



Kim Anderson

NEW/CHAMBERS

Bachelor of Civil Law (Distinction) University of Oxford
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Admitted to the legal profession 2008
Admitted as a barrister in NSW 2014
Also entitled to practise in All Australian jurisdictions (Commonwealth, State and Territory)

Principal areas of practice

Administrative Law	Corporations and Securities
Appellate	Equity
Banking and Financial Services	Proceeds of Crime
Bankruptcy and Insolvency	Property
Commercial Law	Taxation and Revenue
Conflict of Laws	Trade Practices and Competition
Constitutional Law	Trusts

Previous professional experience

- 2009 to 2014: Solicitor/Senior Associate, Herbert Smith Freehills, Sydney Practice in the Dispute Resolution group with a focus on taxation disputes and commercial litigation, particularly in the banking, funds management and resources sectors
- 2007 to 2008: Articled Clerk/Solicitor, Mallesons Stephen Jaques, Melbourne Practice in Taxation, Litigation, Intellectual Property and Mergers & Acquisitions groups
- 2005 to 2006: Associate to the Honourable Justice Vanstone, Supreme Court of South Australia, Adelaide

Publications

'High Court widens scope of penalty doctrine', Insights, Freehills, 10 September 2012 (with Cameron Hanson)

Professional memberships

New South Wales Bar Association
Australian Association of Constitutional Law

Additional information

Kim accepts briefs in all areas of law. He has a broad practice in commercial, revenue and public law with particular experience in regulatory and consumer protection matters, contractual disputes, statutory construction and proceeds of crime. Kim has considerable experience in complex commercial litigation involving expert evidence across multiple disciplines, drawing upon his quantitative engineering background.

Kim regularly appears both led and unled in a variety of courts in multiple Australian jurisdictions, and has conducted examinations unled before the AAT. Kim also has experience in alternative dispute resolution, including mediation and arbitration.

Professional profiles

au.linkedin.com/pub/kim-anderson/1a/717/8/

Regulatory / Consumer Protection

- *Australian Securities and Investments Commission v ANZ Banking Group Ltd* [2017] FCA 1338 (*BBSW Benchmark Manipulation case*) – led by J H Karkar QC and E A Cheeseman SC for ASIC. Proceedings under the *Corporations Act* and *ASIC Act* relating to alleged manipulation of the Bank Bill Swap Rate (BBSW), the primary benchmark interest rate in Australian financial markets. Claims of market manipulation, unconscionable conduct, misleading and deceptive conduct, and breach of financial services licence conditions. Successfully obtained declarations of attempted contraventions, pecuniary penalty order of \$10 million, and enforceable undertakings for payment of \$20 million to ASIC and \$20 million to a proposed Financial Consumer Protection Fund.
- *Australian Securities and Investments Commission v Park Trent Properties Group Pty Ltd* [2015] NSWSC 1527 – led by E A Cheeseman SC for ASIC. Proceedings under the *Corporations Act* in respect of defendant's business of marketing and selling property to investors through self-managed superannuation funds. Successfully obtained declaratory and injunctive relief on the basis that the defendant's business amounted to the conduct of a financial services business without a licence.

Contractual

- *JMT Builders Pty Ltd v Harrison Electrical Services Pty Ltd* (NT Claim No 21714311) – unled for plaintiff. Proceedings involving contractual dispute between builder and electrical subcontractor in relation to completion and valuation of works. Claims made in contract, unjust enrichment and misleading or deceptive conduct. Trial raised issues of contractual construction and admissibility/use of quantitative expert evidence. Judgment reserved.

Revenue

- *Mills v Commissioner of Taxation* (2012) 250 CLR 171 – instructed as solicitor at trial, Full Federal Court appeal and High Court appeal on behalf of taxpayer. Proceedings involved application of Part IVA anti-avoidance regime to imputation benefits associated with PERLS V stapled hybrid securities issued by CBA. Case involved first judicial consideration of s 177EA of the *Income Tax Assessment Act 1936* (Cth), as well as settlement deed and test case procedure agreed between Commissioner and CBA. Successfully appealed decision at first instance and overturned Commissioner's denial of imputation benefits to security holders.

