



JOSHUA THOMSON SC

*Bachelor of Laws (Honours) - The University of Western Australia
Bachelor of Civil Laws - Oxford University*

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Admitted to the legal profession

1995

Appointed Senior Counsel

2012

Also entitled to practise in

Australian jurisdictions (Commonwealth,
State and Territory)

As the Solicitor-General of WA, I have acted for the State of WA in the High Court of Australia on all cases of major importance for the State, including significant cases about s 92 and Ch III of the Constitution. I have personally advised the Premier and the Attorney General of Western Australia, been involved in reviewing draft legislation, and provided constitutional and other advice to Ministers and other State entities.

Prior to appointment as the Solicitor-General, my practice covered a wide range of areas, including contractual and insolvency disputes, building and construction matters, maritime law, regulatory competition law for pipelines, professional negligence and insurance law, administrative and constitutional law and native title claims. I conducted lengthy trials and complex appeals, and provided strategic advice to major clients, such as international and national banks in a complicated construction and insolvency dispute (4-5 month trial and lengthy appeal); insured directors and officers in a major mining matter; and receivers and managers in several complicated receiverships.

PROFESSIONAL EXPERIENCE

2018 – 2023: Solicitor-General of WA

1994 – 2001: Crown Solicitor's Office of WA, including position of Assistant Crown Counsel

PROFESSIONAL MEMBERSHIPS

2018 – 2022: Legal Services Council (Observer for WA); **2023 -present** (member)

2013 – present: Legal Practice Board of WA

2014 – 2018: Convenor of Professional Development Committee

2019 – present: Fellow of the Australian Academy of Law

2016 – present: Faculty of Law Advisory Board, UWA

2002 – 2010: Editor of Western Australian Reports

2010 – 2018: Consulting Editor of Western Australian Reports

2002, 2008, 2009, 2011: Bar Council of WA Bar Association

PUBLICATIONS AND ARTICLES

- Commercial Contract Clauses: Principles and Interpretation** (Published Electronically and in Looseleaf, 2008, and Bound Hardback Editions, 2012, 2016, 2019 Thomson Reuters). Lead author with Justice Kenneth Martin (retired) and Leigh Warnick SC.
- Criminal and Civil Consequences of Corporate Environmental Policies in Western Australia** (1992) 11 Environmental and Planning Law Journal 111
- An Eye for an Eye: Compensating Non-pecuniary Loss** (1993) 11 Australian Bar Review 76
- No Case Submissions** (1997) 71 Australian Law Journal 207
- Estoppel By Representation in Administrative Law** (1998) 26 Federal Law Review 83
- Shares are Worthless – to a Corporation Itself** (2001) 75 Australian Law Journal 572
- The One Per Cent Case (Yougarla v Western Australia)** (2001) 1 Oxford University Commonwealth Law Journal 269
- Constitutional Imperatives** (with Madeleine Durand) (2020) 49 Australian Bar Review 154
- Overruling Constitutional Precedent** (with Madeleine Durand) (2021) 95 Australian Law Journal 139
- The Causal Effect of Hypothetical Events upon Contractual Damages** (with Madeleine Durand) (2022) 49 University of Western Australia Law Review 361
- Examining the Intersection of Constitutional and Administrative Review under the Wotton Approach** (with Tristan Taylor) (2023) 33 Public Law Review 315
- Fairness, Legal Reasoning and Judicial Technique** (2023) Australian Bar Review (Forthcoming)

SELECTED CASES

- High Court Cases – Appearances as Solicitor-General of WA for State as a Party**
- **Garlett v Western Australia** [2022] HCA 30; 96 ALJR 888; 404 ALR 182. Ch III jurisprudence and preventative detention of high risk offenders – constitutional validity of *High Risk Serious Offenders Act 2020* (WA)
 - **Mineralogy Pty Ltd v Western Australia** [2021] HCA 30 (2021) 274 CLR 219. Ch III and removing rights to arbitrate - Constitutional validity of *Iron Ore Processing (Mineralogy Pty Ltd) Agreement Amendment Act 2020* (WA)

