



## Elizabeth Cheeseman SC

**NEW/CHAMBERS**

BA/LLB (SYD)

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Telephone	+61 2 9151 2020
Clerk's telephone	+61 2 9151 2080
Fax	+61 2 9233 1850
Email	cheeseman@newchambers.com.au

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Admitted to the legal profession	1991
Admitted as a barrister in NSW	1996
Appointment as Senior Counsel	2012
Also entitled to practise in	All Australian jurisdictions (Commonwealth, State and Territory)

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### Principal areas of practice

Administrative Law	Corporations and Securities
Appellate	Disciplinary Proceedings
Banking and Financial Services	Equity
Class Actions	Insurance and Reinsurance
Commercial Law	Proceeds of Crime
Competition and Consumer Law	Professional Indemnity

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### Awards or professional recognition

**Chambers Global Asia-Pacific 2017, 2018, 2019:** Australia, Dispute Resolution: The Bar

**Best Lawyers 2017, 2018, 2019:** Listed for Litigation

**Doyle's Guide 2016, 2017:** Recommended Leading Commercial Litigation & Dispute Resolution Senior Counsel – Australia, 2016, also NSW, 2016 / 2017

### Previous professional experience

1991 to 1996: Solicitor/Senior Associate, Blake Dawson Waldron, Sydney (now Ashurst).

### Professional memberships

NSW Bar Association Practice Development Committee (2012 – 2015) (Chair, 2015 - 2019)  
NSW Bar Association Working Party on ALRC Inquiry into Class Action Proceedings and Third Party Litigation Funders (Chair 2018)  
NSW Bar Association Ad hoc Working Party on Direct Costs Agreements (2018)  
NSW Bar Association Equitable Briefing Working Party ( 2014 – 2015)  
NSW Bar Association Professional Conduct Committee (2011 – 2015)

### Additional information

Liz Cheeseman was a founding member of New Chambers in 2015. From inception New Chambers has been ranked as a leading set by Chambers Global Asia Pacific. Liz succeeded David Jackson QC as Head of New Chambers in 2016, a position in which she served until 2018.

Liz is skilled in leading and working with multi-disciplinary teams in complex disputes and in devising and implementing strategic approaches to case formulation, presentation and resolution. She has extensive experience, at trial and appellate level, in large complex multi-faceted litigation. Liz acted for the Liquidators of the Bell Group Companies at trial (2003 - 2006) and on appeal (2011) achieving a \$2.7 billion judgment which was ultimately compromised ahead of the High Court appeal, resulting in a \$1.7 billion settlement. More recently, Liz was one of 2 lead senior counsel for ASIC in the landmark bank bill swap rate market manipulation case against ANZ in which the penalties imposed were 91% of the maximum. The case was the Australian equivalent to the UK/US LIBOR litigation.

Liz practises predominantly in the fields of commercial, corporate, banking, regulatory (with a particular focus on financial services, superannuation and markets), insurance and professional indemnity. She also practises in proceeds of crime litigation typically involving complex financial and taxation structures, money laundering, cuckoo smurfing and insider trading. Liz is regularly briefed in commercial, regulatory and common law matters involving issues which turn on competing expert testimony in a wide variety of disciplines, including financial products and services, banking, professional negligence, capital markets and competition issues. Liz has advised and appeared for a variety of commercial interests across many sectors. Liz is retained to appear and advise in class actions, particularly those arising in a commercial context involving financial services, markets and insurance.

She is regularly briefed in significant litigation for the Australian Securities and Investment Commission, the Australian Tax Office and the Australian Federal Police in corporate, markets and tax matters. She is ranked in Chambers, Doyles and Best Lawyers.

Liability limited by a scheme approved under Professional Standards Legislation.

## COMMERCIAL

***The Bell Litigation (The Bell Group Ltd (In Liq) v Westpac Banking Corporation [No 9] [2008] WASC 239; Westpac Banking Corporation v The Bell Group Ltd (In Liq) [No 3] [2012] WASCA 157*** - acted at trial and on appeal for the Liquidators of the Bell Group Companies in their successful claim against 20 banks (both Australian and international), obtaining a verdict of approx. \$2.7 billion. The proceedings were subsequently settled for approx. \$1.7 billion, prior to the hearing of the appeal to the High Court.

***Commonwealth Bank of Australia v ilinvest Pty Ltd (in Liquidation) [2018] NSWSC 1276*** - acted for the CBA successfully at trial.

***Harker-Mortlock v Commonwealth Bank of Australia [2019] NSWCA 56*** – acted for the CBA successfully on appeal. Instructed to appear for CBA on special leave application (pending).

***Harker-Mortlock v Commonwealth Bank of Australia & Anor [2019] HCATrans 89*** - appeared for the CBA successfully resisting stay application.

