

# DOMINIQUE HOGAN-DORAN SC

[www.dhdsc.com.au](http://www.dhdsc.com.au) | [dhogan@counsel.net.au](mailto:dhogan@counsel.net.au)

## Recent Matters

### Federal Court of Australia

Commonwealth of Australia (Federal Circuit and Family Court of Australia) v Comcare & Anor (QUD33/2024, Raper J, resolved by consent, orders made 27 June 2024)

- For Federal Circuit & Family Court of Australia (briefed by K&L Gates) - *judicial review; FOI Act*

Australian Securities & Investments Commission v RM Capital & The SMSF Club [2024] FCA 151 (Jackson J) (penalty hearing December 2024)

- For The SMSF Club (briefed by Hall & Wilcox) - *financial services; conflicted remuneration*

Muffet v Qantas Superannuation Ltd & Australian Financial Complaints Authority [2024] FCA 39 (Yates J)

- For Qantas Super trustee (briefed by King & Wood Mallesons) - *appeal by Australian & International Pilots Association re AFCA's affirmation of trustee's defined benefits calculation*

Lehrmann v Network Ten Pty Limited (Trial Judgment) [2024] FCA 369 (Lee J)

- For Fiona Brown, former Prime Minister's Office Director of Operations (briefed by Russell Kennedy) - *defamation; public interest immunity*

Australian Securities and Investments Commission v Westpac Banking Corporation (Omnibus) [2022] FCA 515; (2022) 407 ALR 1; (2022) 159 ACSR 381 (Beach J)

- For ASIC (briefed by AGS) - *financial services; civil penalties*

Registered Superannuation Entity Licensee (confidential) v Australian Prudential Regulation Authority (2022) (settled)

- For licensee (briefed by Mills Oakley/Herbert Smith Freehills) - *challenge to APRA decision to impose additional licence conditions; additional conditions revoked*

Sweeney v Australian Financial Complaints Authority & NULIS Nominees (Australia) Ltd [2022] FCA 1525 (O'Callaghan J)

- For MLC Super trustee (briefed by Minter Ellison) - *appeal; jurisdiction*

Construction, Forestry, Mining & Energy, Industrial Union of Employees, Queensland v Queensland Master Builders Association & Anor [2022] FCA 283 (Greenwood J)

- For BUSSQ trustee (briefed by Thomson Geer) - *shareholder dispute re board vacancies*

Registered Organisations Commissioner v Communications, Electronic, Energy, Information, Postal, Plumbing & Allied Services Union [2020] FCA 96 (Flick J)

- For Commissioner (briefed by Lander & Rogers) - *registered organisations; civil penalties*

Arcare Pty Ltd v Aged Care Quality & Safety Commissioner (Federal Court VID1395/2019) (settled)

- For Arcare (briefed by Russell Kennedy) - *Aged Care Act 1997 (Cth); challenge to directions*

## Supreme Court of New South Wales

Re AUSCOAL Superannuation P/L atf Mine Superannuation Fund [2024] NSWSC 32 (Robb J)

- For Mine Super trustee (briefed by Mills Oakley) - *judicial advice; defined benefits schemes*

Nature's Care Holdings v Chen [2024] NSWSC 14 (Rees J)

- For plaintiff manufacturer (briefed by Clifford Chance) - *breach of directors' duty; injunction*

Westpac Banking Corporation v Jammal & Ors (NSWSC 2021/366051) (settled July 2024)

- For Westpac Bank (briefed by HWL Ebsworth) - *equitable mortgage; subrogation*

Application by AUSCOAL Superannuation P/L (NSWSC 2023/438881) (resolved April 2024)

- For Mine Super trustee (briefed by Mills Oakley) - determination under s 23 *Coal and Oil Shale Miners Superannuation Act 1941* (NSW); *Industrial Relations Amendment Act 2023* (NSW)

Applications by abrdn Australia Ltd & abrdn Asia PLC (NSWSC, Rees J, 20 June 2023)

- For the Aberdeen Group (briefed by Minter Ellison) - *consent pursuant to s 249E Crimes Act 1900 (NSW) on retirement of Responsible Entities of Australian funds management business*

Re Energy Industries Superannuation Scheme P/L atf Energy Industries Superannuation Scheme (Pool A and Pool B) t/a EISS Super [2022] NSWSC 1202 (Ball J)

- For EISS Super trustee (briefed by Dentons) - *judicial advice; deed amendment to fund new trustee capital reserve to pay Commonwealth fines and penalties*

Re SCS Super P/L atf Australian Catholic Superannuation Fund [2022] NSWSC 686 (Hallen J)

- For Australian Catholic Super trustee (briefed by Minter Ellison) - *judicial advice; deed amendment to pay Commonwealth fines and penalties*

