

# Justin P Tomlinson

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*From 11 Dec 2008, liability limited by a scheme approved under Professional Standards legislation.*

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<b>ADMISSION TO THE BAR:</b>	20 November 2008
<b>ADMISSION TO PRACTICE:</b>	26 April 2005
<b>PRACTICE AREAS:</b>	Appellate; General Commercial; Corporations; Equity and Trusts; Insolvency (Corporate and Personal); Property; Succession Law (Administration, Wills and Probate); Professional Negligence claims.
<b>QUALIFICATIONS:</b>	LLB, BA (UWA, Melb Uni) Assoc. Dip (ECU). Former senior associate Madgwicks Lawyers, employee solicitor at Wisewoulds.

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A selection of matters in which Justin is, or has been, briefed **as at 1 August 2018** includes:

- *Global Consulting Services Pty Ltd and RGN Pty Ltd v Gresham Property Investments* New South Wales Court of Appeal proceedings (concerning contribution as between co-sureties and equitable exceptions -appeal pending). Led by B W Walker SC.
- *ASIC v Lewski (and Ors)*: application for special leave to the High Court granted (appeal pending as at 1 August 2018 re Full Federal Court proceedings *Lewski v ASIC* **[2016] FCAFC 96** and *Lewski v ASIC (No 2)* **[2017] FCAFC 171**). Led by B W Walker SC and M Osborne QC.

- *Finance & Guarantee Co Pty Ltd v Auswild and Ors*: Supreme Court of Victoria proceedings (ongoing disputes involving alleged breaches of fiduciary duties of past directors; property claims, and negligence). Led by K Lyons QC (and D Collins QC) and with Dr M Barrett, J Maloney, B Ryde.
- *Re the De Lutis Group*: Supreme Court of Victoria Proceedings (concerning disputes between shareholders in a large group of companies – determination of trusts and trust property- contractual construction. Resolved prior to delivery of judgment). Decisions include: *De Lutis v De Lutis* [2017] VSC 505; *De Lutis v De Lutis (No 2)* [2018] VSC 54. Led by A J Myers QC and with D Briggs.
- *Re Australian Property Custodian Holdings Ltd (liquidators appointed)*: several other proceedings arising from the dissolution of a managed investment scheme, liquidation of the responsible entity and alleged breaches of directors’ duties and related equitable claims and statutory relief under the *Corporations Act 2001* (Cth). In addition to *ASIC v Lewski* (above), other matters include:
  - *Horne v Retirement Guide Management Pty Ltd* [2017] VSCA 47 – Victorian Court of Appeal (re time limits on service of ‘voidable transaction’ claims under s588FF of the *Corporations Act 2001* (Cth) - appeal from *Re Australian Property Custodian Holdings Ltd (in liquidation)* [2015] VSC 745). Led by M Osborne QC;
  - *Daytree v Australian Property Custodian Holdings Ltd (liquidators appointed) and others*: Victorian Supreme Court proceeding (re contractual construction of securities and professional negligence claim). Led by L Glick QC;
  - *Australian Property Custodian Holdings Ltd (in Liq) v Lewski* [2014] VSC 456: Supreme Court of Victoria Proceedings (setting aside of orders extending time for service of writ, per Robson J). Led by M Osborne QC;
  - *Re Australian Property Custodian Holdings Ltd (in Liq) (No 3)* [2013] VSC 154: Supreme Court of Victoria Proceedings (production of s19 Examination transcripts by subpoena);
  - *ASIC v Australian Property Custodian Holdings Ltd (in liq)* [2013] FCA 74: Federal Court Proceedings (application for release from *Harman* implied undertakings);

