

# Commercial Litigation & Insolvency

## Overview

Our acclaimed litigation and dispute resolution skills are real strengths within our firm and are integral to every area of our practice. Over many years we have assembled a high quality commercial litigation team with a breadth of expertise and experience which enables us to act across many industries, and allows us to share with you our industry knowledge that can add value.

We take the view that an open mind is paramount and we work hard to provide you with the most practical, intelligent and cost-effective solutions. Our key strength is being able to decide which of our skills and the available processes best suit a particular problem. We are driven by outcomes, not procedures, to achieve the best possible result for you.

You will benefit from retaining our services, as have many others, with proactive partner involvement and access to team members with the most appropriate skills and experience for your matter. The high regard in which we are held by judiciary, arbitrators, mediators and our opponents gives you a real advantage.

The extent of our expertise is illustrated by the range of clients who use our services, including insurers, insolvency practitioners, manufacturers, record companies, film producers, builders and contractors, oil companies, IT companies, government departments and instrumentalities, professional associations, accountants, engineers, architects, developers, trustee companies and primary producers.

Our clients and valued industry partners attend and participate in our interactive seminars and discussion groups. Please contact us to find out more about these events and for further information regarding training relevant to you, your business and your industry.

We can help you with:

- ACCC disputes
- administrative law

- bankruptcy
- ASX and shareholder disputes
- building and construction disputes
- class actions
- commissions of inquiry
- consumer protection
- corporate restructuring
- debt recovery
- director disputes
- employment and IR-related disputes
- franchising code of conduct disputes
- insolvency
- insurance
- intellectual property disputes
- misleading and deceptive conduct claims
- oppressive conduct claims
- product liability
- property disputes
- professional negligence
- risk management and planning, and
- taxation disputes.

## *Alternative Dispute Resolution*

We can help you resolve disputes by means other than traditional court processes. In an increasingly litigious society, the ability to resolve disputes without the need for the time and cost commitments of litigation (not to mention the publicity that litigation can attract) has become extremely important. We can advise you on the right means of dispute resolution for every dispute and advise which of the following methods of dispute resolution are available and appropriate: Arbitration, Mediation & Conciliation, Expert Determination or Early Neutral Evaluation.

## *Appellate Litigation*

Appellate litigation requires lawyers who are highly proficient in the relevant area of law and know and understand those procedures and nuances of appellate proceedings which are distinct from trials.

Our litigation lawyers offer a wealth of experience in preparing and conducting appellate litigation. We have the resources and experience to advise you accurately as to your prospects of success

in the various courts of appeal including the High Court. We have close working relationships with many of the finest appellate barristers and are readily able to prepare and deliver the best possible case on your behalf.

## *Class & Representative Actions*

Class Actions, because of their size and complex nature, have the potential to significantly affect or indeed end your business. Year on year we are seeing an increase in record-breaking verdicts in class actions with no sign of the trend letting up. In 2012 the Australian Institute of Company Directors reported in its bulletin that “*in a survey of company directors, 30 per cent of respondents considered class actions to be a significant or increasing threat*”.

Our extensive experience in conducting, resolving or defending class and representative claims across Australia and internationally is formidable and results driven.

With our extensive class action and representative action experience we can assist you to mitigate class and representative action risks and can assist in building resilience against such risks. We can also advise and represent you in prosecuting and defending such actions.

At TressCox we adopt a multidisciplinary approach allowing us to call upon a network of scientific and other expert advisory groups which enable us to provide you with a holistic response to any claim very early in any proceedings.

Our Class action offering is also designed to assist your business in mitigating the risk of being involved in a class action. Our service includes a *Class Health Review*, which is unique amongst legal service offerings in that we undertake a holistic review of your business to assess not only your susceptibility to such actions but also a root and branch assessment of the likely risk triggers for your specific business and what steps can be taken to minimise risk.

‘Knowledge is king’ and our *Class Mitigation Workshops* are designed to educate professionals and managers as to the identification of potential triggers for class actions e.g.

- Risk proofing your business against the possibility of class actions
- GP and medical professionals workshops: avoiding medical device and pharmaceutical claims.

## *Commissions of Inquiry*

Royal Commissions and inquiries by statutory commissions such as the NSW Independent Commission Against Corruption (ICAC) are far more common than they have been in the past.

We have been involved in recent major inquiries by ICAC and also the Royal Commission into the Home Insulation Program.

If you are a witness, we are able to advise on compliance with summonses, your rights in relation to production of documents, the way in which hearings are conducted, and attend hearings with you.

The findings and determinations by Commissions are amenable to administrative judicial review by the Courts. We are experienced in acting for applicants seeking judicial review and can advise on process and procedure.

## *Competition & Consumer Law - Commercial Litigation*

We are highly experienced in all aspects of defending civil penalty proceedings and other claims brought under the *Competition and Consumer Act* – including dealing with complaints by competitors, ACCC investigations and s.155 Notices, negotiating with ACCC Commissioners and government lawyers, as well as running court actions at trial and appellate levels.

Where your competitors are engaging in unlawful conduct, we provide intelligent and practical advice about bringing private proceedings and, where appropriate, pursue infringers through the Courts with the determination and energy necessary to obtain the desired result.

Our ability to be innovative in dealing with consumer law issues is demonstrated by the fact that we pioneered the so-called 'John Doe' order in Australia by making use of Section 52 of the *Trade Practices Act* as it was then (see *Tony Blain Pty Limited and ors v. Jamison and ors* (1993) AIPC 9D-990). A John Doe order is an order addressed to unknown people who form part of an identifiable group engaged in illegal conduct. Whilst such orders were common in the U.S., Canada and United Kingdom prior to 1990, relevant intellectual property legislation in Australia did not facilitate the obtaining of such orders. By making use of the *Trade Practices Act*, now the *Competition and Consumer Act* and provisions of the Federal Court Rules, we were able to obtain an order of this sort for the first time in 1993 and have been able to obtain further orders since then.