Re NGS Super P/L atf NGS Super [2021] NSWSC 1694 (Henry J)

- For Non-Government Schools Superannuation trustee (briefed by Minter Ellison) - *judicial advice to fund new trustee capital reserve to pay Commonwealth fines and penalties*

In re DSHE Holdings Limited [2021] NSWSC 608 (Williams J)

- For administrators McGrath Nicol (briefed by Norton Rose Fulbright) - *termination of DOCA*

In re Ovato Print Group [2020] NSWSC 1683 and [2020] NSWSC 1882 (Black J)

- For the Commonwealth (briefed by Norton Rose Fulbright) - *scheme of arrangement*

Re NULIS Nominees (Australia) Ltd (NSWSC, Foster J, 8 August 2020)

- For MLC Super Fund trustee (briefed by Minter Ellison) - *judicial advice; lost trust deed*

Martin v Commonwealth Superannuation Corporation (NSWSC 2018/277432) (settled 2020)

- For Public Sector Superannuation Scheme trustee (briefed by Ashurst) - *challenge to adverse Total and Permanent Disability determination*

## Supreme Court of Western Australia

### Reynolds v Higgins & Sharaz (SCWA CIV1840/2023) (Tottle J)

- For Fiona Brown, former Prime Minister's Office Director of Operations (briefed by Russell Kennedy) - *defamation; public interest immunity; witness non-availability*

## Supreme Court of Queensland

### HEST Australia v Attorney-General for State of Queensland and Attorney-General for State of Victoria [2022] QSC 221; (2022) 12 QR 144 (Kelly J)

- For Mercy Super trustee (briefed by Ashurst) - *declaratory relief; Queensland Criminal Code and Victorian Crimes Act and benefits in context of successor fund transfer (merger)*

### Re QSuper Board [2021] QSC 276 (Kelly J)

- For Queensland Public Sector Superannuation Scheme trustee (briefed by King & Wood Mallesons) - *judicial advice; deed amendment to fund new trustee capital reserve to pay Commonwealth fines and penalties*

## Supreme Court of Victoria

### Application by Diversa Trustees atf Future Super Fund [2023] VSC 279 (Delany J)

- Advised Future Super Group (briefed by Herbert Smith Freehills) – *consent to change of trustee*

### Re Care Super (No 1) [2021] VSC 805 & (No 2) [2021] VSC 854 (Lyons J)

- For Clerical, Administrative, Retail Employees Fund trustee (briefed by Mills Oakley) - *judicial advice; lost trust deed; shareholdings; exercise of remuneration power to fund resilience reserve to pay Commonwealth fines and penalties*

## Expert Determinations

### Superannuation trustee and fund administrator (2021-2022)

- Expert Determiner – *superannuation fund administration contract dispute*

### Hunter & Central Coast Development Corporation atf Doma Group (2020-2021)

- For Hunter & Central Coast Development Corporation & NSW Department of Planning, Industry & Environment (briefed by Hall & Wilcox) – *contaminated site remediation*

## Financial Sector Regulatory Opinions

### Financial Services Council (2024)

- Opinion on the *Treasury Laws Amendment (Delivering Better Financial Outcomes) Bill 2024* (Cth) (briefed by Herbert Smith Freehills)

### Law Society of South Australia (2024)

- Professional indemnity scheme and insurance & financial services regulation (briefed direct)

### Council of Australian Life Insurers (2024)

- Opinion on aspects of the *Life Insurance Act 1995* (Cth) (briefed by Herbert Smith Freehills)

### Australian Institute of Company Directors and Governance Institute of Australia (2019)

- Opinion on the practice of board minutes (briefed direct)

## **Transactions / Products Opinions & Advisory**

### Apple (2024)

- Advising Apple (briefed by Herbert Smith Freehills)

### HUB24 (2024)

- Advising HUB24 (briefed by Herbert Smith Freehills)

### Royal Automobile Association of South Australia Incorporated (2024)

- Advising RAA SA (briefed by King & Wood Mallesons)

### Merger between Mine Super and TWU Super to create TEAM Super (2023-2024)

- Advising AUSCOAL Superannuation P/L atf Mine Super (briefed by Mills Oakley)

### Merger of Alcoa Super to Australian Retirement Trust (2023-2024)

- Advised Alcoa Super P/L atf Alcoa of Australia Retirement Plan (briefed by Hall & Wilcox)

### Acquisition by Betashares of Bendigo and Adelaide Bank superannuation business (2023)

- Advised Betashares Group (briefed by King & Wood Mallesons)

### Replacement of trustee for Future Super Fund (2023)

- Advised Future Super Group (briefed by Herbert Smith Freehills)

### RSE Licensee (2022-2023)

- Advice on greenwashing allegations; proxy voting (briefed by King & Wood Mallesons)

