

List of Cases

Set out below is a sample of cases Caroline has been involved in:

AUSTRALIAN LITIGATION

- **Heckler & Koch v Commonwealth of Australia & Ors** (Supreme Court): Retained for the Commonwealth of Australia in proceedings arising out of a tender for the supply of Light Weight Automatic Grenade Launchers to the Department of Defence.
- **Kaddam & Ors v MiiResorts Pty Ltd & Ors** (Federal Court): Retained for 45,000 Indian investors to recover their investment in a Ponzi scheme estimated to have defrauded 58 million investors of \$9 billion in funds some of which was diverted to Australia and used to purchase the Sheraton Mirage on the Gold Coast and other properties. The proceedings involved multiple hearings in Melbourne and Brisbane and concluded earlier this year with a trial.
- **ASIC v Wealth and Risk Management Pty Ltd** (Federal Court): Retained for ASIC in proceedings for an interlocutory and permanent injunction, declarations and penalty orders against the holder of an Australian Financial Services Licence under the Future of Financial Advice Reforms (FOFA) introduced as Division 2, Pt 7.7A of the *Corporations Act 2001 (Cth)*. The proceedings was one of the first concerning the FOFA reforms.
- **Distinctive FX Pty Ltd v Van Der Slot** (Court of Appeal/Commercial List of the Supreme Court): Retained for Distinctive FX in proceedings seeking to recover funds in excess of \$8 million from a former employee and recipients of stolen funds under *Barnes v Addy* principles. The proceeding involved two appeals to the Court of Appeal prior to trial: [2016] VSCA 39; [2015] VSCA 328.
- **ASIC v NAVRA Group Pty Ltd** (Federal Court): Retained for ASIC in proceedings arising out of the collapse of the Navra Group. The matter involved several *in camera* hearings to resolve an insurance dispute between claimants and an insurer.
- **ACCR v Commonwealth Bank of Australia** (Federal Court- Fast Track List): Retained to represent the Australasian Centre for Corporate Responsibility in proceedings seeking to challenge CBA's refusal to permit shareholders to pass a resolution at the AGM which sought to express an opinion on how directors should perform their duties entrusted under the constitution. The matter involved a trial and an appeal to the Full Court.

- **Falkingham v Peninsula Kingswood Country Golf Club** (High Court/Court of Appeal/Supreme Court): Retained for Falkingham to seek an interlocutory injunction and then to appear at trial, in the Court of Appeal and in the High Court. The proceeding raised a consideration of the principles applicable to s 232 and s 233 of the *Corporations Act 2001* (Cth) (oppression of minority) and whether the defence of *laches* was available in answer to a statutory cause of action. The matter involved a trial, an appeal to the Court of Appeal on a novel question of law and an appeal to the High Court.
- **Jackson v The Commissioner of the Australian Federal Police**: (Court of Appeal) Retained for Jackson in an appeal against a County Court decision refusing a stay of civil proceedings commenced under the *Proceeds of Crime Act 2002* (Cth). This was the first decision in which an intermediate appellate court considered the Commonwealth legislation ([2014] VSCA 136)
- **Port of Portland Pty Ltd v State of Victoria**: (High Court/Court of Appeal/Supreme Court) Retained for the State of Victoria in a complex commercial dispute arising out of the privatisation of the port of Portland. The dispute raised State constitutional issues concerning limitations on the executive power, the supremacy of Parliament and the application of the *Bill of Rights 1688* (Imp) to Australia. The proceedings involved a lengthy trial, an appeal to Court of Appeal, an appeal to the High Court and a remitter to the Supreme Court for a trial on damages.
- **J C Decaux Australia Pty Ltd v Public Transport Corporation & Ors and Adshell Pty Ltd v Public Transport Corporation (Supreme Court)**: (Federal Court and Supreme Court): Retained for the Public Transport Corporation in proceedings in the Federal Court and in the Supreme Court which arose out of the privatisation of the public transport in Victoria. The proceedings raised issues of contract law, misleading and deceptive conduct and anti-competitive conduct under the *Trade Practices Act 1974* (Cth). The proceeding in the Federal Court concluded after a three month trial.
- **Central Pacific Holdings Pty Ltd v State of Victoria and Commissioner of State Revenue and Southern Cross Properties Pty Ltd** (Supreme Court): Retained to mediate a dispute in relation to debts owed to the Commissioner of State Revenue which arose from the acquisition of a property on the site of the former Southern Cross Hotel.
- **Transfield Pty Ltd & Ors v Hyder Consulting Pty Ltd (the 'Burnley Tunnel cases')** (Supreme Court): Retained by the professional indemnity insurers to conduct the defence of the engineers sued in connection with the failure in the design and the leakage of the Burnley tunnel. The proceedings raised commercial/construction/insurance law issues and ran for three years. The trial was the first electronic trial in the Supreme Court.

