



Luke Livingston

NEW/CHAMBERS

Bachelor of Laws (Hons I) (The University of Melbourne), 2001
Bachelor of Arts (History) (Hons I) (The University of Melbourne), 2001

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Admitted to the legal profession	2003
Admitted as a barrister in NSW	2009
Also entitled to practise in	All Australian jurisdictions (Commonwealth, State and Territory)

Principal areas of practice

Administrative law	Environmental law
Banking and financial services	Local government and planning
Bankruptcy and insolvency	Proceeds of crime
Commercial law	Property
Constitutional law	Professional indemnity
Corporations and securities	Taxation and revenue
Disciplinary proceedings	Trade practices and competition
Equity	Trusts

Previous professional experience

- 2003 to 2009 Solicitor/Senior Associate, Mallesons Stephen Jaques, Sydney
Prior to coming to the Bar, Luke was a senior associate in the Dispute Resolution Group at Mallesons Stephen Jaques (now King & Wood Mallesons), where he practised in commercial litigation, with a focus on property, banking, contract and corporate disputes and equity and trust matters. Luke acted for and advised public companies, investment banks and other clients in the financial services, professional services and property sectors.
- 2002 to 2003 Associate to the Hon Justice W M C Gummow, AC, High Court of Australia
Sydney/Canberra

Publications

“Revocation of a Patent for Prior Secret Use by a Patentee” (2003) 14(1) Australian Intellectual Property Journal 5
Co-Editor, Melbourne University Law Review, Volumes 25(1), 25(2) and 25(3) (2001)

Professional memberships

Australian Association of Constitutional Law
Australian Institute of Administrative Law
Environment and Planning Law Association Inc
National Environmental Law Association of Australia
New South Wales Bar Association

Additional information

Luke accepts briefs to appear, primarily unled, in first instance and appellate work throughout Australia in all areas of equity, commercial, corporations, taxation, constitutional and public law.
In 2008, Luke was awarded the Con Varnavas Award for the highest aggregate score in the NSW Bar Exams. In 2018, Luke successfully completed the Australian Bar Association Advanced Trial Advocacy Intensive (a 5-day residential course specialising in advanced trial advocacy).

