

Alexander Vial



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Areas of Practice

Alexander maintains a national practice in complex commercial and regulatory matters. He is recognised as a Leading Junior (Band 1) for competition law and as a “Rising Star” in regulatory matters in the 2024 Legal500 rankings. Alexander is also recognized as “One to Watch in Australia” for competition law in the 2025 edition of Best Lawyers.

Alexander specialises in commercial and regulatory litigation that covers:

- competition and consumer law
- trade practices including franchising
- complex commercial disputes involving contract, restitution, equity, property, and private international law
- class actions
- corporations and insolvency
- intellectual property law
- employment law

Alexander regularly advises on and appears in regulatory investigations and enforcement matters, as well as in Royal Commissions and inquiries.

Alexander is frequently engaged by in-house legal teams on a direct access basis to advise and assist on a range of commercial and regulatory matters.

Professional Experience

Barrister | 2020 – Present
5 Wentworth Chambers, Sydney

Senior Associate | 2015 - 2020
Clayton Utz, Sydney (July 2018)

- Competition, Regulation, Trade Practices, Consumer Law

Associate | 2013 – 2015
Camatta Lempens, Adelaide

- Commercial Litigation

Associate to the Honourable Chief Justice Christopher Kourakis | 2012

Associate to the Honourable Chief Justice John Doyle AC | 2011 - 2012

Associate to the Honourable Justice John Sulan | 2010 - 2011

Qualifications

University of Oxford | 2013
Bachelor of Civil Law (BCL) - Postgraduate Masters

University of Adelaide | 2010

Bachelor of Laws (**LLB**) with First Class Honours (2010)

- First place in: Remedies, Constitutional Law, Law of Torts 2, Law Review A and B
- Prestigious prizes include: Stow Prize for ‘exceptional merit in two or more subjects’, Howard Zelling Prize for “Constitutional Law”, and Thomson Lawbook Company Prize for the most outstanding merit in law subjects

University of South Australia | 2007

Bachelor of Commerce (Accounting) (**BCom**) (2007)

Bachelor of Business (Commercial Law) (**BBus(Comm Law)**) (2007)

**Selected Matters as
Counsel**

Current to:
4 July 2024

Competition, consumer law, regulatory

Delta Building Automation Pty Ltd v ACCC (ACD44/2024)

- Led by R Higgins SC and C Bannan for the appellants (ongoing)
- Appeal against findings of attempt and attempt to induce cartel conduct contrary to s 45AJ of the *Competition and Consumer Act 2010* (Cth)

ACCC v Delta Building Automation Pty Ltd (No 2) [2024] FCA 580 (No 2)

- Led by C Bannan for the respondents
- Imposition of civil penalties following findings of attempt and attempt to induce cartel conduct contrary to s 45AJ of the *Competition and Consumer Act 2010* (Cth)

Brickworks Ltd v BGC (Australia) Pty Ltd (NSD949/2023)

- Led by P Brereton SC, R Yezerski SC, P Strickland, D Forrester, and with M Caristo for the applicants (ongoing)
- Allegations of breach of s 46 (predatory and irrational pricing) and s 50 of the CCA (acquisition by first respondent was likely to, and did, substantially lessen competition in the Western Australian clay brick market)

ACCC v Delta Building Automation Pty Ltd [2023] FCA 880 (Bromwich J)

- Led by C Bannan for the respondents
- Allegations of attempt and attempt to induce cartel conduct contrary to s 45AJ of the *Competition and Consumer Act 2010* (Cth)

Shift Financial Pty Ltd v Jack Aldridge-Kuhr & Ors (NSWDC 2023/00231545)

- **Unled** for the first and second defendants
- *ASIC Act 2001* (Cth) unfair contract terms regime pleaded as defence to enforcement of loan guarantees

Wills v ACCC (HCA, S49/2023) (Application for Special Leave to Appeal)

- Led by M Hodge KC and C Bannan (special leave granted)
- Application for special leave to appeal from [2023] FCAFC 54; accessorial liability for unconscionable conduct

Xiamen Huadian Switchgear Co Ltd v Powins Pty Ltd & Gelpag Electrics Pty Ltd [2022] FCA 1159 (Halley J)

- Led by B Mee for the applicant/cross-respondent
- Misleading or deceptive conduct, trade mark infringement, passing off, good faith, exemplary damages