- **Robert John Millard v State of Victoria** (Court of Appeal): Retained for the State of Victoria in the Court of Appeal in an appeal from the County Court. At issue was the power to extend time to commence proceedings under s 23A of the *Limitations of Action Act 1958* (Vic) and the principles applicable to applications for leave to appeal from an interlocutory order in the trial division.
- **Victorian Managed Insurance Authority v Royal & Sun Alliance (Global) Limited** (Supreme Court): Retained for Royal & Sun Alliance, a UK listed insurance company, in relation to a substantial insurance claim brought by VMIA under a reinsurance agreement entered into by the State Insurance Office and UK reinsurers in 1956. The claim related to the alleged exposure by SECV employees to asbestos at the Yallourn power station in the mid 1950's.
- **Stout and Daylesford Sawmilling Pty Ltd v Commonwealth of Australia & Ors** (Supreme Court): Retained for the Commonwealth of Australia in proceedings against the Commonwealth and the State alleging, inter alia, they were parties to an uncommercial transaction within the meaning of s 588FB of the *Corporations Act 2001* in connection with the award of a Business Exit Assistance Grant in the sawmilling industry.
- **"Y" and Austin and Repatriation Medical Centre and Women's and Children's Health** (Supreme Court): Retained by the Attorney-General of Victoria in an application by a wife for permission to remove spermatozoa and associated tissue from the body of her deceased husband. Questions raised included the inherent jurisdiction of the Court, whether the removal of spermatozoa was prohibited by the *Human Tissue Act 1982* (Vic) and whether the use of sperm was prohibited by the *Fertility Treatment Act 1995* (Vic).
- **Henderson v The Principal Registrar of the County Court** (High Court): Retained for the Principal Registrar of the County Court in the Court of Appeal and in the in the High Court. At issue was the County Court's power to refer matters to VCAT under the *Guardianship and Administration Act 1986* (Vic) and the correctness of the decision appointing an administrator under the Act.
- **Museum Board of Victoria v Rodney Carter** (Federal Court): Retained for an inspector appointed under the *Aboriginal and Torres Strait Islanders Heritage Protection Act 1984* (Cth), in an application for judicial review under s 5 of the *Administrative Decisions (Judicial Review) Act 1977* (Cth) of decisions made by him under the Act. The proceedings related to Aboriginal artefacts borrowed by Museums Board of Victoria to celebrate Aboriginal heritage.

- ***In the matter of: the Department of Human Services and a Licence Agreement Between Allegiance Systems Pty Ltd and Sap Australia Pty Ltd***: Retained to advise the Department of Human Services in relation to its licensing arrangements.
- ***Hanson v Buloke Shire Council and Australian Electoral Commission*** (High Court): Retained for the Buloke Shire Council and the Australian Electoral Commission in an application for special leave in the High Court. The proceeding raised issues of bankruptcy and the operation of Order 80 of the Federal Court Rules.
- ***The Queensland Gas Access Regime Certification Application under Part III of the Trade Practices Act*** : Retained to advise Duke Energy in relation to the National Competition Council's refusal to certify the Queensland Government's Gas Access Regime as an effective access regime for the purposes of Part IIIA of the Act. The advice examined Part IIIA of the Act and included options available for judicial review of the Minister's decision under the *Administrative Decisions (Judicial Review) Act 1977* (Cth).
- ***Investigation by ASIC into the UniSuper Superannuation Fund***: Retained by ASIC to advise in relation to their investigation of potential breaches of the *Corporations Law* by UniSuper Superannuation Fund.
- ***Rainsford v State of Victoria*** (Federal Court): Retained for the State of Victoria in a proceeding under the *Human Rights and Equal Opportunity Commission Act 1986* (Cth) (HREOC Act). At issue was whether the HREOC Act applied to the Crown in right of the State and whether s 39B(1A)(c) of the *Judiciary Act 1903* (Cth) provided an additional source of jurisdiction in this instance either to the Federal Court or the Federal Magistrates' Court.
- ***Roman Catholic Trusts Corporation for the Diocese of Melbourne & Ors v The Attorney-General For the State of Victoria*** (Supreme Court): Retained for the Attorney-General in proceedings with respect to a charitable trust established in 1908 for orphan boys which failed. The proceedings sought approval for the trust to be administered cy-pres.
- ***Hugo Alistair Rich v Group 4 Correction Services Pty Ltd & Ors*** (Supreme Court): Retained for Group 4 Correction Services Pty Ltd (the operator of Port Phillip Prison) in a proceeding brought by plaintiff alleging a contravention of section 85ZU of the *Crimes Act 1914* (Cth). The plaintiff was convicted of importing into Australia a trafficable quantity of heroin contrary to s 233(1)(B) of the *Customs Act 1901* (Cth).