Professional profiles

au.linkedin.com/pub/luke-livingston/66/a0b/809/

As Leading or Sole Counsel

- *In the matter of Pure Nature Sydney Pty Ltd* [2018] NSWSC 914 – shareholder oppression, sections 232 and 233 of the *Corporations Act 2001* (Cth).
- *Hookey and Commissioner of Taxation* [2018] AATA 1509 – small business relief provisions in respect of capital gains tax in Div 152 of the *Income Tax Assessment Act 1997* (Cth).
- *Application by the Commissioner of the Australian Federal Police* [2018] NSWSC 1563 (proceeds of crime).
- Appearing for the Deputy Commissioner of Taxation in proceedings in the Supreme Court of New South Wales concerning the operation of the notice of estimate provisions regarding PAYG withholding amounts under Div 268 of Sch 1 to the *Taxation Administration Act 1953* (Cth) (heard October and November 2018, judgment reserved).
- Appearing for the plaintiffs in proceedings in the Supreme Court of Western Australia seeking recovery of substantial sums under an indemnity contained in a deed governing a large iron ore mining project (ongoing).
- *Mineralogy Pty Ltd v BGP Geopexplorer Pte Ltd* [2018] QCA 174 – appeal from a judgment of US\$17 million concerning the proper construction of a guarantee and principles of discharge of liability under a guarantee on the ground of variation or breach.
- *Burrell Solicitors Pty Ltd (in liq) v Reavill Farm Pty Ltd & Ors* (Supreme Court of New South Wales, heard February 2018, judgment reserved) – validity of assignment of judgment debts.
- *Commissioner of the Australian Federal Police v Agius* [2017] NSWSC 1764 - priority of interests, enforcement of statutory charge in support of pecuniary penalty order.
- Shareholder proceedings in the Supreme Court of Western Australia involving allegations of oppression, breach of contract, breach of fiduciary duties and unconscionable conduct (settled 2018).
- Complex proceedings in the Corporations List of the Supreme Court of New South Wales involving allegations of breach of trust, oppression and rectification (settled, 2018).
- Appearing for the Commissioner of Taxation defending proceedings in the Federal Court seeking restitution and constructive trust remedies (ongoing).
- Appearing for the plaintiff in proceedings in the Supreme Court of New South Wales brought by an employer against former employees for breach of contract, contravention of statutory duties as officers of the company, breach of fiduciary duty and breach of confidence (ongoing).
- Appearing for a defendant in product liability and professional negligence proceedings, in connection with a surgical procedure, in the Supreme Court of New South Wales (settled, 2017).
- *Kenquist Nominees Pty Limited v Campbell (No 3)* [2017] FCA 1230 – privilege claims, discovery, in representative proceedings alleging shareholder loss.
- *In the matter of Linton Developments (Qld) Pty Limited* [2017] NSWSC 336 – application to set aside statutory demand.
- *Tyne v UBS AG (No 4)* [2017] FCA 374 – bankruptcy.
- *Frogley v Orr* (Supreme Court of New South Wales, 2017, Rein J) – appointment of trustees, declaratory relief.
- *NT Beverages Group Pty Ltd v PT Bromo Tirta Lestari* [2017] FCA 775 – application to set aside statutory demand.
- *Verke Pty Ltd v Registrar-General of New South Wales* (Supreme Court of New South Wales, 2017, Darke J) – rectification of instrument of transfer.
- *Patdith Services Pty Ltd v Mitronics Corporation Pty Ltd* [2016] FCA 1315 – security for costs in appeal proceedings
- *Blair v The Owners - Strata Plan No 71656* [2016] FCA 1522 – bankruptcy
- *Application of the Commissioner of the Australian Federal Police* [2015] NSWSC 888 - proceeds of crime, examination orders where criminal proceedings pending
- *Savellis v Financial Ombudsman Service Limited* [2016] NSWSC 1771 - dispute resolution scheme; construction of contract; administrative law.
- *Devi v Commissioner of Taxation* [2016] AATA 67 – income tax; entitlement to deductions; whether applicant conducted a business of share trading.
- *Lee v Elgammal* [2016] NSWCA 26 – professional negligence, claim against solicitor, guarantee for loan.
- *ACCC v Cascade Coal & Ors* (2016, Federal Court, judgment reserved) – competition law, exclusionary provision, cartel conduct.
- *Hawcroft v Hawcroft General Trading Co Pty Ltd* [2016] NSWSC 555 – equitable assignment, equitable estoppel, common mistake.
- *L J Carroll v L T Carroll* [2016] NSWSC 390 – application for extension of caveat, proprietary estoppel, equitable charge, constructive trust.
- *Domazet v Jure Investments Pty Limited* [2016] ACTSC 33 – rectification, trusts, rule against perpetuities.
- *Rothnere Pty Limited v Magic Markets Pty Limited* [2015] NSWSC 1785 – claim by lessor against lessee, mitigation of loss.
- *Capital Finance Australia Limited v Clough* [2015] NSWSC 1327 - personal property securities legislation.
- *Freestone Auto Sales Pty Ltd v Musulin* [2015] NSWCA 160 – administrative law; misleading or deceptive; supply of goods.
- *In the matter of 4 Doonan Street Collinsville Pty Ltd (in liq)* [2015] NSWSC 437 – taxation; running balance accounts; corporate winding up.
- *Senior and Commissioner of Taxation* [2015] AATA 353 – income tax; capital gains.
- *Watpac Construction (NSW) Pty Ltd v Council of the City of Sydney* [2014] NSWLEC 163 – planning law; neighboring land access order.
- *Hoad v GEL Custodians Pty Limited* [2014] NSWSC 513 - banking, misleading or deceptive conduct, contract.
- *Westpac Banking Corporation v Morris* [2014] NSWSC 332 - banking, funds in court.
- *Burrell Solicitors Pty Limited v Reavill Farm Pty Limited* [2014] NSWSC 569 (strike-out application, security for costs) and *Burrell v Reavill Farm Pty Ltd & Ors* [2014] FCCA 1449 (bankruptcy).
- *Cuzeno Pty Limited v The Owners - Strata Plan 65870* [2013] NSWSC 1385 - implied easements, non-derogation from grant, s 88K of the *Conveyancing Act 1919* (NSW).
- *Pillay v Commissioner of Taxation* [2013] AATA 447 - taxation, income tax.
- *Swaab v Sayed* [2013] NSWSC 887 (equitable charge, declaratory relief) and related application for extension of caveat.
- *Deputy Commissioner of Taxation v Soong* [2013] FCCA 2016 - bankruptcy/taxation.
- *Deputy Commissioner of Taxation v Revolve Ltd* [2012] FCA 555 - insolvency.
- *Australia & New Zealand Banking Group Ltd v Mishra* [2012] NSWSC 1333 - mortgages, remedies of mortgagee.