Xiamen Huadian Switchgear Co Ltd v Powins Pty Ltd (No 2) [2022] FCA 1458 (Halley J)

- Led by B Mee
- Grant of relief including exemplary damages, declarations, injunctions, corrective advertising, and delivery up

Laith & Fadi Investments Pty Ltd v Fogo Brazilia Holdings Pty Ltd (NSWSC 2021/000245787); *RRZ Pty Ltd v Fogo Brazilia Franchise Holdings Pty Ltd* (NSWSC 2020/00179917); *Golden Peak Australia Pty Ltd v Fogo Brazilia Holdings Pty Ltd* (NSWSC 2021/00010215)

- Led by J Lazarus SC for the first and second defendants (ongoing)
- Alleged breach of the Franchise Code, misleading or deceptive conduct, unconscionability, and insolvent trading

ACCC v Employsure Pty Ltd [2021] FCAFC 142 (Rares J, Murphy J, Abraham J) (appeal); *ACCC v Employsure Pty Ltd (No 2)* [2021] FCA 1488 (Griffiths J)

- Led by P Brereton SC and C Bannan for the respondent
- Civil penalty for misleading or deceptive conduct in relation to paid results on Google Ads

Other

- Worked on various aspects of leading competition cases (ongoing)
- Advising Found—Space Trading Pty Ltd on a voluntary recall (ongoing)
- Considered various competition law issues in relation to financial services, transport, and digital platforms
- Advised parties on cartel conduct and s 45(1) risks and issues, and whether and how markets should be pleaded as a defendant in competition law proceedings brought by the ACCC
- Advised on whether and when applications should be made under ACCC's immunity and cooperation policies
- Advises on s 155 notices and appears as counsel in s 155(1)(c) examinations

Non-competition restraints of trade

Australian Ceramics Engineering Pty Ltd v Darren Clinton (WAD 291/2021)

- Led by N Burmeister
- Alleged breaches of restraints of trade, alleged breaches of contractual, equitable, and *Corporations Act 2001* (Cth) duties

Australian Timber Supplies Pty Ltd v BOM Building Supplies Pty Ltd (NSWSC 2023/00462005)

- Led by J Fernon SC for the plaintiff (ongoing)
- Alleged breaches of restraints of trade; alleged breaches of contractual, equitable, and *Corporations Act 2001* (Cth) duties; accessorial liability

Hardaker v Janala Pty Ltd trading as COPE Sensitive Freight (NSWCA 2023/00210045)

- **Unled** for the respondent; appeal dismissed
- Validity of restraints of trade in an employment context

Janala Pty Ltd trading as COPE Sensitive Freight v Hardaker (NSWSC 2022/00138739)

- Led by J Fernon SC for the plaintiff (ongoing)
- Alleged breaches of restraints of trade; breaches of contractual, equitable, and *Corporations Act 2001* (Cth) duties

Janala Pty Ltd trading as COPE Sensitive Freight v Hardaker [2023] NSWSC 446

- Led by J Fernon SC for the plaintiff
- Validity of restraints of trade in an employment context

DXC Eclipse Pty Ltd v Wildsmith [2023] NSWCA 98

- Led by Ian Neil SC, C Cochrane SC, and A Spies for the appellant
- Validity of non-competition restraint in a sale of business agreement

Grand Group Australia Pty Ltd v Chao Bo (NSWSC 2022/00233641)

- **Unled** for the defendant
- Alleged breaches of restraints of trade; alleged breaches of contractual, equitable, and *Corporations Act 2001* (Cth) duties

Class actions

Laith & Fadi Investments Pty Ltd v Fogo Brazilia Holdings Pty Ltd (NSWSC 2021/000245787)

- Led by J Lazarus SC for the first and second defendants (ongoing)
- Alleged breaches of the Franchise Code, misleading or deceptive conduct, unconscionability, and insolvent trading

Fakhouri v The Secretary for the NSW Ministry of Health (NSWSC 2020/00356588) (Garling J)

- Assisted E Raper SC (as her Honour then was) for the defendant
- Allegations of underpayment of employment entitlements by junior doctors including for excessive overtime

Davison v Commissioner of Police, New South Wales Police Force (NSD1063/2020) (Griffiths J)

- Assisted E Raper SC (as her Honour then was) for the defendant
- Allegations made under the Racial Discrimination Act 1975 (Cth)