- **Mobil Oil Australia Pty Ltd v State of Victoria & Ors** (High Court/Court of Appeal/Supreme Court): Retained for the Attorney-General and then for the State of Victoria in proceedings challenging the constitutional validity of the State's class action legislation. The proceeding was the State's first class action proceeding which arose out of the contamination of aircraft fuel.
- **Action Cycles Pty Ltd & Ors v Gippsreal Limited** (Supreme Court): Retained to represent the Action Cycles parties in proceedings which raised the validity of appointment of receivers & managers, misleading and deceptive conduct and unconscionable conduct under the *Australian Consumer Law*.
- **Board Solutions Pty Ltd v Westpac banking Corporation and Bendigo Bank Limited** (Supreme Court): Retained for the plaintiff in injunction proceedings, and for the trial in proceedings challenging the validity of a demand issued under a performance bond. At issue was whether Bendigo Bank had engaged in misleading and deceptive conduct and unconscionable conduct under the *Trade Practices Act 1974* (Cth).
- **Ascott International Management (Australia) Pty Ltd v Renaissance Assets Pty Ltd** (Supreme Court): Retained for a Singaporean listed company and its Australian subsidiary in proceedings in the Commercial List which raised issues of trade practices, directors' duties and equity.
- **Australia and New Zealand Banking Group v American Express International Inc** (Supreme Court): Retained for ANZ Bank in interim and interlocutory injunction proceedings to restrain Amex from a breach of contract in relation to the conduct of its business in the South Pacific.
- **Chen v Chan** (Court of Appeal): Retained for the third appellant in appeals from three separate judgments in the trial division. As part of the appeal it was necessary to review the trial judge's finding of fraud and the evidence and procedure adopted at trial. The appeal raised complicated issues under *Barnes v Addy* as interpreted by the High Court in *Say Dee v Farah Constructions Pty Ltd*.
- **Newcrest Mining Limited v Smith** (Supreme Court): Retained for Newcrest Mining Limited in proceedings alleging breach of contract of employment by a former executive of Newcrest.
- **Australia and New Zealand Banking Group v Anzcover Insurance Pty Ltd** (Supreme Court): Retained by the Bank in a substantial insurance claim against Australian and foreign defendants arising from a loss sustained by the Bank's former subsidiary in India, Grindlays Bank. The proceeding necessitated calling witnesses on Indian law and procedure.