- *Hoxton Park Residents Action Group v Liverpool City Council (No 4)* [2012] NSWLEC 67 - injunction, temporary stay.
- *Gindy v Holden Street Pty Ltd* [2012] NSWSC 1269 - misleading or deceptive conduct, amendment of pleadings.
- *Westgate Finance v May* [2012] NSWSC 806 - claims for privilege, subpoena.
- *Burrell Solicitors Pty Ltd v Reavill Farm Pty Limited (No 2)* [2011] NSWSC 1615 - real property, caveats.
- *FloMin Inc v Australian Raw Materials Corporation Pty Ltd (vol admin appt'd)* [2011] NSWSC 585 - informal contracts, declaratory relief.

As Junior Counsel

- *UBS AG v Tyne* [2018] HCA 45. Led by J Stoljar SC (abuse of process, permanent stay, s 37M of the *Federal Court of Australia Act 1976* (Cth)).
- *ASIC v Whitebox Trading Pty Ltd* (Federal Court of Australia, heard July 2018, judgment reserved). Led by R G McHugh SC and M J Steele SC (market manipulation).
- *Lordianto v Commissioner of the Australian Federal Police* [2018] NSWCA 199 and *Commissioner of the Australian Federal Police v Fernandez* [2018] NSWCA 198. Led by A R Moses SC (proceeds of crime).
- *Lewis Securities Ltd (in liq) v Carter* [2018] NSWCA 118, 355 ALR 703, 128 ACSR 120. Led by A G Bell SC (fiduciary duty, *Barnes v Addy* claims).
- *Bunderra Holdings Pty Ltd v Pasmenco Cockle Creek Smelter Pty Ltd (subject to Deed of Company Arrangement)* (2017) 96 NSWLR 434, [2017] NSWCA 263. Led by S B Lloyd SC (construction of development consent, retrospective incorporation).
- *Commissioner of the Australian Federal Police v Lordianto* [2017] NSWSC 1196. Led by E A Cheeseman SC (application to exclude property from restraining orders under s 330(4)(a) of the *Proceeds of Crime Act 2002* (Cth)).
- *Coeur de Lion Investments Pty Ltd v The President's Club Limited* [2017] QCA 309. Led by D F Jackson QC (contractual construction; articles of association; voting rights)
- *Commissioner of Taxation v Tamarama Fresh Juices Australia Pty Ltd* [2017] FCAFC 154. Led by S B Lloyd SC (taxation; non-disclosure of protected information)
- *Commissioner of the Australian Federal Police v Elzein* (2017) 94 NSWLR 700, [2017] NSWCA 142. Led by A Moses SC (constitutional law, proceeds of crime legislation, powers of examination)
- *Reavill Farm Pty Ltd v Burrell Solicitors Pty Ltd* [2017] NSWCA 156. Led by A J McInerney SC (misleading or deceptive conduct, causation)
- *Hawcroft General Trading Co Pty Ltd v Hawcroft* [2017] NSWCA 91. Led by T Alexis SC (contractual construction, equitable assignment, equitable estoppel)
- *Lazarus v Independent Commission Against Corruption* (2017) 94 NSWLR 36, [2017] NSWCA. Led by A Moses SC (construction of validating legislation, constitutional law)
- *QNI Resources Pty Ltd v Queensland Nickel Pty Ltd (in liq)* [2017] QCA 167. Led by D F Jackson QC (corporations law, winding-up)
- *Tyne (Trustee) v UBS AG (No 2)* [2017] FCAFC 5; 341 ALR 415. Led by J Stoljar SC (abuse of process, permanent stay)
- *Binqlf Finances Pty Ltd (In Liq) v Tamarama Fresh Juices Australia Pty Limited* [2017] FCA 358. Led by S B Lloyd SC (taxation, secrecy provisions under *Taxation Administration Act 1953* (Cth))