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- **Palmer v Western Australia** [2021] HCA 31; (2021) 274 CLR 286. Constitutional validity of *Iron Ore Processing (Mineralogy Pty Ltd) Agreement Amendment Act 2020* (WA)
 - **Palmer v Western Australia** [2021] HCA 5; (2020) 272 CLR 505. Constitutional validity of closing State borders during COVID-19 pandemic
 - **Western Australia v Manado** [2020] HCA 9; (2020) 270 CLR 81. Whether native title extinguished right of public access to beaches
 - **Commissioner of State Revenue v Rojoda Pty Ltd** [2020] HCA 7; (2020) 268 CLR 281. Equitable estates and nature of partners' rights in relation to partnership assets
 - **Tjungarrayi v Western Australia** [2019] HCA 12; (2019) 269 CLR 150. Extinguishment of native title rights

High Court Cases – Appearances as Solicitor-General of WA as Intervener

- **Vanderstock v Victoria** [2023] HCA 30. Whether a tax on use on electric vehicles was an excise
- **Hornsby Shire Council v Commonwealth** [2023] HCA 19; (2023) 97 ALJR 534. Constitutional validity of GST imposed on local councils
- **SDCV v Director-General of Security** [2022] HCA 32; (2022) 96 ALJR 1002. Judicial power of Commonwealth and procedural fairness
- **Farm Transparency International Ltd v NSW** [2022] HCA 23; (2022) 96 ALJR 655. Implied freedom of political communication and offence of making recordings of animal cruelty on private property
- **Citta Hobart Pty Ltd v Cawthorn** [2022] HCA 16; (2022) 96 ALJR 476. Exercise of federal jurisdiction by a tribunal and Ch III of Constitution
- **Ruddick v Commonwealth** [2022] HCA 9; (2022) 96 ALJR 655. Electoral legislation and implied freedom of political communication – Liberal Democratic Party
- **Gerner v Victoria** [2020] HCA 48; (2020) 272 CLR 505. Constitutional validity of State legislation restricting intrastate movements
- **BMW Australia Ltd v Brewster** [2019] HCA 45; (2019) 269 CLR 574. Constitutional validity of legislation permitting common fund orders in class action litigation
- **Vella v Commissioner of Police (NSW)** [2019] HCA 38; (2019) 269 CLR 219. Ch III and constitutional validity of State legislation allowing preventative orders

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- **Minogue v Victoria** [2019] HCA 31; (2019) 268 CLR 1. Ch III and constitutional validity of legislation which changed availability of parole after sentencing
 - **Comcare v Bannerji** [2019] HCA 23; (2019) 268 CLR 355. Implied freedom of political communication and public servant anonymously tweeting views against the government
 - **Spence v Queensland** [2019] HCA 15; (2019) 268 CLR 355. Constitutional validity of State and Commonwealth legislation governing donations by property developers - Implied freedom of political communication
 - **Unions NSW v NSW (No 2)** [2019] HCA 1; (2019) 264 CLR 595. Constitutional validity of State legislation governing donations by unions - Implied freedom of political communication
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Contractual and Commercial Disputes