## *Corporate Litigation*

The *Corporations Act 2001* regulates every aspect of a corporation during its life from incorporation to deregistration – resulting in the need for regular advice on how the corporation and officers should conduct themselves and, in extreme cases, litigation forms part of the necessary problem-solving mechanisms.

We provide comprehensive legal advice on all aspects of the *Corporations Act* to a diverse range of companies from small to medium enterprises through to multinational organisations.

We can advise and act for you in relation to disputes about: formation and registration, directors' duties, officers and employee entitlements, shares, charges, meetings, voidable transactions, restructures external administrations and deregistration.

## *General Commercial Litigation*

A thorough understanding of contract law and the legislation effecting commercial transactions in Australia is required to effectively represent you in a general commercial dispute. We have expertise in acting for plaintiffs and defendants on a broad range of commercial disputes involving the application of the following areas of law:

- Rectification of contractual terms
- Avoiding agreements on the grounds of uncertainty, failure of consideration, lack of authority, illegality, failure to comply with strict legislative requirements, undue influence, and unconscionable conduct
- Specific performance
- Declarations of proper termination
- Contracts Review Act (unfair tactics and unequal bargaining power)
- The Competition & Consumer Act / Australian Consumer Law (misleading and deceptive conduct and unconscionable conduct); and
- Damages for breach.

## *Injunctions*

Sometimes it is necessary to commence proceedings urgently to obtain an injunction to stop a threatened legal wrong, breach of contract, nuisance, passing off, a defamatory article being published, assets being stripped or moved outside the jurisdiction or documents being destroyed. These are a few of the grounds on which an injunction may be granted. In most cases, to obtain an injunction it will be necessary to demonstrate that damages will not be an adequate remedy for the threatened wrong. We have experience in obtaining a broad range of injunctions and our

Partners can be contacted at any time to obtain necessary orders.

## *Insolvency & Restructure*

We assist insolvency practitioners, financial institutions and company directors in handling the legal issues that arise during a corporate reconstruction or insolvency.

Our team of experienced reconstruction and insolvency lawyers is committed to achieving the best commercial outcome for you. The focus is on developing a relationship with you that maximises the benefits of our experience, industry knowledge, commercial realism and flexibility.

We provide advice to clients from a broad range of industries including government and private enterprise clients in the entertainment, media, information technology, electricity, transport, mining, energy, manufacturing, publishing, health and insurance industries.

## *Private Prosecutions*

Many firms claim to do work in the area of prosecutions but very few know what this truly entails. It is a unique skill set involving knowing and understanding what is in the client's best interests and balancing this with what is in the public interest whilst always complying with Model Litigant Guidelines. Having worked with, and for, a prominent semi-governmental statutory authority, we know what is involved in prosecuting matters from providing advice in relation to investigation procedures and techniques, to issuing charges and acting in contested prosecutions.

We can help you in this area by:

- Advising in relation to investigations, legislation, procedures, gathering and use of evidence
- Considering whether there is enough evidence to sustain charges for proof beyond reasonable doubt and providing advice in relation to sustainability of charges
- Assisting in the compilation of prosecution briefs, including the drafting of witness statements, tendency and coincidence notices;
- Assisting in the formulation of charges for issue
- Appearing in mentions, contest mentions and committal proceedings
- Negotiating plea resolutions
- Acting in contested hearings
- Acting in any appeals against conviction and/or sentence in the County Court and in any appeals to the Supreme Court; and
- Enforcement of court orders.

Our National Team has also successfully carried out secondments with a number of State and Commonwealth bodies.

## *Our Commercial Litigation & Insolvency News & Events*

[Commercial Litigation & Insolvency >](#)

## *Our Commercial Litigation & Insolvency Achievements*

### **Asia Pacific Legal 500**

We have been listed as a recommended law firm in the Asia Pacific Legal 500 (2006/07 - 2013/14 inclusive) for Dispute Resolution and (2006/07 - 2008/09, 2010/11 - 2017 inclusive) for Restructuring and Insolvency.

### **Asialaw Profiles**

We have been listed as a recommended law firm in Asialaw Profiles (2016 - 2018 inclusive) for Dispute Resolution & Litigation and Restructuring & Insolvency.

### **Best Lawyers®: Australia**

We were selected for inclusion in the Best Lawyers®: Australia publication (2013 - 2018 inclusive) for Litigation and in 2017 and 2018 for Insolvency and Reorganisation.

### **Top 50 Law Firms in Australia**

We were nominated and voted the number 1 law firm as well as the top Litigation & Dispute Resolution law firm in Australia in 2013 by The Top 50 Law Firms website.

### **Doyle's Guide to the Australian Legal Profession**

The Doyle's Guide to the Australian Legal Profession has recommended us as a leading NSW Insolvency and Reconstruction Firm for 2010.

### **International Financial Law Review (IFLR) 1000 Guide**

We have been listed in the IFLR 1000 Guide of leading financial and corporate law firms for Restructuring and Insolvency (2016 - 2018 inclusive).

## *Related Areas*

[Building & Construction](#)

[Employment, IR & Workplace Safety](#)

[Government](#)

[Intellectual Property](#)

[Insurance & Insurance Litigation](#)

[Media & Entertainment](#)

[Property](#)

[Wealth, Tax & Estate Planning](#)