- *Australian Securities and Investments Commission, in the matter of Whitebox Trading Pty Ltd v Whitebox Trading Pty Ltd* [2017] FCA 324. Led by R G McHugh SC (client legal privilege)
- *Lewis Securities Ltd (in Liq) v Carter* [2017] NSWSC 412. Led by A G Bell SC (equity, knowing receipt and knowing assistance in breach of fiduciary duty)
- *Palmer v Ayres* (2017) 259 CLR 478, [2017] HCA 5. Led by D F Jackson QC (constitutional law, judicial power)
- *Commissioner of the Australian Federal Police v Cacu* [2017] NSWCA 5. Led by T M Thawley SC (proceeds of crime, stay application)
- *Pasmenco Cockle Creek Smelter Pty Limited v Lake Macquarie City Council* [2016] NSWLEC 143. Led by R P L Lancaster SC (construction of development consent, declaratory relief)
- *Duncan v Independent Commission Against Corruption* [2016] NSWCA 143. Led by D F Jackson QC and C T Barry QC (judicial review, director's duties, procedural fairness)
- *New South Wales Cremation Company Pty Limited v Valuer General* [2016] NSWLEC 135. Led by A E Galasso SC (valuation of land)
- *FLZY v Commissioner of Taxation* [2016] AATA 348. Led by D McGovern SC (income tax, whether profit derived from sale of property was a capital gain or a revenue gain).
- *Commissioner of Taxation v 4 Doonan Street Collinsville Pty Ltd (in liq)* [2016] NSWCA 69. Led by N Williams SC (corporations, insolvency, taxation).
- *Burrell Solicitors Pty Ltd v Reavill Farm Pty Ltd* [2016] NSWSC 303. Led by A J McInerney SC (causation, breach of retainer, misleading or deceptive conduct, advocates' immunity).
- *Tyne v UBS AG (No 3)* [2016] FCA 5. Led by J Stoljar SC (abuse of process, estoppel).
- *Commissioner of the Australian Federal Police v Pham* [2015] NSWSC 1383. Led by A Moses SC (proceeds of crime, forfeiture order).
- *Queensland Nickel Pty Ltd v Commonwealth of Australia* (2015) 255 CLR 252, [2015] HCA 12. Led by D F Jackson QC (constitutional law).
- *Goldie Marketing Pty Ltd v Financial Ombudsman Services* [2015] VSC 292 (dispute resolution scheme; construction of contract; administrative law) and [2014] VSC 587 (interlocutory injunction) – Led by J R J Lockhart SC.
- *Issa v Issa* [2015] NSWSC 112. Led by A P Coleman SC (limitation of actions; equitable compensation).
- *Ekes v Commonwealth Bank of Australia* (2014) 313 ALR 665, [2014] NSWCA 336. Led by A J McInerney SC (issue estoppel, Anshun estoppel, abuse of process).
- *Tyne v UBS AG* [2014] FCA 1073. Led by J Stoljar SC (security for costs; re-litigation by trustee; anti-suit injunction).
- *McGuigan & Ors v ICAC; Cascade Coal & Ors v ICAC* [2014] NSWSC 1018. Led by D F Jackson QC and C T Barry QC (administrative law, judicial review of corrupt conduct findings).
- *DSG Holdings Australia Pty Ltd v Helenic Pty Ltd* (2014) 307 ALR 143, (2014) 99 ACSR 121, [2014] NSWCA 96. Led by R Dick SC (corporate insolvency - application to set aside deed of company arrangement).
- *His Eminence Petar the Diocesan Bishop of the Macedonian Orthodox Diocese of Australia and New Zealand v Kotevich* [2014] NSWSC 1215. Led by T G R Parker SC (equity, estoppel, charitable trusts, discretionary bars to relief).

