

# Jonathon Dooley

Solicitor 2006

Barrister 2014

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Jonathon Dooley is a barrister specialising in commercial law and equity. His broad practice focuses on several key areas, including class actions, building and construction claims, commercial law, property law and insolvency.

Jonathon has built a strong reputation at the NSW Bar based on his core values of responsiveness, meeting deadlines and being upfront with costs and billing. He is briefed by firms of all sizes - including by large firms in complex high-value litigation, as well as by boutique firms and regional firms.



From 2008 to 2014, Jonathon worked as a solicitor at Allens, where he was appointed a Senior Associate in 2011. In his role, Jonathan was responsible for a number of complex pieces of commercial litigation. Before that, Jonathan worked as a graduate at Sparke Helmore. In 2006, Jonathon worked as the Tipstaff to the Hon. Justice P.A. Bergin, then the Commercial List Judge in the Equity Division.

Outside of work, Jonathon is married with two kids, two dogs, and two cats. He is also a fan of the NBA.

## QUALIFICATIONS

Bachelor of Arts/Bachelor of Laws (UNSW) 2005

## SPECIALISATIONS

- Class actions, including ASX non-disclosure, debenture trustee duties, employee benefits, and COVID-19 business interruption claims.
- Building and construction claims, including major infrastructure (including mines in Australia and Vietnam, and tunnels used for civilian traffic), liquidated damages for over \$20 million, claims for defective work, and security for payment act.
- Commercial law, including misleading conduct concerning sales of businesses and commercial leases, issuance of performance bonds, derivative actions in relation to large-scale property developments.
- Property law, including commercial leases, trustees for sale, relief against forfeiture, and extension of caveats.
- Insolvency and bankruptcy law, including unfair preferences and uncommercial transactions, termination of winding up, reinstatement of deregistered companies, and directors' duties.

## NOTABLE CASES

**Class action for employee benefits.** Jonathon appeared for the group members in a class action for telecommunications technicians. The proceedings concerned with whether they are independent contractors or employees (led by Mr Pike SC).

**Derivative action in relation to large property development.** Jonathon appeared for an advisor who was alleged to have provided incorrect advice in connection with the entry into options for a property development worth \$200 million (led by Mr Pike SC).

**Insurance dispute relating to Queensland Floods Class Action.** Jonathon appeared for Sunwater in relation to a dispute with its insurers concerning liability following the Queensland Floods Class Action, relating to whether a particular exclusion clause was engaged (led by Mr Sheahan KC and Mr Kidd SC).

**Bankruptcy case regarding superannuation benefits.** Jonathon appeared for trustees in bankruptcy in proceedings at first instance and on appeal to the Full Court of the Federal Court of Australia concerning whether the trustees were able to clawback superannuation contributions pursuant to s 128B of the Bankruptcy Act 1966, in what appears to have been the first intermediate appellate court consideration of that section.

2014 to date Barrister admitted in NSW, mainly practising in these areas:

- Corporations and insolvency (derivative action; oppression; reinstatement of company; winding up; statutory demands; directors' duties; insolvent trading; continuous disclosure; white collar crime).
- Class actions for applicants and respondents (debenture trustee schemes; shareholder claims arising from failure to comply with s 674 and ASX Listing Rules; claims for unpaid employee benefits; construction/cladding; business interruption re COVID-19).
- Financial services and banking (unconscionable conduct in respect of making/approval of loans; Contracts Review Act; Banking Code of Conduct; enforceable undertakings).

Insurance (acting for insured re disputes re excess layers re catastrophe cover; coverage advice; acting for insurers when joined pursuant to statutory charge; acting for insurers re D&O policy in class action; reinsurance).

- Contract disputes (including rent revision disputes, debt claims, construction contracts, employment contracts, insurance policy disputes).
- Construction (including liquidated damages; construction of rare metal and gold mines; defects claims; security for payment).
- Professional advisors (solicitors, accountants, financial advisors, and auditor's duties).
- Misleading or deceptive conduct, and unconscionable conduct (issue of performance bonds by insurer following allegedly misleading conduct; pre-contractual representations in sale of businesses and commercial leases; misleading statements to market in ASX announcements).
- Real property (discharge of easement; extension of caveat; relief from forfeiture for non-payment of rent; relief from forfeiture of deposit following failure to settle purchase of land).
- Employment issues (misuse of confidential information; restraint of trade; independent contractor vs employee).

NSW Supreme Court judgments include:

- consideration of the validity of a conditional Certificate of Practical Completion and a related claim for liquidated damages (H & M Constructions (NSW) Pty Ltd v Golden Rain Development Pty Ltd (No 4) [2023] NSWSC 925, led by Mr Kidd SC);
- leave to commence a derivative action concerning sale of potential property development at undervalue (Mount Gilead Pty Ltd v Macarthur-Onslow [2021] NSWSC 948 and Mount Gilead Pty Ltd v Macarthur-Stantham [2023] NSWCA 37, led by Mr Pike SC);
- construction of exclusion clause of policy relating to Queensland Floods Class Action (Liberty v Sunwater [2021] NSWSC 1582 and Sunwater v Liberty [2022] NSWCA 273, led by Mr Sheahan QC and Mr Kidd SC).

