

## **DOMINIQUE HOGAN-DORAN SC**

Dominique Hogan-Doran SC is a leading commercial silk at the Australian Bar. She specialises in regulatory investigations and enforcement action; trusts and superannuation; and public inquiries involving governance and integrity issues. She maintains chambers in Sydney (5 Wentworth), Melbourne (Douglas Menzies) and Adelaide (Jeffcott).

Dominique is also an accredited Mediator and Arbitrator, and an experienced non-executive director in the Not-For-Profit sector. She is an Adjunct Associate Professor with the UNSW Centre for Law, Markets and Regulation.

Prior to the Bar, Dominique was a lawyer with Mallesons Stephen Jaques, Research Director to the Chief Justice of New South Wales, the Hon. Murray Gleeson AC, and Research Assistant to the Dean of the Sydney Law School, Professor James Crawford AC SC.

### **Professional Recognition & Awards**

*Leading Commercial Litigation & Disputes Resolution Senior Counsel NSW* – Doyle's Guide to the Australian Legal Profession (2016, 2017, 2018)

*Leading Mediators NSW* – Doyle's Guide to the Australian Legal Profession (2018)

*Barrister of the Year* – Lawyers Weekly Australian Law Awards (2016)

*Woman of the Year Finalist* – Money Management Super Review Australian Women in Financial Services Awards (2013)

### **Academic Qualifications**

*Master of Laws* – University of Sydney (2004)

*Bachelor of Civil Law (First Class Honours)* – Balliol College, University of Oxford (1995)

*Bachelor of Laws (First Class Honours)* – University of Sydney (1992)

*Bachelor of Economics (Social Sciences)* – University of Sydney (1990)

### **Academic Scholarships & Awards**

*Sir Robert Menzies Memorial Scholarship in Law* – University of Oxford (1994)

*Fulbright Scholarship* – Harvard University (not taken up) (1993)

*Convocation Medal* – University of Sydney (1993)

*Nancy Gordon Smith Prize for Honours at Graduation in Law* (3rd in year) (1992), *Tress Cox Maddox Scholarship* (1991), *Phillips Fox John L Mant Scholarship* (1990), 1st Place in Corporations Law, 1st Place in Criminal Law (*Aaron Levine Prize*, 1990) – University of Sydney

### **Professional Development**

*Company Directors Course* – Australian Institute of Company Directors (2004, 2017)

*Financial Analysis for Directors & Officers* – Governance Institute of Australia (2016)

*Program on Negotiation and Leadership* – Harvard Law School (2015)

*Joint Course on International Commercial Arbitration* – Columbia University & CIARB (New York) (2015)

*Trustee Directors Course* – Australian Institute of Superannuation Trustees (2015)

*Ethical Leadership in Business* – Centre for Ethical Leadership, University of Melbourne (2014)

*US & International Anti-Corruption Law* – American University Washington College of Law (2014)

*Practitioner's Certificate in Mediation* – Institute of Arbitrators and Mediators of Australia (2013)

## Current Appointments

Chartered Accountants Australia and New Zealand – Professional Conduct Committee  
UNSW Centre for Law, Markets and Regulation – Adjunct Associate Professor  
Australian Bar Association – International Committee  
International Bar Association – Bar Issues Commission's Regulation Committee  
G20 Business Dialogue – Integrity & Compliance Taskforce

### *Mediation:*

NSW Bar Association BarADR – Accredited Mediator NMAS  
Supreme Court of New South Wales – Mediators Panel  
District Court of New South Wales – Mediators Panel  
Australian Franchising Code of Conduct – Mediators Panel

### *Arbitration:*

Chartered Institute of Arbitrators – Fellow  
NSW Bar Association BarADR – Accredited Arbitrator  
Australian Energy Regulator – Arbitral Panel  
National Broadband Network – Arbitral Pool  
Essential Services Commission of South Australia – Arbitral Panel  
Economic Regulatory Authority of Western Australia – Arbitral Panel  
Superannuation Transactions Gateway Network Governance Body – Disputes Resolution Panel