Public Law

- *Rirratjingu Aboriginal Corporation v Northern Land Council* (2017) 248 FCR 349 – led by A Moses SC for Gumatj Corporation Limited. Proceedings involving challenges to lawfulness of allocation of moneys received by Land Council under *Aboriginal Land Rights (Northern Territory) Act 1976*. Appeal to Full Federal Court raised issues of statutory construction, availability and scope of judicial review, trust law and constitutional law. Successfully resisted appeal and subsequent application for special leave to appeal to the High Court. In further proceedings at first instance, appeared unled in court ordered mediation resulting in successful resolution of proceedings.
- *Onley & Ors v Commissioner of the Australian Federal Police* [2019] NSWCA 101; *Commissioner of the Australian Federal Police v Cranston & Ors (No 8)* [2018] NSWSC 365; *Commissioner of the Australian Federal Police v Cranston & Ors (No 10)* [2018] NSWSC 542 – led by D McLure SC for the Commissioner. Proceeds of crime proceedings in relation to the Plutus Payroll major tax fraud investigation. Appellants at first instance had unsuccessfully sought stay of compulsory examinations pending conclusion of contemporaneous criminal proceedings. Appeal raised issues of statutory construction and integrity of criminal process. Successfully resisted appeal and preserved operation of compulsory examination orders.

Proceeds of Crime

- *Application by the Commissioner of the Australian Federal Police (No 2)* [2015] NSWSC 1447; *Application by the Commissioner of the Australian Federal Police (No 3)* [2015] NSWSC 1623 – led by E A Cheeseman SC for the Commissioner. Proceedings under the *Proceeds of Crime Act 2002* (Cth) in relation to funds restrained in the context of casino junket operations and structured bank deposits. Successfully resisted applications to exclude funds from restraining orders and successfully brought applications for forfeiture of the restrained funds. Conducted extensive examinations (unled) of numerous persons suspected of involvement in criminal enterprise.
- *Commissioner of the Australian Federal Police v Kalimuthu (No 2)* [2018] WASCA 92 – led by A Moses SC for the Commissioner. Proceeds of crime proceedings in relation to suspected "cuckoo smurfing" money laundering operation through international bank transfers. Appeal raised issues of statutory construction, banking law and personal property law. Successfully appealed against first instance decision excluding funds in bank accounts from restraint.

Alternative Dispute Resolution

- *Rirratjingu Aboriginal Corporation v Gumatj Corporation Limited* – led by A Moses SC for Gumatj Corporation Limited. Commercial arbitration proceedings before the Hon Robert French AC in relation to traditional ownership of land under *Aboriginal Land Rights (Northern Territory) Act 1976*. Proceedings ongoing.
- *Gumurdul v Northern Land Council*, Federal Court of Australia No VID 534 of 2017 – unled for Kunbarlanja Bininj Kunbolk Pty Ltd. Proceedings involving judicial review of decisions of Land Council under *Aboriginal Land Rights Act (Northern Territory) Act 1976* in respect of lease agreements. Interlocutory hearings raised issues of statutory interpretation and application of *Hardiman* principle. Successful resolution of proceedings at mediation.

Advisory matters

Advised on a range of complex commercial, revenue and public law matters, including:

- availability of relief in respect of liability for redundancy payments following termination of ship management arrangement (contractual formation, contractual interpretation, rectification, misleading or deceptive conduct, estoppel);
- taxation liability of statutory authority following anticipated vesting of land (capital gains tax, immunities from income tax, resulting trusts, resumption of land, taxation of trusts, stamp duty);
- availability of relief in respect of overpayments under building contract terminated prior to completion (contractual interpretation, unjust enrichment, money had and received, mistake, failure of consideration, misleading or deceptive conduct);
- tort liability of law enforcement authority following collision of police vehicle with suspect during apprehension (negligence, intentional torts, powers of arrest, lawful custody, vicarious liability, statutory immunities, exclusions of liability under motor accidents and personal injuries legislation, limitation periods);
- prospects of appeal and applications for leave to appeal in numerous proceedings.