

Andrew B Emmerson

Eighth Floor Selborne Chambers
8/174 Phillip Street Sydney NSW 2000
DX 395 Sydney
T - (02) 8066 0882
F - (02) 9232 7740
E - aemmerson@eightselborne.com.au

Admission

Bar: 2019

Solicitor: 2008

Practice areas

Administrative Law (Judicial and Merits Review)

Arbitration (Domestic and International)

Bankruptcy

Building and Construction

Commercial

Commissions of Inquiry

Competition and Consumer Law

Corporations and Insolvency

Disciplinary Proceedings

Equity and Property

Members schemes of arrangement

Professional Negligence

Regulatory

Representative Proceedings

Tax

White Collar and Corporate Crime

Academic

2016: LLM, Public and International Law (The University of Melbourne)

2006: BA/LLB (Hons) (The University of Melbourne)

Associateship/internship

2009: Intern, 6th Committee (International Law), Australian Mission to the UN, NYC

2008-09: Associate to the Honourable Justice Middleton, Federal Court of Australia

Prior legal experience

July 2013 to August 2019: Senior Associate, Baker McKenzie (Sydney)

April 2008 to June 2013: Associate, Baker McKenzie (Melbourne and Sydney)

March 2007 to March 2008: Articled Clerk, Baker McKenzie (Melbourne)

Andrew has experience preparing trials and appeals in most civil courts and tribunals.

As a solicitor, Andrew practised principally in commercial litigation, with experience in international and domestic arbitration, administrative law, building and construction disputes, insolvency, professional disciplinary proceedings, professional negligence, mining and energy joint venture disputes, representative proceedings, shareholder disputes, commercial property and tax disputes.

Andrew was a member of Baker McKenzie's Global Compliance and Investigations group, with experience in export control, trade sanctions, foreign bribery and corruption and criminal cartel investigations, acting for both individuals and corporations.

He was a recommended Senior Associate in Legal500 Asia Pacific for Regulatory, Compliance and Investigations (2018, 2019).

Andrew was seconded to the Litigation Counsel role at Optus for three months in 2018.

Bar

Advice and appearances - general

- Debt recovery proceedings in Local Court and District Court of NSW.
- Advice under the *Retail Leases Act 1994* (NSW).
- Advice in relation to professional indemnity insurance.
- Public examinations.

Appellate

- *ACN 004 410 833 Ltd (formerly Arrium Limited) (in liq) & Ors v Michael Thomas Walton* [2020] NSWCA 157 (led by Mr PD Herzfeld SC).
- *Mistrina Pty Ltd v Australian Consulting Engineers Pty Ltd* [2020] NSWCA 223 (led by Mr T Marskell).

First instance

- *G&S Engineering Services Pty Ltd v MACH Energy Australia Pty Ltd (No 3)* [2020] NSWSC 1721 - application for leave to amend (led by Mr M Christie SC and Dr B Kremer).
- *NSP Property Holdings Pty Ltd v AOL Express Pty Ltd & Ors* (November 2020) – successful application to set aside default judgment (*ex tempore* judgment) (Unled).
- *Wang Lawyers Pty Ltd v Xu* (September 2020) – acted for successful defendant in claim for unpaid legal costs (*ex tempore* judgment) (Unled).
- *In the Matter of Sneaky Fisho Pty Ltd* (June 2020) – Supreme Court of NSW Winding up under creditor’s statutory demand (Unled).
- *In the matter of LCW Property Holdings Pty Ltd (deregistered)* [2020] NSWSC 71 – reinstatement application (led by Mr J Hewitt).

Example current matters (undetermined)

- *Walton & Anor v ACN 004 410 833 Limited (formerly Arrium Limited) (In Liquidation)* – High Court proceedings no. S20/2021, representing KPMG regarding scope of the s 596A public examination power (led by J Kirk SC).
- *Morelli in his capacity as Liquidator of Core Personnel Dot-Com Pty Ltd & Anor v Farrell & Ors* – Federal Court of Australia proceeding NSD311/2021, representing certain defendants against unfair preference and uncommercial transaction claims (unled).
- *London City Equities Limited & Ors v Ernst & Young* – NSW Supreme Court proceeding, representing plaintiffs in audit negligence claim (led by J Sexton SC and S Wells).

- *Sapienza & Anor v LCW Property Holdings Pty Ltd & Ors* – Federal Court of Australia proceeding NSD490/2021, representing plaintiffs to recover unpaid consideration on sale of land (led by Mr J Hewitt).
- *Business Service Brokers Pty Ltd (ACN 069 049 994) v Optus Mobile Pty Ltd (ACN 054 365 696) & Ors* – Victorian Supreme Court proceeding, representing defendants (led by D Collins QC and D McAloon).
- *G&S Engineering Services Pty Ltd & Anor v MACH Energy Australia Pty Ltd & Ors* - NSW Supreme Court (Commercial List) proceeding, representing plaintiffs/cross-defendants in large mine infrastructure dispute (led by M Christie SC and M Lyons).
- *Savcor Communications Pty Ltd v Soletanche Freyssinet S.A.S* – NSW Supreme Court (Commercial List) proceeding, representing plaintiff in breach of share purchase deed (led by J Stoljar SC and Z Hillman).
- *Taxi Apps Pty Ltd v Uber Australia Pty Ltd & Ors* – Victorian Supreme Court proceedings, representing plaintiff in unlawful means conspiracy claim (led by T Bannon SC and R Yezerski).