For previous roles: <http://dhdsc.com.au/previous-roles/>

## Recent Papers

*Royal Commissions in Australia* - South Australian Bar Association (2018)

*New approaches to proof of foreign law: a practitioners' assessment in Commercial Issues in Private International Law: A Common Law Perspective*, Hart Publishing (2018, forthcoming)

*"Computer says 'No'": Automation, Algorithms and Artificial Intelligence in Government Decision-Making*, published by the Judicial Commission of New South Wales (2017) 13 *The Judicial Review* 136

*The Banking Executive Accountability Regime* - UNSW Centre for Law, Markets & Regulation (2018)

*What role has good advocacy in mediations?* - International Bar Association Conference (2017)

*Managing Corporate Interests in Public Inquiries* - UNSW In-House Counsel Seminar (2017)

*Challenges for the Legal Profession: Data Management, Confidentiality & Cyber Security* - Fiji Law Society Annual Convention (2017)

*Modern Corporate Governance* - Governance Institute of Australia Governance Forum (2017)

*Conflicts of Interest and Duty* - Women on Boards Australia, Sydney Directors' Circle (2017)

*Directors and Officers Duties - Recent Cases and Regulatory Developments* - UNSW Centre for Law, Markets & Regulation Practitioners' Forum (2017)

*Accountability Mechanisms* - Law Council of Australia Annual Immigration Law Conference (2017)

*Advocating the Complexity of Corporate Law* - Governance Institute National Conference (2016)

*Mediation: Ethics, Privilege & Confidentiality* - NSW Young Lawyers (2015)

For other papers: <http://dhdsc.com.au/paper-presentations/>

## 2018 matters include:

### *Royal Commissions & Public Inquiries*

- Royal Commission into Misconduct in the Banking, Superannuation & Financial Services Industry
  - Commonwealth Bank of Australia (Aussie Home Loans), briefed by *Clayton Utz*
  - Trustee of an industry superannuation fund (not called), briefed by *Hall & Wilcox*
- NSW Ombudsman's Inquiry into Water Compliance & Enforcement & South Australian Murray-Darling Basin Royal Commission – for WaterNSW, briefed by *Norton Rose Fulbright*
- NSW Public Inquiry into Charitable Fundraising – for RSL LifeCare, briefed by *Clayton Utz, Sydney*

### *Civil Penalty Litigation & Regulatory Investigations*

- Registered Organisations Commissioner v Communications, Electrical, and Plumbing Union of Australia - Federal Court civil penalty proceedings, briefed by *Lander & Rogers, Melbourne*
- Australian Securities & Investments Commission v (confidential: major AFSL financial advisor group) - fees for no service remediation plan, briefed by *Sparke Helmore*
- Canberra Raiders Sports Club v ACT Gambling & Racing Commission - ACT Supreme Court & Tribunal set aside civil penalty & licence conditions, reprimand substituted, briefed by *Snedden, Hall & Gallop, Canberra*
- Australian Competition & Consumer Commission v Husqvarna Australia – franchise arrangements (EU negotiated), briefed by *Holman Webb*
- Australian Charities & Not-for-profits Commission v RSL LifeCare – governance arrangements & director remuneration (EU negotiated), briefed by *PWC & Clayton Utz*

### *Trusts & Superannuation*

- Trustee of a leading bank's retail superannuation fund – Successor Fund Transfer proposal, briefed by *Minter Ellison*
- Trustee of a leading bank's retail superannuation fund - insurance governance arrangements, briefed by *K&L Gates*
- Trustee of an industry fund - Defined Benefits Pension Scheme & prudential regulation, briefed by *Sparke Helmore*
- Simpson v Simpson QSC No. 7887/16 - application for judicial advice – s 96 *Trusts Act 1973* (Qld) - division of capital & income, briefed by *Bradley, Allen, Love, Canberra*

### *Commercial Disputes*

- Re Bridgeland Investment - termination of winding up by Supreme Court of NSW (White J)
- Wagering operator - impact of state Point of Consumption Tax on operations
- Dispute between competing international distributors of fire safety equipment