***Commonwealth Bank of Australia v Yong & Ors [2016] NSWSC 952*** - appeared for CBA before Adams J in successful claim against the director guarantors of the V-plus Group of Asian Supermarkets. Issues included a dispute as to the validity of the loan documents, the valuation of the business operated by the primary borrower and allegations of unconscionable or misleading and deceptive conduct.

***Wyeth / AstraZeneca proceedings*** – advised the Commonwealth in respect of 3 related proceedings involving a claim for damages on an undertaking given in support of an injunction. The claim involved difficult issues of expert evidence concerning proof of loss in the context of hypothetical market modelling addressed to measure the impact on payments made under the Pharmaceutical Benefits Scheme based on competing scenarios as to time of market entry by generic suppliers of certain drugs.

***Saravinovska v Saravinovski – (No 6) [2016] NSWSC 964*** - appeared for the defendant. The case involved the division of commercial and residential property interests following the breakdown in a family relationship. The case concerned several constructive trust arguments and an application of the *Property Relationship Act* as between a woman and her father-in-law. The case involved extensive oral testimony and cross-examination. There were a number of interlocutory decisions that were significant relating to loss of capacity and conflict of interest in the selection of a tutor.

***Trust Company Limited v Noosa Venture 1 Pty Limited [2010] NSWSC 1334*** – appeared for the successful defendants in resisting claims for damages for breach of contract and in the alternative relief against oppression through compulsory share buyout order or the winding up of the joint venture vehicle formed to redevelop the Starwood/Sheraton Hotel at Noosa.

***Centre for Australian Ethical Research Pty Limited ats Sandfire Resources NL*** - briefed for CAER in Federal Court proceedings brought by Sandfire following the ANU's divestment of shares in Sandfire and other resources companies based on CAER's ESG (environmental, social and governance) ratings. Case settled at mediation shortly before hearing.

***O'Connor v O'Connor [2018] NSWCA 214*** - appeal in relation to refusal of preliminary discovery application in context of sale of shares and sale of business.

***Findex Group Limited v Keith McKay [2019] NSWCA 93*** - appeared for successful respondent in appeal from decision concerning use and retention of materials obtained under search order (Anton Pillar order).

## REGULATORY

***ASIC v ANZ [2017] FCA 1338 (BBSW Benchmark Manipulation) - Federal Court*** - appeared for ASIC in civil penalty proceedings against ANZ under the *Corporations Act* and *ASIC Act* for alleged market manipulation, unconscionable conduct, misleading and deceptive conduct and breach of licence. The BBSW is the primary interest rate benchmark used in Australian financial markets (described as the Australian equivalent to LIBOR). ASIC obtained orders that required ANZ to pay a pecuniary penalty (91% of the maximum applicable penalty) as well as obtaining enforceable undertakings which included a payment of \$20 million to a proposed Financial Consumer Protection Fund, and payment of \$20 million to ASIC for the cost of the investigation, the cost of the proceedings and in connection with the establishment and management of the proposed Financial Consumer Protection Fund.

***Park Trent Properties Group Pty Ltd v ASIC [2016] NSWCA 298*** - appeared for ASIC successfully at trial and on appeal. At trial, ASIC successfully obtained injunctive and declaratory relief against Park Trent on the basis that its business of marketing and selling real property through SMSFs constituted the conduct of an unlicensed financial services business in contravention of s911A of the *Corporations Act*. The decision is a significant recognition of the reach of the financial advice consumer protections in Chapter 7 of the *Corporations Act* to property investment through use of a SMSF, particularly so in the context of the burgeoning growth in the SMSF sector (570,000 controlling approx. \$600B in assets). The case also involved a number of significant interlocutory decisions.

***Tarrant v ASIC [2015] FCAFC 8*** - appeared for ASIC at trial and on appeal. Appeal by a licensed financial planner against a 7 year banning order imposed by the AAT. ASIC succeeded at trial and on appeal. The case was important in relation to consumer protection and the requirements for disclosure placed on licensed advisers.

***Ransley v Deputy Commissioner of Taxation [2018] FCA 1796 and Ransley and Commissioner of Taxation [2018] AATA 4359*** - successfully appeared for the Commissioner before Jagot J in relation to the tax treatment of multi-million dollar profits made on the sale and exchange of shares in Doyles Creek Mining Pty Ltd and NuCoal Resources NL. Appeal to Full Court withdrawn.

**Grossman v ASIC** [\[2011\] AATA 6](#) - disqualification of director of managing corporations for 5 years: Finding of lack of commercial morality; disregard for interests of creditors and repeated misuse of corporate structure.

**ASIC v FC Stone Australia Pty Ltd** - represented FC Stone in proceedings before the Markets Disciplinary Panel concerning breach of the Market Integrity Rules (ASX24).