- **ACCC v Kaye; ASIC v Kaye** (Federal Court): Retained for Mr Kaye to conduct the defence in proceedings brought by the consumer and corporate regulators alleging a breach of the *Corporations Law* and the *Trade Practices Act 1974* (Cth).
- **Stack v GSA Pty Ltd & Anor** (High Court): Retained for the respondent in the High Court appeal which raised novel points of law in relation to the *Patents Act 1901* (Cth).
- **Sarah Marie Holdings Pty Ltd v Commonwealth Bank of Australia** (Supreme Court/Court of Appeal): Retained for the plaintiff in proceedings to oppose the Bank's repossession of property and in which allegations of fraud, duress and unconscionability and the principles of indefeasibility of title under the Torrens system were raised. The proceeding concluded after a two week trial.
- **Christopher Leptos v Accenture Australia Limited** (Supreme Court): Retained for Accenture Australia Limited in a significant breach of employment contract claim brought by a former executive of Accenture.
- **Agresta v Commercial Union Assurance Company of Australia** (County Court/Court of Appeal) : Retained for Commercial Union in the trial in the County Court and in the appeal before the Court of Appeal.
- **In Re: A Scheme of arrangement between the Commonwealth Bank and Colonial Limited**: (Supreme Court) Retained by Colonial Limited to advise and appear in relation to a scheme of arrangement between the Bank and Colonial Limited.
- **BP Solar (Australia) Pty Ltd v John Holland Asia Holdings Ltd** (Supreme Court): Retained for BP Solar in proceedings which arose from breach of a construction contract by John Holland.
- **In the Matter of Julie Ann Laird** (Supreme Court): Retained by a Justice of the Hong Kong Supreme Court to advise and draw proceedings against Laird, the Law Institute Fidelity Fund, the Law Institute of Victoria and professional Indemnity insurers in relation to an embezzlement claim against Ms Laird.
- **Icons Worldwide Marketing Pty Ltd v Shale** (Federal Court): Retained for Shale to defend proceedings, including an application for a Mareva injunction, in the Federal Court.
- **Leeds & Bradford Boiler Co Limited & Ors ats Todorovski** (Supreme Court): Retained by Leeds & Bradford, a UK based company, in proceedings alleging a

wrongful death caused by a fault in a boiler manufactured by Leeds & Bradford. I was involved in all aspect of the proceeding and gave advice to the defendant.

- **UTSA Pty Ltd (In Liq.) & Ors v Ultra Tune Australia Pty Ltd** (High Court/Court of Appeal/Supreme Court): Retained for the principal defendant in proceedings brought by the liquidator which alleged breach of directors' duties, fiduciary duties, fraud and a contravention of the voidable transaction provisions of the *Corporations Law*. Novel insolvency issues raised in the proceeding are reported at *UTSA Pty Ltd (in Liq) & Ors v Ultra Tune Aust Pty Ltd* 21 ASCR 457; *UTSA Pty Ltd (in Liq) & Ors v Ultra Tune Aust Pty Ltd* [1977] 1 VR 667; *UTSA Pty Ltd (in Liq) & Ors v Ultra Tune Aust Pty Ltd* [1999] VSC 58; *UTSA Pty Ltd (in Liq) & Ors v Ultra Tune Aust Pty Ltd* [1999] 1 VR 204
- **Moxia Pty Ltd v AMP General Insurance Limited** (High Court/Court of Appeal/Supreme Court): Retained for the plaintiff in a proceeding seeking indemnity under an insurance policy in which the defences of fraud and arson were raised. I was involved in all facets of the proceeding including running the six week trial, the appeal to the Court of Appeal and the special leave application to the High Court.

UK LITIGATION

- Retained for the UK Secretary of State for the Homeland in 2012 in more than 50 asylum and immigration appeals. The appeals involved consideration of case law, the Secretary of State's policy guidelines, Immigration Rules, the European Convention on Human Rights and UK immigration legislation including the *Human Rights Act 1998*, the *Nationality, Immigration and Asylum Act 2002*, the *Asylum and Immigration (Treatments of Claimants, etc) Act 2004* and the *Border, Citizenship and Immigration Act 2009*.
- Retained in various insolvency proceedings in the High Court of England.

INTERNATIONAL COMMERCIAL ARBITRATION

- Engaged as presiding arbitrator and sole arbitrator in international commercial arbitrations arising out of contractual disputes involving significant sums in the Asia Pacific region. One arbitration concluded after a proceeding to the High Court of Singapore where my decision on jurisdiction as sole arbitrator was upheld: *Malini Ventura v Knight Capital Pte and Ors* [2015] SGHC 225.
- Course director for the Chartered Institute of Arbitrators (CI Arb) APAC diploma course and have taught the diploma course in Singapore, Hong Kong and Australia and in Oxford for three consecutive years.
- Course director for the Accelerated Route to Fellowship course and have taught the course in Perth, Sydney and Melbourne.

- Course director for the Award Writing Course and have taught the course in Melbourne and Sydney.
- Speaking engagements in numerous international arbitration conferences including most recently Australian Arbitration Week, Perth (2017), GAR Live, Hong Kong Arbitration Week (2017), Beijing Arbitration Commission Annual Hong Kong Summit (2017), Australian Arbitration Week, Sydney (2016), Beijing Arbitration Commission – Enforcement of Awards in Australia (2016) and Oxford Diploma Alumni Conference, Oxford (2015).

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