### *Class Actions & Grouped Disputes*

- Various funders & insureds - class actions - continuous disclosure & consumer protection (prospects & coverage opinions)
- Re Greek Atlas League Inc - Supreme Court of NSW (Robb J) elections for community association (declarations made at final hearing)

## Selected Earlier Cases:

### *Royal Commissions & Public Inquiries*

- NSW Special Commission of Inquiry into Greyhound Racing Industry - for CEO GreyhoundsNSW (2015-2016)
- Commonwealth Royal Commission into Trade Union Corruption & Governance (AWU Case Study) - for Thiess/John Holland executive Stephen Sasse, re his negotiations with the Hon. Bill Shorten MP (2015)
- NSW Special Commission of Inquiry into The Medical Research & Compensation Foundation (the James Hardie Inquiry) - Junior Counsel Assisting the Commission (2004)
- Commonwealth Royal Commission into collapse of HIH Insurance Ltd - for Hannover Re (2001-2003)

### *Integrity and Probity*

- ICAC Operation Ricco (Botany Bay Council) - for Deputy General Manager, Ms Lorraine Cullinane (2017)
- ICAC Operation Credo (Australian Water Holdings) - for Senator the Hon. Arthur Sinodinos (2014-2017)
- ICAC Operation Spicer (Political Donations) - for Senator the Hon. Arthur Sinodinos (2014-2016)
- ICAC Operation Tunic (NSW Mine Subsidence Board) - for the NSW Mine Subsidence Board (2014-2015)
- ICAC Operation Vesta (Sydney Harbour Foreshore Authority) - for witness informant (2010-2011)
- ICAC Operation Ambrosia (NSW TAFE) - fraudulent occupational licensing schemes (2005)

### *Regulatory Investigations & Enforcement*

#### *For respondents:*

- ASIC v (confidential: corporate Authorised Representative) (financial services - conflicted remuneration prohibition - Pt 7.7A Div. 4 Corporations Act 2001 (Cth)) (2017)
- ASIC v (confidential: director) (insider trading - continuous disclosure - 'no action' letter obtained) (2016)
- The Sharemarket College P/L & Ors v ASIC [2016] AATA 1057 (licence cancellation - banning orders)
- The Star Casino (casino operations - provision of credit - Part 5 Casino Control Act 1992 (NSW)) (2015)
- ASIC v Shawn Hickman (Macquarie Equities trader) (unlicensed discretionary trading of options - falsification of records - Parts 7.6 & 7.12 Corporations Act 2001 (Cth) - banning hearing) (2015)
- ASIC v (confidential: Responsible Entity of registered investment scheme) (compliance with scheme constitution - Chapter 5C Corporations Act 2001 (Cth) - imposition of licence conditions) (2012-2013)
- Australian Taxation Office Project Wickenby (for confidential informant - tax evasion) (2012-2013)
- ASIC v (confidential: senior executive) (2012) (insider trading)
- Tarrant and ASIC [2011] AATA 945; (2011) 56 AAR 257; (2011) 128 ALD 376 (financial product advice - high risk products (Trio Capital) - retail investors - investigation - banning hearing - review)
- ASIC v Rodney Adler (2010) (allegation of managing corporation whilst disqualified - Part 2D.6 Corporations Act 2001 (Cth) - 'no action' letter obtained)
- RSPCA v Granada Productions & ITV Plc (2009) ("I'm a Celebrity - Get Me Out of Here" - animal welfare)
- X & Ors v Australian Prudential Regulation Authority [2007] HCA 4; (2007) 226 CLR 630; Applicant Y v APRA [2006] FCAFC 37; Applicant X v APRA [2005] FCA 1288 (Insurance Act 1973 (Cth) - fit and proper)
- Australian Prudential Regulation Authority v (confidential: corporate superannuation fund trustee) (2005-2006) (Superannuation Industry (Supervision) Act 1993 (Cth) - fit and proper)