#### PROCEEDS OF CRIME

**Commissioner of the Australian Federal Police - Proceedings arising out of Project Wickenby** - appeared at first instance and on appeal for the Commissioner who was successful in restraining and obtaining forfeiture of various high value property interests under the *Proceeds of Crime Act 2002* (Cth). The appeal also raised a constitutional issue involving the *Kable* principle in the context of proceeds of crime legislation. The constitutional validity of the forfeiture scheme was upheld. Special leave to appeal to the High Court was refused. (see *Commissioner of the Australian Federal Police v Dickson (No. 2)* [\[2016\] NSWSC 574](#), *AD v Commissioner of the Australian Federal Police* [\[2018\] NSWCA 89](#), *AD v Commissioner of the Australian Federal Police (No 2)* [\[2018\] NSWCA 169](#), *Dickson v Commissioner of the Australian Federal Police* [\[2018\] HCASL 220](#), *Dickson v Commissioner of the Australian Federal Police* [\[2018\] HCASL 364](#), *Commissioner of the Australian Federal Police v Dickson (No. 3)* [\[2016\] NSWSC 564](#)).

**Zheng & Anor v Commissioner of the Australian Federal Police** [\[2018\]](#) (reserved before Full Court of South Australia Supreme Court) - appearing for the Commissioner (led by Stephen Donaghue QC, Solicitor General (Cth)) in respect of a constitutional challenge to the *Proceeds of Crime Act 2002* (Cth).

**Commissioner of the Australian Federal Police v Nguyen** [\[2016\] NSWSC 883](#) - appeared for the Commissioner in civil proceedings involving the *Proceeds of Crime Act 2002* (Cth) - successfully resisted application for exclusion from forfeiture.

**Application by the Commissioner of the Australian Federal Police (No 2)** [\[2015\] NSWSC 1447](#) - appeared for the Commissioner before Schmidt J - successfully resisted applications for exclusion from forfeiture in relation to cash seized in connection with casino junket operation.

**Commissioner of the Australian Federal Police v Pharmacy Depot Hurstville Pty Ltd (in liq)** [\[2019\] NSWSC 643](#); **Commissioner of the Australian Federal Police v Pharmacy Depot Hurstville Pty Ltd (in liq)** [\[2018\] NSWSC 1284](#) - appearing for the Commissioner in confiscation proceedings and related proceedings in the Supreme Court relating to an alleged fraud in excess of \$18 million perpetrated on the Commonwealth Pharmaceutical Benefits Scheme.

**Commissioner of the Australian Federal Police v Revell Reade & Ors** [\[2019\] NSWSC 334](#) - appeared for the Commissioner in obtaining registration of foreign compensation order under the *Mutual Assistance in Criminal Matters Act 1987* (Cth).

Numerous other proceeds of crime cases arising in various contexts including tax fraud, fraudulent claims on the Pharmaceutical Benefits Scheme, international money laundering (including cuckoo smurfing), unexplained wealth, customs fraud and insider trading.

#### COMMON LAW / INSURANCE

**Obeid v Lockley & Anor** [\[2018\] NSWCA 71](#) - at trial appeared successfully for two individual ICAC officers and the State of NSW in civil proceedings commenced by Edward Obeid Sr and three of his sons against Commissioner Ipp, ICAC and others alleging misfeasance in public office and denial of procedural fairness. The plaintiffs' claims were dismissed. On the appeal, successfully appeared for an individual ICAC officer (the claim against the State and the other ICAC officer having been dismissed and not appealed). Appeared for an individual ICAC officer on the special leave application - leave was refused. *Obeid v Ors v Lockley & Anor* [\[2018\] HCA Trans 239](#).

**Neumann Felix Pty Ltd v QBE Insurance Australia Ltd** - proceedings in the Supreme Court of Queensland for QBE. Claim under trade credit insurance policy.

**Seltsam v Amaca** [\[2015\]](#) - appeared for Amaca (James Hardie) before Curtis J in the Dust Diseases Tribunal of NSW - successful in defending cross-claim for s5 contribution between the two major asbestos building product suppliers.

**Sills v State of New South Wales** [\[2019\] NSWCA 4](#) - appeared for the State of NSW in relation to a claim for PTSD of a former police officer.

#### ADVISORY

- advising litigation funders in relation to class action litigation arising in context of financial services and insurance;
- advising financial services organisations in relation to the Australian Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry;
- advising statutory authorities on questions arising from land acquisition and resumption;
- advising the Commissioner of Taxation in relation to civil and criminal proceedings in various contexts.

#### ALTERNATE DISPUTE RESOLUTION

**Independent Adjudicator** - appointed as Independent Adjudicator under the Claims Resolution Process Lehman Brothers Australia (In Liquidation) (Scheme Administrators Appointed)

**Mediation** - in addition to representing clients at mediation, has acted as a mediator in disputes between insurers and valuers arising in from property valuations provided in a mortgage/guarantee context.