Royal Commissions and inquiries

Royal Commission into the Robodebt Scheme

- Led by Dominique Hogan-Doran SC for the Commonwealth, instructed by the Australian Government Solicitor
- Royal Commission into the debt assessment and recovery scheme known as Robodebt

Inquest into the death of Moses Kellie (NSWCC 2019/28070)

- **Unled** for a number of individual witnesses
- Coronial inquest (death in immigration detention); self-incrimination privilege objections

Inquest into the death of Muhammad Bin Zaini (NSWCC 2022/00148393)

- **Unled** for a number of individual witnesses
- Coronial inquest (death in immigration detention); self-incrimination privilege objections

Inquest into the death of Leah Porter (NSWCC 2020/352738)

- **Unled** for a number of individual witnesses
- Coronial inquest (death in immigration detention); self-incrimination privilege objections

Commercial disputes

OTJ Construction Solutions Pty Ltd v Bradley John Mooney (NSWSC 2023/00345530)

- **Unled** for the applicant
- Alleged breaches of fiduciary duties and *Corporations Act 2001* (Cth) duties (directors' duties)

Jasbir Singh Motay v Sikh Mission Centre Sydney Inc (NSWSC 2022/00375829)

- Led by H Stowe
- Incorporated associations; procedural fairness

Radinger v Ole Lynggaard Copenhagen Pty Ltd (FCFCOA SYG495/2022)

- **Unled** for the respondent /cross claimant
- Breach of contract; breach of fiduciary duty

Shaw v The Trustees of the Roman Catholic Church for the Diocese of Armidale (NSWSC 2023/00232832)

- **Unled** for the defendant
- Alleged repudiation of a contract for the sale of land; settled at mediation

Cottee v Frederick & Co Pty Ltd (NSWSC 2020/00255715)

- Led by Ian Roberts SC for the defendant
- Alleged breach of contract and claims to relief in the nature of rectification, restitution, unjust enrichment; change of position defence

Zoom Design & Graphics Pty Ltd v McGaw (NSWDC 2022/95816)

- **Unled** for the Defendant
- Alleged breaches of fiduciary duties and directors' duties under the *Corporations Act 2001* (Cth)

Wealth Recovery Experts LLC v John Ford Medhurst (Unreported, NSWDC 2020/85402) (Olsson J)

- **Unled** for the plaintiff at trial (judgment for the plaintiff with interest and costs on an indemnity basis)
- Breach of contract; construction of contract; interaction of contract with third party deed; doctrine of mistake

Fortitude Accelerated Pty Ltd v Julia Zhang (NSWDC 2021/00089850)

- **Unled** for the plaintiff
- Repudiation of commercial lease; application of Covid lease regulations and code

N. Moit & Sons (NSW) Pty Ltd v AB Developments (Australia) Pty Ltd (NSWDC 2019/00094979)

- **Unled** for the plaintiff/cross-defendant
- Defendant failed to pay security; stay and costs order obtained

Constitutional Law

[Confidential]

- Led by J Lazarus SC for the plaintiffs
- Acquisition of property on other than just terms

Employment Law

Ryckmans v Camerons Management Pty Ltd (FWC U2023/6891)

- Led by D Chin SC for the respondent
- Unfair dismissal

SafeWork NSW v Craig Arthur Pty Ltd (NSWDC 2021/262467 and 2021/262485)

- Led by Kris Handshin QC and B Armstrong
- Workplace death; allegations of unsafe systems of work and failure to consult, cooperate and coordinate

Insolvency

Fogo Brazilia Holdings Pty Ltd and Ian Dresner v Gavin Moss (in his capacity as liquidator of Fogo Brazilia Franchise Holdings Pty Ltd (in liq)) [2022] NSWSC 556 (Williams J)

- Led by J Lazarus SC for the plaintiffs.
- Application to remove liquidator for alleged breaches of duties and apprehended bias in relation to the conduct of examinations under ss 596A and 596B of the *Corporations Act 2001* (Cth) and the liquidation generally

Civil Procedure / interlocutory applications

OTJ Construction Solutions Pty Ltd v Bradley John Mooney (NSWSC 2023/00345530)

- **Unled** for the applicant
- *Ex parte* global freezing order obtained; breach of fiduciary duties

Janala Pty Ltd v Hardaker (No 2) [2022] NSWSC 1222

- Led by J Fernon SC for the Plaintiff
- Resisted in part the setting aside of a subpoena; legitimate forensic purpose established