- *Re Australian Property Custodian Holdings Ltd (in Liq) (No 2)* **[2012] VSC 576**: Supreme Court of Victoria Proceedings (privileges against incrimination and exposure to a penalty -application to stay proceedings or limit defences). Led by P Bick QC.
- *Bainbridge Grill'd Pty Ltd & Ors v Simon Crowe & Ors*: Federal Court proceedings (oppression claim between the shareholders in the Grill'd group of companies). Led by Philip Crutchfield QC, with S Rosewarne and F Bentley.
- *Re the Australian Institute of Fitness Pty Ltd*: numerous disputes between directors and shareholders in New South Wales and Victoria. Decisions included:
  - *Australian Careers Institute Pty Ltd v Australian Institute of Fitness Pty Ltd* **[2016] NSWCA 347** - New South Wales Court of Appeal decision (appeal of *Australian Institute of Fitness Pty Limited v Australian Institute of Fitness (Vic/Tas) Pty Limited (No 3)* [2015] NSWSC 1639). Led by M Osborne QC and with D Stretton.
  - *Australian Institute of Fitness Pty Limited v Australian Institute of Fitness (Vic/Tas) Pty Limited (No 3)* **[2015] NSWSC 1639** (members' remedies - oppression - breach of directors' duties - accessory liability. per Sackar J). Led by M Osborne QC and with D Stretton.
  - *Australian Institute of Fitness Pty Limited v Australian Institute of Fitness (Vic/Tas) Pty Limited* **[2015] NSWSC 635** (defendants' application to limit use of evidence under s136 of the *Evidence Act 1995* (NSW) - Cross examination - Restrictions on cross examination. per Sackar J). Led by M Osborne QC;
  - *Australian Institute of Fitness Pty Limited v Australian Institute of Fitness (Vic/tas) Pty Limited (No 2)* **[2015] NSWSC 994** (Legal professional privilege - Waiver - Privileged material referred to in affidavit - Whether conduct inconsistent with maintenance of privilege - Whether material must be read before privilege waived. per Sackar J). Led by M Osborne QC.
- *Gun Capital Management Pty Ltd v Solamind Pty Ltd*: Federal Court Proceedings (including allegations of misleading or deceptive conduct, contractual breaches: *Gun Capital Management Pty Ltd v Solamind Pty Ltd* **[2013] FCA 620**; and application to

transfer proceedings interstate: *Gun Capital Management Pty Ltd v Solamind Pty Ltd* [2010] FCA 1360) Led by T North QC.

- *IC Hire Pty Ltd v Coal Projects Pty Ltd* [2013] VSC 732: Supreme Court of Victoria Proceedings (winding up application – Statutory demand – Requirement that affidavit “verify” the debt – Significance of defect in affidavit – Affidavit not sworn by an appropriate oath-taker).
- *Warner v Global Pacific Aerospace Pty Ltd & Anor* [2012] VSC 291 Supreme Court of Victoria Proceedings (successful winding up on just and equitable ground – Between shareholders – *Corporations Act 2001 (Cth)*, s 461(1)(k), per Ferguson J).
- *Watson v Vaughan* [2011] TASSC 17: Supreme Court of Tasmania Proceedings (disputes between trustees – appointment of new trustees by the Court, per Tennent J).
- *Re S&D International Pty Ltd (in liq)*: Supreme Court of Victoria Proceedings (various disputes arising from the liquidation of S&D International Pty Ltd and priority disputes). Cited decisions include:
  - *Re S&D International Pty Ltd (in liq)* [2009] VSC 225 (dispute concerning equitable priorities in property held by company as trustee – Lien for “salvage costs” – Application of principle in *Universal Distributing Co Ltd (in liq)* (1933) 48 CLR 171 – construction of sect 77 of the *Transfer of Land Act 1958 (Vic)*).
  - *Re S&D International Pty Ltd (in liq) No 6* [2011] VSC 119 (appeal from Associate Justice – Debtor bringing further proceedings raising issues connected with proceedings in which costs orders made).
- *Evans & Ors v Thurau Pty Ltd* [2011] VCC 1354: County Court of Victoria Proceedings (jurisdiction – Long term lease of Crown land - Dispute over sub-leases of apartments at Falls Creek – Whether premises to be regarded as “retail premises” – Whether VCAT has exclusive jurisdiction to determine disputes).
- *Confiscation Act matters briefed by the Director of Public Prosecutions:*

- *Re Mokbel*: Supreme Court of Victoria Proceedings (successful application for Pecuniary Penalty Order, unreported 27 September 2012, per Whelan J.) Led by S O'Bryan QC.
- *Re Rizzo* **[2014] VSC 225**: Supreme Court of Victoria Proceedings (successful application for pecuniary penalty order – Property previously automatically forfeited – Argument for use of part of automatic forfeiture proceeds in satisfaction of part of PPO – Abuse of process – Issue whether property subject of automatic forfeiture “tainted” property, per King J.) Led by S O'Bryan QC.
- *Lemoussu v DPP* **[2012] VSCA 20**: Supreme Court of Victoria Court of Appeal Proceedings (confiscation – Restraining order – Exclusion order – Entitlement to make application – Prior to conviction – Following conviction – Time limits). Led by S O'Bryan QC.