- *Macedonian Orthodox Community Church St Petka Incorporated v Metropolitan Petar* [2013] NSWCA 223. Led by T G R Parker SC (charitable trusts, incorporated associations, accessory liability for breach of trust).
- *Oswal v Commissioner of Taxation* [2013] FCA 745 and [2014] FCA 812. Led by B J Sullivan SC and M Hirschhorn (capital gains tax, trusts).
- *Richards v Macquarie Bank Limited (No 5)* [2013] FCA 1442. Led by J Kirk SC (application for Court approval of representative proceedings).
- *Perpetual Custodians Ltd as custodian for Tamoran Pty Ltd as trustee for Michael Crivelli v IOOF Investment Management Ltd* (2013) 304 ALR 436, (2013) 278 FLR 49, [2013] NSWCA 231 and (2012) 91 ACSR 530, [2012] NSWSC 1318. Led by P J Jopling QC and P G Liondas (contractual construction).
- *Telesto Investments Ltd v UBS AG* (2013) 94 ACSR 29, [2013] NSWSC 503 and (2012) 262 FLR 119, [2012] NSWSC 44. Led by J Stoljar SC (private international law, res judicata, issue estoppel, abuse of process).
- *Pritchard v DJZ Constructions Pty Ltd* (2012) 16 BPR 31,141, [2012] NSWCA 196, *DJZ Constructions Pty Ltd v Pritchard* [2010] NSWSC 1024 and [2010] NSWSC 1472. Led by A J McInerney (professional negligence, guarantee and indemnity).
- *L & B Linings Pty Ltd v WorkCover Authority of New South Wales* [2012] NSWCA 15. Led by S D Epstein SC (administrative law, jurisdictional error, procedural fairness).
- *Mercland Investment Group Pty Ltd v Dunclalm Pty Ltd* [2012] FCA 183. Led by D A McLure (misleading or deceptive conduct).
- *Bank of Western Australia Limited v Tannous* [2012] NSWSC 559. Led by M B J Lee SC (Anshun estoppel, abuse of process).
- *BJ McAdam Pty Ltd v Jax Tyres Pty Ltd* [2012] FCA 799, [2012] FCA 1438, [2013] FCA 643 - breach of trust, misleading or deceptive conduct, oppression: (led by J Kirk SC) and related application by trustee for judicial advice: [2012] NSWSC 1114 (led by T G R Parker SC).
- *Macquarie Generation v Hodgson* (2011) 186 LGERA 311, [2011] NSWCA 424 (led by R P L Lancaster SC), [2010] NSWLEC 34 (led by B W Walker SC and R P L Lancaster SC) and [2011] NSWLEC 3 (led by B W Walker SC) - protection of the environment legislation, climate change, nuisance.
- Commercial arbitration before the Hon J Clarke QC (2011-2012). Led by A J Meagher SC and then by R P L Lancaster SC (rent review, valuation of land).
- *Easyway Australia Pty Ltd v Infinite Plus Pty Ltd* [2011] FCA 351. Led by F M Douglas QC (misleading or deceptive conduct, comparative advertising).
- *Alpha Wealth Advisory Services v Steer* (2011, McDougall J, Supreme Court of New South Wales). Led by R Beech-Jones SC (contract, fiduciary duties).
- *CTI Joint Venture Company Pty Ltd v CRI Chatswood Pty Ltd* (in liq) [2011] NSWLEC 90 (interlocutory injunction) and [2011] NSWLEC 91 (joinder of parties). Led by R P L Lancaster SC.
- *Health Care Complaints Commission v Ng* [2012] NSWPH 1. Led by J B Simpkins SC (professional disciplinary proceedings).
- *Davis v Chief of Army* (2011) 278 ALR 199, 247 FLR 207, [2011] ADFDAT 1. Led by D A McLure (criminal law, defence force discipline).
- *Spencer v The Commonwealth* (2010) 241 CLR 118, [2010] HCA 28. Led by B W Walker SC (constitutional law).
- *Halley v Minister Administering the Environmental Planning and Assessment Act 1979* (2010) 170 LGERA 449, [2010] NSWLEC 6, and (2010) 178 LGERA 327, [2010] NSWCA 361. Led by R P L Lancaster SC (compulsory acquisition of land).
- *BBB Constructions v Aldi Foods* [2010] NSWSC 1352. Led by G M Watson SC and F G Kalyk (unconscionable conduct, estoppel, quantum meruit).
- *Manildra Laboratories Pty Ltd v Campbell* [2009] NSWSC 987 and [2010] NSWSC 70. Led by F M Douglas QC (fiduciary duty, breach of confidence, contract).

Advice practice

- Advice for businesses, individuals and government agencies in respect of a range of disputes involving all areas of commercial and public law including contract, equity, property, corporations, taxation, constitutional and administrative law.