commonwealth* and related matters (settled)
  (led by William Edwards and Ryan May) – multiple sets of class actions against the Commonwealth in relation to PFAS chemicals. Together, these were settled for hundreds of millions of dollars.

- *Moussa v SMEC Testing Pty Ltd* (ongoing)
  (unled) – Supreme Court class action regarding alleged failures in relation to geotechnical engineering in relation to a residential real estate development.

- *Richmond Valley Council v JLT Risk Solutions Pty Ltd* [2022] NSWSC 1761
  (led by Christopher Withers SC, Darrell Barnett and Robert Yezerski) – class action in relation to insurance brokerage.

- *BMC Super Holdings No 3 Pty Ltd & anor v Mariners FC Developments Pty Ltd* (ongoing)
  Representative proceeding on behalf of a unit owner in relation to building defects.

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Employment law

- *Henderson & anor v Commonwealth Broadcasting Corporation Pty Ltd* (ongoing)
  (led by Tom Blackburn SC) – claim for over $80 million for alleged breach of contract and alleged adverse action.

- *Canizales v Contour Clinic Management Pty Ltd & ors* (ongoing)
  (unled) – claim for alleged adverse action, alleged breach of whistleblower laws, alleged breach of contract, and promissory estoppel.

- *Allan v Winning Appliances Ltd & anor* (ongoing)
  (with Nakul Bhagwat) – claim for alleged adverse action and misleading or deceptive conduct.

- *Prakash v HCF* (settled)
  (led by Tom Blackburn SC) – claim for adverse action and defamation.

Corporations law and insolvency

- *Mighty River International Ltd v Hughes* (2018) 265 CLR 480
  (led by Robert Newlinds SC and David Sulan) – application to void deed of company arrangement.

- *Lowbeer v De Varda; Lowbeer v Tov-Lev* [2018] FCAFC
  (led by Farid Assaf) – appeal from dismissal of application for sequestration order.

- *In the matter of Kupang Resources Ltd* (2017) 125 ACSR 301
  (unled) – application for security for costs in relation to external administrator examinations.

- *Bindaree Beef Pty Ltd v Chinatex (Australia) Pty Ltd* [2018] NSWSC 949

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(unled) – application to lift stay of proceeding against company in voluntary administration.

- *Re Gym and Tonic Healthclubs Pty Ltd* [2017] NSWSC 49 and [2017] NSWSC 50
  (unled) – application to wind up.

- *Re Arrium Ltd*
  (led by Robert Dick SC) – administrators' examinations of solicitors.

Trusts, fiduciary obligations and directors' duties

- *Lachlan AB Pty Ltd v Brissull Investments (Forbes) Pty Ltd & ors* (ongoing)
  (unled) – claim for breach of trust.

- *DSHE Holdings Ltd v Abboud & Ors (No 4)* (2021) 155 ACSR 1
  (led by Jeremy Giles SC and James Arnott) – claim for breach of directors' duties and misleading or deceptive conduct.

- *Equititrust Ltd v KPMG & Ors* (settled)
  (led by Christopher Withers and Patrick Meagher) – claim for alleged breaches of equitable, statutory and common law duties against the responsible entity and trustee of managed investment schemes, its directors, and its auditors.

- *In the matter of Equititrust Ltd (No 4)* [2017] FCA 1133
  (led by Christopher Withers) – judicial advice application.

- *In the matter of The Hope Margaret Hancock Trust* [2017] NSWSC 282 (led by Christopher Withers) – judicial advice application.

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Anti-money laundering and counter-terrorism financing regulation

- ***AUSTRAC v Tabcorp Holdings Limited & Ors*** **(settled)**
  (led by John Sheahan QC, Peter Brereton SC, Ruth Higgins and Sera Mirzabegian) – proceedings brought by AUSTRAC for alleged breach of AML/CTF legislation.

- ***AUSTRAC v Commonwealth Bank of Australia*** **(settled)**
  (led by John Sheahan QC, Sera Mirzabegian and Nicholas Bender) – proceedings brought by AUSTRAC for alleged breach of AML/CTF legislation.