Janala Pty Ltd trading as COPE Sensitive Freight v Hardaker [2022] NSWSC 822

- Led by J Fernon SC for the plaintiff
- Urgent injunction to enforce non-competition restraints of trade

RRZ Pty Ltd v Fogo Brazilia Holdings Pty Ltd [2021] NSWSC 873 (Robb J)

- Led by J Lazarus SC for the second and third defendants
- Whether costs of hearing were payable by plaintiff or plaintiff's solicitor; lump sum costs order made against plaintiff

In the matter of Fogo Brazilia Holdings Pty Ltd (in liq) (*ex tempore*, Williams J, 24 March 2021, 2020/00163342)

- Led by J Lazarus SC for the plaintiffs
- Successful application to amend pleading on second day of trial based on new matters discovered by defendant in opening submissions

In the matter of Fogo Brazilia Holdings Pty Ltd (in liq) [2021] NSWSC 580 (Williams J)

- Led by J Lazarus SC for the plaintiffs
- Resisted in part the setting aside of a notice to produce; legitimate forensic purpose established

In the matter of Fogo Brazilia Holdings Pty Ltd (in liq) [2021] NSWSC 242 (Williams J)

- Led by J Lazarus SC for the plaintiffs
- Resisted in part the setting aside of a subpoena; waiver of legal professional privilege established

In the matter of Fogo Brazilia Holdings Pty Ltd (in liq) [2022] NSWSC 1070 (Williams J)

- Led by J Lazarus SC for the plaintiffs
- Resisted applications for a gross sum costs order and indemnity costs

Criminal Law

Elmir v R [2021] NSWCCA 19 (Court of Criminal Appeal) (McCallum JA, Garling and Wright JJ)

- Led by C Parkin for the appellant

- Sentencing for foreign incursion offences using terrorism sentencing principles in the Criminal Code (Cth)

R v Hasan Ali (NSWDC 2019/00042319)

- Led by C Parkin for the defendant
- Sentencing for tobacco importation offence under s 233BABAD(2B) of the Customs Act 1901 (Cth)

Selected Matters as a Solicitor

Advised and acted for:

Competition law

- a major pharmaceutical company to respond to a dawn raid conducted by the ACCC, AFP, and ATO in relation to suspected cartel conduct
- a major international bank to defend the foreign exchange (FX) cartel class action, which was commenced in relation to alleged cartel conduct in foreign exchange markets between 1 January 2008 to 15 October 2013
- Pacific National in *ACCC v Pacific National Pty Limited (No 2)* [2019] FCA 669 and *ACCC v Pacific National Pty Limited* [2020] FCAFC 77 to defend proceedings brought by the ACCC alleging Pacific National's acquisition of the Acacia Ridge Terminal from Aurizon would have had the likely effect of substantially lessening competition in breach of s 50 of the *Competition and Consumer Act 2010* (CCA)
- a major Australian bank to apply for conditional immunity for potential cartel conduct, an anti-competitive understanding, and a concerted practice
- a major international bank to respond to regulatory investigations related to the "[Forex \(FX\) Scandal](#)". Relevant jurisdictions included Australia, Singapore, Japan, Malaysia, and South Korea. Globally, more than \$8 billion in fines have been issued
- an international solar panel cell manufacturer and distributor with respect to an alleged breach of a joint venture agreement it had formed with a large international solar panel manufacturer and distributor. The dispute was arbitrated in the International Court of Arbitration and raised matters of Australian law including cartel conduct, exclusive dealing, the scope and operation of the joint venture exception for cartel conduct under the *Competition and Consumer Act 2010* (Cth)
- a major Australian energy company on various aspects of its business for the purpose of ensuring compliance following the commencement of the Harper Reforms, including market power issues in the electricity, gas, LNG, and transport markets
- a major Australian media company to acquire businesses and assets in Australia, requiring ACCC clearance
- Government departments on potential competition law risks associated with initiatives for the Western Sydney Airport at Badgerys Creek
- a Government entity on ways it could lawfully act, both generally and from a competition law perspective, to achieve policy changes with respect to the disposal of asbestos

Consumer law and Class Actions

- the Volkswagen, Audi and Skoda respondents in *ACCC v Volkswagen Aktiengesellschaft* [2019] FCA 2166 and *Cantor v Audi Australia Pty Limited* (No 5) [2020] FCA 637 in relation to [Dieselgate](#). Globally, \$33.3 billion in fines, penalties, financial settlements and buybacks have been imposed
- defendants in proceedings in the Supreme Court of South Australia in a matter involving a dispute on the propriety of the termination of a commission agency agreement to which it was alleged the Oil Code applied