#### *For regulators:*

- For ASIC intervening: Kerr v CGU Insurance Ltd; Donnelly v CGU Insurance Ltd (2010-2011) (indemnity claim by trustees in bankruptcy of former directors of One.Tel Ltd - public interest immunity - settlement privilege)
- ASIC v Macdonald (No 12) [2009] NSWSC 714; 73 ACSR 638 & ASIC v Macdonald (No 11) [2009] NSWSC 287 (2009) 256 ALR 199; (2009) 230 FLR 1; (2009) 71 ACSR 368; James Hardie Industries NV v ASIC [2009] NSWCA 18 (civil penalty - misleading and deceptive statements - continuous disclosure)
- ASIC v Australian Lending Centre (2009-2010) (investigation & subsequent civil penalty proceedings - consumer credit - unconscionable conduct)
- Westpac Banking Corporation v ASIC [2009] FCA 1506; (2009) 181 FCR 379 (debitcards - payment systems)
- ASIC v Ezybonds Pacific Limited Partnership (2007-2009) (ASIC Act 2001 (Cth) - payments)
- For ASIC: P Dawson Nominees P/L v ASIC [2008] HCATRans 409 on appeal from ASIC v P Dawson Nominees P/L [2008] FCAFC 123; (2008) 169 FCR 227; (2008) 247 ALR 646; (2008) 66 ACSR 704; P Dawson Nominees P/L v Multiplex Ltd [2007] FCA 1659; (2007) 65 ACSR 239 (public interest immunity - whistleblowers - Part 9.4AAA Corporations Act 2001 (Cth))
- ASIC v Offset Alpine & Estate of Late Renee Rivkin (2006-2007)

### *Commercial Disputes & Investor Claims*

- Cohen v Invigor Group [2015] NSWSC (injunction - executive termination - for Invigor)
- Westpac Banking Corporation v Nitopi (2015) NSWSC (commercial bill facility - for Westpac)
- In Re Retail Adventures (in liq) (2015-2016) NSWSC (insolvency - foreign law - for freight forwarder)