- Application to set aside a statutory demand (In the matter of Austpac Resources NL [2022] NSWSC 1668, unled).
- costs of a preliminary discovery application which had otherwise resolved (PRC Capital Pty Ltd v The Trust Company Ltd [2021] NSWSC 1007, led by Mr Goodman SC);
- resulting trust based on contribution to purchase price (Gregor v Amaya [2021] NSWSC 89, unled);
- consideration of conventional estoppel as in personam claim re judgment for possession of land (Hutson v Roufeil [2020] NSWSC 864, unled);
- application for derivative action under s 237 of the Corporations Act 2001 (Dinomyte Pty Ltd v ASIC [2019] FCA 1989, unled);
- appeal re undertaking proffered under s 44 Proceeds of Crime Act (Youssef v Commissioner of the AFP [2019] NSWCA 272, unled);
- strike-out / summary dismissal (Stimpson v Australian Traditional-Medicine Society Ltd [2019] NSWSC 979, unled);
- application for exclusion of property under Proceeds of Crime Act 2002 (The Commissioner of the Australian Federal Police v Pharmacy Depot Hurstville Pty Ltd (in liq) [2019] NSWSC 643, unled);
- legal professional privilege and without prejudice privilege, and waiver (Hera v Gekko [2019] NSWSC 37, led by Mr Kidd SC);
- indemnity costs based on offer of compromise (Grewal v Layton (No 2) [2018] NSWSC 1910, unled);
- review of Registrar's decision to order security for costs (Trojan Marketing & Consultants Pty Ltd v Kirela Pty Ltd [2018] NSWSC 1786, unled);
- breach of contract (Grewal v Layton [2018] NSWSC 1645, unled);
- termination of a winding up (Inverell Shire Council v Australia Gemstone Resources Pty Ltd (in liq) [2018] NSWSC 1470, unled);
- appeal regarding Farm Debt Mediation Act judgment (Kiriwina v Green Lees [2018] NSWCA 210, led by Mr Pike SC);
- costs of preliminary discovery application (Renton v Kelly [2018] NSWSC 1377, unled);
- defence of allegations of breaches of fiduciary duty and misuse by employee of confidential customer information (Vanguard Financial Planners Pty Ltd v Ale [2018] NSWSC 314, unled);
- acting for Insurers, where underlying allegations of misleading conduct concerning collapse of Forge Group (Swiss Re International SE v Simpson [2018] NSWSC 233, led by Mr Muston SC);

- defence of debt claim under the Farm Debt Mediation Act (*Kiriwina v Green Lees* [2017] NSWSC 1727, unled);
- appeal from Local Court re payment by solicitor out of trust account for fees (*Simone v Kola* [2017] NSWSC 821, unled);
- discharge of easements (*Denshire v Newcastle* [2017] NSWSC 577, unled);
- unconscionable conduct (*Marsden v DCL* [2016] NSWSC 1795, unled);
- reinstate a deregistered company (*Rocha* [2016] NSWSC 899 and [2016] NSWSC 1172, unled);
- judgment under Hague Convention (*Nitro Circus* [2016] NSWSC 178, unled).

Federal Court judgments include:

- appeal concerning whether trustees in bankruptcy could recover superannuation payments (*Do (Trustee), in the matter of Andrew Superannuation fund v Sijabat* [2023] FCAFC 6, unled);
- settlement approval hearing in respect of an employee/independent contractor class action (*Bradshaw v BSA Ltd* [2022] FCA 1440, led by Mr Pike SC);
- construction of settlement deed in respect of class action (*BSA Ltd v Bradshaw* [2022] FCA 1440, and whether within no costs jurisdiction [2022] FCA 1182, led by Mr Sulan SC);
- an application to restrain communications to group members by a respondent during an opt-out period (*Bradshaw v BSA Ltd* [2021] FCA 1080, unled);
- appeal from decision re common questions and de-classing re class action (*ISG Management Pty Ltd v Mutch* [2020] FCAFC 213, led by Mr Pike SC);
- release from implied undertaking (*Pro-Pac Packaging (Aust) Pty Ltd v Penn* [2020] FCA 540, unled);
- issues of common questions and de-classing in a class action concerning employees (*Mutch v ISG Management Pty Ltd* [2020] FCA 362, led by Mr Pike SC);
- approval of settlement in Representative Proceedings (*Hodges v Sandhurst* [2018] FCA 1346, led by Mr Pike SC);
- joinder in shareholder class action (*Rushleigh v Forge* [2018] FCA 26, led by Mr Muston SC);
- application for strike-out in Representative Proceedings (*Hodges v Sandhurst* [2014] FCA 1223, led by Mr Pike SC).

2008 - 2014 Allens, Commercial Litigation. Senior Associate from January 2011.

2007 Sparke Helmore, Lawyer. Federal Litigation and Commercial Litigation.

2006 Tipstaff to the Hon. Justice P. A. Bergin, Supreme Court of NSW.