Royal Commissions and regulatory Inquiries

- a major Australian bank in relation to a prudential inquiry conducted by the Australian Prudential Regulation Authority (APRA)
- a major Australian bank in the Financial Services Royal Commission
- National Broadband Network (NBN) on the Royal Commission into National Natural Disaster Arrangements

Insolvency

- a defendant in insolvency proceedings in the Supreme Court of South Australia in relation to claims under the principles in *Barnes v Addy* (1874) LR 9 Ch App 244. Appeared as counsel in *Matthews v Shaw* [2014] SASC 74

Selected Presentations

- H Stowe and A Vial, "Conversation Evidence and the Psychology of Memory" (Evidence and Advocacy Conference 2024, 1 March 2024) (forthcoming)
- A Fox SC and S Hallahan, "Conversation Evidence: Recent Developments" (7 September 2023)
- C Cochrane SC, C Bembrick, and A Vial, "Patented Pharmaceutical Products: Allegations of Misuse of Market Power or Cartel Conduct" (Trade Marks and Patents Conference 2022, 26 May 2022)
- C Cochrane SC, C Bembrick, and A Vial, "The Inaugural Competition Litigation Update - A Retrospective on 2021 and What to Expect in 2022" (3 March 2022)
- A Vial, "Can you contract out of misleading or deceptive conduct?", delivered at the Law Society of New South Wales as part of its "Mandatory rule 6.1 – commercial lawyers" series (12 March 2021)
- A Vial, "Outlines of Evidence in the Federal Court", delivered at the Law Society of New South Wales during its Specialist Accreditation Week for Commercial Litigation (26 November 2020)

Selected Publications

- **Co-author** of Adrian Zuckerman, Stephanie Wilkins, Jonathan Adamopoulos, Alexander Vial, Andrew Higgins, Stephanie Hooper, Naomi Oreb, and Claire Jago, *Zuckerman on Australian Civil Procedure* (LexisNexis, 2nd ed, 2023)
- H Stowe and A Vial, "Conversational Evidence: A stake in the heart of 'direct speech' & the psychology of memory" (Summer 2023) *Bar News* 50
- C Cochrane SC and A Vial, "Testing the competition: Legitimate restraints of trade" (July 2023) *Law Society Journal*

- C Bembrick and A Vial, “ACCC v BlueScope Steel – Cartels and Attempts to Induce” (February 2023) Law Society Journal
- C Cochrane SC, C Bembrick and A Vial, “Exposed to Part IV of the Competition and Consumer Act 2010 (Cth) – How Do We Settle Patent Cases Now?” (2022) 129 Intellectual Property Forum 23
- C Cochrane SC and A Vial, “Patented pharmaceutical products — risk of misuse of market power or cartel conduct following statutory amendments” (2022) 35(5) Intellectual Property Law Bulletin 78
- C Cochrane SC, C Bembrick, and A Vial, Allegations of Misuse of Market Power or Cartel Conduct in the Context of Patented Pharmaceutical Products (Legalwise, 26 May 2022)
- M Corrigan and A Vial, “Merger review where the target is a “failing firm”” (Thomson Reuters, Practical law)
- Co-author of Adrian Zuckerman, Stephanie Wilkins, Jonathan Adamopoulos, Alexander Vial, Andrew Higgins, and Stephanie Hooper, Zuckerman on Australian Civil Procedure (LexisNexis, 2018)
- Linda Evans and Alexander Vial, 'Settlement Practices in Australia: The distinction between civil and criminal penalties' (2016) 44 Australian Business Law Review 300
- Alexander Vial, 'The Minimum Entrenched Supervisory Review Jurisdiction of State Supreme Courts - Kirk v Industrial Relations Commission (NSW) (2010) 239 CLR 531' (2011) 32(1) Adelaide Law Review 145 (cited in *Simpson v Andrew Maynard Architects Pty Ltd* [2014] VSC 365; (2014) 287 FLR 418 at [35] per Garde J)
- Current **contributor** to Thomson Reuters' “Practical Law Australia” service for competition law
- **Senior Reporter** of the South Australian State Reports (and previously reporter of the Western Australian State Reports)