- ASIC v GDK Financial Solutions P/L (in liq) (2016) FCA (Middleton J); ASIC v GDK (No 14) [2013] FCA 459 (Gordon J); ASIC v GDK (No 11) [2012] FCA 1034 & ASIC v GDK (No 12) [2012] FCA 1035 (Dodds-Streeton J); ZMB Australia P/L v Warne [2011] FCA 311 (Ryan J); ZMB Australia P/L v Warne [2011] FCAFC 65 (appeal); ASIC v GDK (No 8) [2011] FCA 997 (Dodds-Streeton J); ASIC v GDK [2010] FCA 710 (Gray J); ASIC v GDK (No 6) [2010] FCA 1092 (Finkelstein J); AVS Property v McMaster [2010] FCAFC 81; (2010) 79 ACSR 89 (appeal); AVS Property v Western Retirement Village Management Ltd (In Liq) [2009] FCA 512 (Ryan J); ASIC v GDK (No 3) [2008] FCA 448 (2008) 169 FCR 497 (2008) 248 ALR 766; & ASIC v GDK (No 4) [2008] FCA 858 (Finkelstein J) (winding up – unregistered managed investment scheme)
- Hanley v National Australia Bank (2015) VSC (settled) (financial advice – complex products - for NAB)
- TSDack v Australian Water Holdings [2015] FCA 93 (shareholder dispute – for Sen. Sinodinos)
- Mercedes Holdings v Waters (No 6) [2012] FCA 1412; [2015] FCA 264 (MFS Premium Income Fund class action - ss 208, 601FC, 601FD, 601HG, 601LC Corporations Act 2001 (Cth) – for founder & Chairman)
- Leda Holdings v Securcorp [2013] FCA 1364; (settled at hearing, 2015) (managed investment scheme – responsible entity provisions)
- Australian Mortgage & Finance Co v Rome Euro Windows (2014) NSWSC 29; [2014] NSWSC 1173; [2014] NSWSC 996 (minority oppression – fiduciary duties - freezing orders)
- Adobe Systems & Microsoft v Broadcast Operations Group (2013) FCA (copyright – account of profits - for 29 companies of the Super Radio network)
- Tugrul v Tarrants Financial Consultants [No 4] [2014] NSWSC 291; [No 2] [2013] NSWSC 1971; [No 1] [2013] NSWSC 1561 (financial advice – agribusiness schemes – for financial planner)
- Prime Media Group v Seven Network (2013) (television program supply – for Prime)
- Nowland v Maiolla; Casbee Properties P/L v Eastwood Air Conditioning P/L [2013] NSWSC 980 (shareholder dispute - minority oppression)
- Webb v Borg [2012] NSWSC (unrep. Nicholas J) (strata title – exclusive use by-law)
- In re Nevada P/L [2011] NSWSC 1499 (company title – redevelopment – class rights)
- Victoria Point Docklands Real Estate v OC1 & OC4 (Plan of Subdivision PS 509916K) (2011) VSC; VCAT (management rights)
- Henderson v Body Corporate of Merrimac Heights CTS 19563 [2011] QSC 336 (community title)
- West Apartments P/L v Austino Property Development & 19 Ors (2011) NSWSC (strata development – conveyancing - rescission – specific performance)
- Wajs v Active Optics [2008] NSWSC 23 (winding up - appointment of provisional liquidator)
- Vale v Rosychamp P/L [2008] NSWSC 1373; Vale v Rosychamp P/L [2006] NSWSC 1341 (retail tenancy - unconscionability)
- Universal Music Australia P/L v Sharman License Holdings Ltd [2004] FCA 183 (Anton Piller orders - for Nippon Telecom, University of NSW, University of Queensland and Monash University)
- Ingot Capital Investments P/L & Macquarie Equity Capital Markets Limited [2007] NSWSC 124; (2007) 63 ACSR 1 (investor claim – defending claim on former partners of law firm Phillips Fox)
- Official Trustee as Trustee of Estate of Alexander Samootin v Shea (2007) NSWSC (Hammerschlag J); earlier Samootin v Shea [2007] NSWSC 785 (Hamilton J) and subsequently Samootin v Official Trustee in Bankruptcy [2007] FCA 1618 (account and inquiry – self-represented litigant)
- Peridon Village Nominees, application of Billingham [2006] NSWSC 464 and Warne v GDK Financial Solutions P/L; Billingham v Parbery [2006] NSWSC 259; (2006) 57 ACSR 525 (managed investment scheme – successor scheme – winding up – for lead investors)
- Johnstone v HIH Insurance Limited [2004] FCA 1414; Johnstone v HIH Limited [2004] FCA 190 (class action – defending claim on foreign insurer Hannover Re)
- Climit P/L v Captech Group Limited [2003] NSWSC 491 (joint venture – construction of deed)
- Xie v Zhou [2002] NSWSC 1114 (partnership – winding up)
- F. Hoffmann-La Roche AG v Chiron Corp [2000] FCA 346 (patent – revocation – Hepatitis C Virus)
- Hanave Pty Ltd v LFOT Pty Ltd [1998] FCA 1051; [1998] FCA 1429 (shopping centre – acquisition)
- Eighth SRJ P/L v Merity [1997] NSWSC 139 (conveyancing – rescission)

#### *Trusts & Probate*

- RSL LifeCare (2017) (charitable trust – cy-pres scheme - administration)
- Cupic v Cupic; Zelenovic v Cupic (2017) NSWSC (probate – foreign property – foreign law)
- Trustee of the Energy Industries Superannuation Scheme & State of New South Wales (2016) (defined benefits scheme – negotiations for future funding - “Poles and Wires” privatisation of electricity network assets)
- SR Tech v Kousba Holdings (2013) FCA (ACT Registry) (unit trust – trust deed – construction)
- In re MF Global Australia (in liq) [2012] NSWSC 994; In re MF Global Australia (in liq) (No 2) [2012] NSWSC 1426; (2012) 267 FLR 27 (application for judicial advice - s 63 Trustee Act 1925 (NSW) – distribution of \$200 million in client money – for Contracts For Difference clients - complex priority dispute)
- Greek Orthodox Church Community (2012) (charitable trust – trust deed – amendment)
- Garofolo v Capogreco [2006] NSWSC 1116 (probate – family provision – for solicitor executor)