Public law

- ***Freelancer International Pty Ltd and Australian Information Commissioner & Anor*** [2017] AATA 2426
  (led by Kate Richardson SC) – appeal from findings of the Privacy Commissioner).

- ***Smith v NSW Treasury*** [2017] NSWCATAD 337
  (led by Tiffany Wong) – construction of shop opening time legislation.

Wagering and gaming law

- **Representing various wagering companies in relation to prosecutions for unlawful gambling advertisements from 2019 to 2024 (unled)**

- Representing TAB Limited in relation to claims for unpaid winnings (unled).

- Advising (with Perry Herzfeld SC) a gambling company in relation to compliance inducement prohibitions.

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- Advising (with Nicholas Owens SC) a wagering company in relation to the operation of the *Interactive Gambling Act 2001* (Cth) concerning a proposed new wagering functionality.

- Advising (with Noel Hutley SC) a gaming company in relation to the operation of State legislation and the *Interactive Gambling Act 2001* (Cth) concerning a proposed online gaming product.

- *Collins v Tabcorp Wagering (Vic) Pty Ltd* (unled) – claim by gambler for allegedly unpaid winnings.

- Advising (unled) a wagering company in relation to the operation of State and Federal legislation concerning a proposed new wagering functionality.

- Advising (unled) a wagering company in relation to its contractual arrangements with racing authorities.

Practice and procedure

- *Lachlan AB Pty Ltd v Brisull Investments (Forbes) Pty Ltd* [2024] NSWSC 133
  (unled) – successfully resisted application for review of registrar's decision declining to order security for costs.

- *Equititrust Ltd v Equititrust Ltd (2018)* 124 ACSR 115 and *Equititrust Ltd (No 1)* [2018] FCA 39
  (led by Christopher Withers and Patrick Meagher) – applications for leave to amend and strike out pleadings.

- *Chief Executive Officer of Australian Transaction Reports and Analysis Centre v TAB Limited* [2016] FCA 122
  (led by Ruth Higgins) – application to set aside Notice to Produce.

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- *Hancock Prospecting Pty Ltd v 150 Investments Pty Ltd* (2017) 120 ACSR 495
  (led by Christopher Withers) – crossvesting application.

- *Bindaree Beef Pty Ltd v Chinatex (Australia) Pty Ltd (No 2)* [2018] NSWSC 57
  (led by Jeremy Giles SC) – application for freezing orders.

- *Lamanna Bananas Pty Ltd v Abdul-Rahman*
  (led by James Watson) – application for freezing orders.

- *McIvor and Australian Securities and Investments Commission* [2017] AATA 201
  (unled) – access to documents

2013 – 2014

University of New South Wales
Lecturer, *Resolving Civil Disputes*
Part time lecturer for the compulsory subject dealing with civil procedure and alternative dispute resolution.

2009 – 2015

Herbert Smith Freehills
Senior Associate (2014-2015) and Solicitor (2009-2014)
Cases worked on included:

- A group of cases regarding the Constitutional freedom of interstate trade and commerce: *The State of Victoria v Sportsbet Pty Ltd* [2012] FCAFC 143; *Sportsbet Pty Ltd v New South Wales* [2012] HCA 13; *Sportsbet Pty Ltd v Harness Racing Victoria (No 6)* [2012] FCA 896.

- Acting for companies in the Babcock & Brown group in relation to claims of breach of fiduciary duty and misleading or deceptive conduct brought by investors.

- Acting for banks in the Bell group litigation. § Cross-border disputes in relation to contracts and fiduciary duties in resources joint ventures.

- Advising NSW State government departments as to compliance with privacy legislation.

- Advising in relation to wagering, gaming and lotteries law compliance under Federal legislation and legislation in each State and Territory

2008 **Supreme Court of New South Wales**
Tipstaff to the Honourable Justice PA Bergin

EDUCATIONAL QUALIFICATIONS

2007 – 2011 **Macquarie University**
BA LLB (Hons)

Prizes and awards:

- First class honours.
- Holding Redlich Prize for First Place in LAW500 Litigation.
- Division of Law Prize for First Place in Legal Ethics.
- Dean's Award for Outstanding Academic Achievement in Law.