- **Westgem Investments Pty Ltd v Commonwealth Bank of Australia Ltd** [2022] WASCA 132. Building dispute involving proper construction of financing agreement and insolvency claims.
 - **Rayney v The State of Western Australia (No 4)** [2022] WASCA 44. Causation of damage by defamation.
 - **CPB Contractors Pty Ltd v JKC Australia Pty Ltd (No 2)** [2017] WASCA 123. Enforcement of performance bonds.
 - **Wise Energy Group Ltd v Rocke (No 2)** [2016] WASCA 125. Construction of iron ore sale and purchase agreement.
 - **City of Subiaco v Homebase Management Pty Ltd** [2015] WASCA 54. Construction of rent review clause.
 - **Kidd v Western Australia** [2014] WASC 99. Construction of state agreement for Casino Resort.
 - **Silkchime Pty Ltd v Warwick Entertainment Centre Pty Ltd (No 2)** [2013] WASCA 224. Existence and Construction of Joint Venture Agreement
 - **La Rosa v Nudrill Pty Ltd** [2013] WASCA 18. Incorporation of exclusion clauses into standard form contracts
 - **Hayes v Doran (No 2)** [2013] WASC 486. Operation of a convertible loan agreement and alleged oral collateral contract
 - **The Ship "Hako Endeavour" v Programmed Total Marine Services Pty Ltd** [2013] FCAFC 21; (2013) 211 FCR 369; (2013) 296 ALR 265. Nature of maritime claims and maritime lien
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- **Daebo Shipping Co Ltd v Ship Go Star** [2012] FCAFC 156; (2012) 207 FCR 220; (2012) 294 ALR 635. Title to bunkers and tort of interfering with contractual relations
- **Geraldton Port Authority v Ship “Kim Heng 1988” (No 2)** [2012] FCA 353. Claims in rem and limitation periods
- **Trans Petroleum (Aust) Pty Ltd v White Gum Petroleum Pty Ltd** [2012] WASCA 165; (2012) 268 FLR 433. Operation of termination clause and obligations of good faith
- **Bosveld v Cardup Industrial Land Holdings Pty Ltd** [2010] WASC 411; (2011) 41 WAR 504. Effect of settlement deed upon non-parties with joint rights
- **White Gum Petroleum Pty Ltd v Bernadini Pty Ltd** [2010] WASCA 229. Construction of an option to renew a lease
- **Clough Engineering Ltd v Oil and Natural Gas Corporation Ltd** [2008] FCAFC 136; (2008) 249 ALR 458. Performance guarantees and unconscionability
- **Olympic Holdings Pty Ltd v Windsor Corporation Pty Ltd (in liq)** [2008] WASCA 80; (2008) 36 WAR 342. Operation of “all moneys” clause in relation to assigned mortgage and further advances

Corporations and Corporate Insolvency

- **Caratti v Mammoth Investments Pty Ltd** [2016] WASCA 84; (2016) 113 ACSR 31. Operation of statutory presumptions in ss 127- 129 of the *Corporations Act* in case of fraud
- **Re Mentha; Griffin Coal Mining Co Pty Ltd** [2010] FCA 1469; (2010) 82 ACSR 142. Variation of administrator’s personal liability and operation of s. 443A of the *Corporations Act*
- **Re ASIC; Richstar Enterprises Pty Ltd v Carey (No 12)** [2007] FCA 35; (2007) 60 ACSR 597. Asset preservation orders
- **F&G Nominees Pty Ltd v Coxon and Howard** [2007] WASC 113; (2007) 34 WAR 55. Indemnity of receivers
- **Bowesco Pty Ltd v Zohar** [2007] FCAFC 1; (2007) 156 FCR 129; (2007) 238 ALR 576. Operation of fixed or floating charge in relation to land held as stock
- **ASIC v Westpoint Corporation Pty Ltd** [2006] FCA 135; (2006) 227 ALR 623. Group appointment of liquidators

PRINCIPAL AREAS OF PRACTICE

COMMERCIAL LAW

Administrative Law	Bankruptcy and Insolvency	Insurance and Reinsurance
Admiralty and Maritime	Building, Construction and Technology	Mining Resources and Energy
Appellate	Contracts	Partnership Disputes
Arbitration	Corporations and Securities	Professional Liability
Banking and Financial Services	Environment and Planning	

COMMON LAW

Professional Indemnity

EQUITY

Appellate	Property	Trusts
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PUBLIC AND ADMINISTRATIVE LAW

Appellate	Judicial review and administrative law	Native Title
Constitutional Law	Merits review	Public law

TAXATION AND REVENUE

Stamp duty and other state taxes

SECTORS

Banks and Financial Institutions	Technology, Media and Telecommunications	Primary Resources Real Estate
Government		