



JAMES SHELLER SC

Bachelor of Arts - University of Sydney

Bachelor of Laws - University of Sydney

T +61 2 9151 2039

E sheller@newchambers.com.au

Personal Assistant

Sarah Newton

T +61 2 9151 2096

E newton@newchambers.com.au

Clerk of Chambers

Angela Noakes

T +61 2 9151 2080

F +61 2 9233 1850

E clerk@newchambers.com.au

Admitted to the legal profession

14 December 1994

Admitted as a barrister in NSW

February 2004

Appointed Senior Counsel

2019

Also entitled to practise in

All Australian jurisdictions (Commonwealth, State and Territory)

James has a broad common law practice operating in the District and Supreme Courts, with occasional work in the Federal Court (eg a representative action for injured plaintiffs). He has practiced extensively in the Dust Diseases Tribunal since 1997.

James has also appeared regularly both as junior and senior counsel, mostly unled, in matters in the Court of Appeal (and once in the Full Federal Court) since 2005 in matters as diverse as seeking prohibition orders restraining a judge from sentencing a convicted person to appealing a bankruptcy trustee's decision to engage a litigation funder.

James' practice in the Dust Diseases Tribunal is mostly work for defendants. His common law practice outside the Tribunal is usually for plaintiffs (without means to pay), particularly in police torts and abuse cases, and for defendants in more general personal injury matters.

James has also been involved in long-standing litigation in the Civil & Administrative Tribunal (health disciplinary section) which gave rise to proceedings in the Supreme Court and Court of Appeal listed below.

James has also appeared in a Special Commission of Inquiry, the Jackson Inquiry (2004), two coronial inquiries including the matter of *Re Holcombe* which gave rise to leading authority on the compellability of a police witness to give evidence (see cases below) and three Judicial Commission proceedings for magistrates or judges, the subject of inquiry (see cases below).

In addition to legal practice, James is the coordinator for the organisation of mooting judges in New South Wales university competitions.

PROFESSIONAL EXPERIENCE

Solicitor

1994 to 2004: Phillips Fox

Barrister

2004 to 2023

PROFESSIONAL MEMBERSHIPS

New South Wales Bar Association

SELECTED CASES

Commissions of Inquiry and Inquests

Appeared as counsel in [the Jackson Inquiry into the affairs of James Hardie](#) (2004)

[Judicial Commission of New South Wales – Magistrate Maloney](#) (2011) – Appeared for Magistrate Maloney in parliamentary hearing arising from the Report of the Conduct Division to The Governor Regarding Complaints Against His Honour Magistrate Brian Maloney and associated Supreme Court proceedings.

[Coronial Inquest into the Death of David Oldknow](#) (2012) appearing for the occupier of the premises (report not available to me).

[Inquest into the Death of Elijah Holcombe](#) (2013 – 2014) appearing for the family including in related Supreme Court and Court of Appeal proceedings

[Judicial Commission of New South Wales – Magistrate Dominique Burns](#) (2018) Report of the Conduct Division to The Governor Regarding Complaints Against Her Honour Magistrate Dominic Burns and associated Court of Appeal proceeding.

[Judicial Commission of New South Wales – Magistrate L](#) (2018-2019) Magistrate resigned prior to the issuing of the report.

List of Selected Cases

[Smith v The Council of Trinity Grammar School](#) [2022] NSWCA 93. Appeared for the applicant on an application for leave to appeal a permanent stay

[Makaroff v Nepean Blue Mountains Local Health District](#) [2021] NSWCA 107. Appeared for the successful appellant who successfully claimed that she had suffered injury and loss as a result of the negligent treatment she received from Nepean District Hospital.

[Haselburst v Toyota Motor Corporation Australia Ltd](#) (and related proceedings) [2020] NSWCA 66. Appeared for one of the respondents (Subaru) in relation to “class closure” orders.

[Kirby v Health Care Complaints Commission](#) [2021] NSWCA 138. Appeared for appellant appealing authority of NCAT to hear professional misconduct proceedings.

Kirby v Health Care Complaints Commission [2021] NSWCA 139. Appeared for appellant challenging prohibition order made by medical authority.

Owlstara v State of New South Wales [2020] NSWCA 217. Appeared for successful appellant in an appeal concerning a police tort (assault, wrongful imprisonment)

Dempsey v Director of Public Prosecutions [2019] NSWCA 267. Appeared for successful appellant appealing an award of costs in criminal proceedings

Young v Thompson (Trustee) in the matter of Young (Bankrupt) No 2 Young v Thomson (formerly trustee of the property of Young) [2017] FCAFC 140. Appeared for successful appellant in relation to the determination by a bankruptcy trustee to engage a litigation funder.

Alcan Gove v Zabic (2015) 257 CLR 1. Appeared for appellant in accrual of cause of action and measurable damage under the Northern Territory worker's compensation legislation.

State of New South Wales v McMaster (2015) 91 NSWLR 666. Appeared for respondent in police intentional tort case

Pavlis v Wetherill Park Market Town Pty Ltd [2014] NSWCA 292. Appeared for successful respondent in contractual indemnity dispute

Rich v Attorney General of New South Wales & Ors [2013] NSWSC 877 (Supreme Court). Appeared for successful defendant in judicial review application from decision of coroner.

Rich v Attorney General of New South Wales & Ors 2 [2013] NSWSC 891 (Supreme Court). As above.

Rich v Attorney General of New South Wales & Ors [2013] NSWCA 419 (Court of Appeal). Appeared for successful respondent in appeal from judicial review application [2013] NSWSC 87

Amaca Pty Ltd v Booth (2011) 246 CLR 36 (High Court). Appeared for appellant in causation case.

Maloney v The Honourable Michael Campbell QC & Ors [2011] NSWSC 470. Appeared for plaintiff magistrate in judicial review application from Judicial Commission report.

Amaca Pty Ltd v Ellis (2010) 240 CLR 111 (High Court). Appeared for successful appellant in causation case.

Power Technologies Pty Ltd v Energy Australia [2010] NSWCA 107. Appeared for respondent in appeal in statutory interpretation of *Dust Diseases Tribunal Regulation* concerning contribution from third parties and the administrative apportionment of liability.

A v NSW (2007) 230 CLR 500 (High Court). Appeared for successful appellant in leading malicious prosecution case.

PRINCIPAL AREAS OF PRACTICE

COMMON LAW

Dust Diseases

Insurances and Reinsurance

Personal Injury

Professional indemnity

Appeal

INQUESTS AND INQUIRIES

Commissions of Inquiry,

Judicial Commission,

Coronial Inquiry