Representative matters as solicitor

Arbitration

- Private arbitration (international, SIAC rules): seeking replacement of bank guarantees required under building and construction contract.
- Private arbitration (domestic) - Representing mining company in arbitration with contractor relating to negligent design and construction of equipment installed at mine site.
- Private arbitration (domestic) - representing private company involved in Commonwealth construction project.

Class and Funded Actions

- *Petersen Superannuation Fund Pty Ltd v Bank of Queensland & Anor* - acting for litigation funder in class action as intervener in settlement approval and common fund order application.

Corporate and Commercial - general

- *Masters Home Improvement Australia Pty Ltd v Aventus Cranbourne Thompsons Road Pty Ltd* [2019] VSC 428 - successfully acting for Tenant where Landlord unreasonable withheld consent to sublease.

- *Outback Energy Hunter Pty Ltd v New Standard Energy PEL 570 Pty Ltd* [2018] SASC 8 - Joint venture dispute acting for Defendant / Appellant - Full Court of South Australia (reserved).
- *Evolution Group (Vic) Pty Ltd v Pakenham Retail Centre Pty Ltd & Masters Home Improvement Australia Pty Ltd* - Acting for Masters in defending significant breach of lease / permitted use claim in VCAT as part of portfolio leasing dispute work.
- Advising foreign company in relation to restraints of trade in exclusive distribution arrangement (confidential - ongoing).
- *AMPCI & Anor v Parsons Brinkerhoff & Ors* - acting for Plaintiffs in NSW Supreme Court proceedings in claims against traffic forecasters for misleading and deceptive conduct and professional negligence arising from infrastructure investments in the Lane Cove Tunnel.
- *Ange v Coffey Projects (Australia) Pty Ltd & Ors; Leto v Coffey Projects (Australia) Pty Ltd; Kboury v Coffey Projects (Australia) Pty Ltd*: Supreme Court of NSW and Court of Appeal proceedings regarding professional negligence, misleading or deceptive conduct claims arising from fraudulent investment.
- *Greg Wheeler Contracting Pty Ltd v TransGrid* - (Supreme Court of NSW) Representing State Owned Corporation in defending NSW Supreme Court claim by unsuccessful tenderer for breach of contract arising from tenders the subject of an ICAC investigation.
- Members schemes of arrangement.

Compliance / Confidential Investigations

- 2019 (ongoing) - advising on warrant, investigation and threatened criminal cartel proceedings.
- 2018 (ongoing) - representing an individual in relation to AFP investigation into foreign bribery and corruption allegations.
- 2018 - investigation and advising listed US multinational and local Australian subsidiary in relation to Local Council tender and secret commissions in Australia.
- 2017 - acting for purchaser under contractual warranty claim in relation to business valuation and fraud claim.
- 2013-2015 - Beam Inc - DOJ self-reporting investigation concerning bribery and corruption in relation to operations in India.
- General anti-bribery and trade sanctions advice to local and multinational corporations.

Insolvency and Restructuring

- *Re Oceanlinx Limited (Receivers & Managers Appointed) (In Liquidation)* - Federal Court of Australia acting for Receivers.
- *Forge Group Power Pty Limited (receivers and managers appointed) (in liquidation) v General Electric International, Inc & Ors* [2016] NSWSC 52 - acting for second and third defendants in dispute concerning title to gas turbines located in Western Australia under the *Personal Property Securities Act 2011* (Cth).

Insurance / Negligent design and manufacture

- *BioVision 2020 Pty Ltd & Anor v CGU Insurance & Ors* [confidential settlement 2014] - Supreme Court of Victoria proceedings acting for plaintiffs in complex equipment failure claim against designer, manufacturer and ISR insurer.

Public law advisory / Judicial Review / Tribunals

- *Asbestos Injuries Compensation Fund Limited* [2018] NSWSC 589; *Talifero v Asbestos Injuries Compensation Fund Limited* [2018] NSWCA 227: acting for Trustee in application for judicial advice.
- *Bolton v ASIC and Commissioner of Taxation* VID90/2018 - Federal Court of Australia proceedings regarding s 39B application for judicial review of GST ruling.
- *Bolton v ASIC* - AAT Reference 6020/2015 - AAT proceedings regarding challenge to ASIC decision to disqualify director.
- *Signode v Comptroller General of Customs* - representing applicant in the Administrative Appeals Tribunal on tariff classification and duty dispute.
- Representing the Professional Conduct Committee (PCC) in disciplinary tribunal matters for the Chartered Accountants Australia NZ, including lead advocate for PCC.
- *Cantarella v Australian Securities & Investments Commission* - Administrative Appeals Tribunal proceedings to overturn Freedom of Information decision by ASIC to release s 533 Report.

Professional negligence - valuation for mortgagors

- *Investec Bank Australia Limited v CBRE Pty Ltd* - NSW Supreme Court proceedings for negligent valuation.
- *Investec Bank Australia Limited v Morris Martin & Jones* - Federal Court proceedings for negligent valuation.

Tax

- *Audit* - advising international clients on privilege issues arising from transfer pricing and Multinational Anti-Avoidance Law (MAAL).

- *Googong Property Pty Ltd v Commissioner of State Revenue* - land tax dispute in Supreme Court of NSW for Land Tax primary production exemption (including reparable application to Property NSW).
- *Wild Oaks Properties Pty Ltd & Anor v Commissioner for State Revenue* - land tax dispute in Supreme Court of NSW for primary production exemption.
- *Wild Oaks Properties Pty Ltd v Valuer General* - reparable application and dispute with to Property NSW before Land and Environment Court.