### Merger of Australian Ethical Super with Christian Super (2022)

- Advised Australian Ethical Super trustee (briefed by Norton Rose Fulbright)

### Merger between QSuper and Sunsuper to create Australian Retirement Trust (2021)

- Advised Queensland Public Sector Scheme trustee (briefed by King & Wood Mallesons)

### Commonwealth Bank of Australia sale of Colonial First State business to KKR Inc (2020)

- Advised Commonwealth Bank of Australia (briefed direct)

## **Regulatory Investigations and Pre-Litigation Resolution of Enforcement Action**

### ACNC investigation of registered charities (2023-ongoing)

- For Australian Charities & Not-for-Profits Commission

### ACTGRC investigation of gambling licensee; show cause notice (2022-ongoing)

- For ACT Gambling & Racing Commission (briefed by the ACT Government Solicitor)

### Australian Prudential Regulation Authority investigation into FirstSuper co-chair (2023-2024)

- For First Super trustee (briefed by Ashurst) - *payments to trade union shareholder*

### ASIC v Australian Financial Services Licensee (2023)

- For responsible entity of registered managed investment scheme (briefed by Hall & Wilcox) - *license cancellation hearing; 'no further action' confirmation obtained*

### ASIC investigation of Australian Financial Services Licensee (2022)

- For superannuation fund trustee (briefed by Dentons) - *investment choice campaign; no enforcement action taken*

APRA investigation of Registered Superannuation Entity Licensee (2021-2022)

- For superannuation fund trustee (briefed by Dentons) - *compliance with Prudential Standard CPS 520 Fit and Proper; additional license conditions imposed*

APRA investigation of Registered Superannuation Entity Licensee (2022)

- For superannuation fund trustee (briefed by Thomson Geer and Ashurst) - *compliance with Prudential Standard CPS 520 Fit and Proper; compulsory examinations of CEO*

ASIC investigation of Registered Superannuation Entity Licensee (2021)

- For superannuation fund trustee (briefed by Dentons) - *advertising and disclosure notices; no enforcement action taken*

ASIC investigation into REST Super (2019-2021)

- For General Counsel of retail superannuation trustee (briefed by Minter Ellison) - *compulsory examinations involving complex legal professional privilege claims*

ASIC investigation into Westpac Banking Corporation (Royal Commission referrals) (2021)

- For ASIC (briefed by the Australian Government Solicitor) - *financial services*

Aged Care Quality & Complaints Commission investigation and audit (2018)

- For Garden View Aged Care (briefed by Sparke Helmore and Hall & Wilcox)

<b>Royal Commissions, Public Inquiries, and ICAC Operations</b>
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***Royal Commissions***

Royal Commission into the Robodebt Scheme (2022-2023)

- For the Commonwealth (briefed by Australian Government Solicitor)

Royal Commission into National Natural Disaster Arrangements (2020)

- Senior Counsel Assisting the Royal Commission

Royal Commission into Aged Care Quality and Safety (2018-2020)

- For AMP Capital (briefed by Hall & Wilcox) - *Funding, Financing & Prudential Regulation (2020)*
- For Garden View Aged Care (briefed by Sparke Helmore) - *Dementia and Residential Care: Use of Physical & Chemical Restraints hearing (2019); also re ABC TV 7.30 Report (2019)*
- For Anglican Care (briefed by Hall and Wilcox) - *Carers for Older Australians hearing (2019) and re ABC TV Four Corners program "Who Cares" (2018) and related complaints*

Royal Commission into Misconduct in Banking, Superannuation & Financial Services Industry

- For Commonwealth Bank of Australia & Aussie Home Loans (briefed by Clayton Utz)

***Public Inquiries***

Public Inquiry into Charitable Fundraising (aka the RSL Inquiry) (2017-2018)

- For RSL LifeCare Ltd (briefed by Clayton Utz).

Ombudsman's Inquiry into Water Compliance & Enforcement (2017-2018)

- For WaterNSW (briefed by Norton Rose Fulbright).

Special Commission of Inquiry into NSW Greyhound Racing Industry (2015-2016)

- For CEO of Greyhounds NSW (briefed by Clayton Utz).

### ***Anti-Corruption Inquiries***

#### ICAC Operation Ember (Roads and Maritime Services) (2019-2022)

- For Roads and Maritime Services (briefed by Norton Rose Fulbright)

#### ICAC Operation Toloso (Mayor of City of Canada Bay Council) (2022)

- For Mayor of City of Canada Bay Council (briefed by KPL Lawyers)

#### ICAC Operation Ricco (City of Botany Bay Council) (2017)

- For City of Botany Bay Council Deputy General Manager (briefed by McCabes)

#### ICAC Operation Credo (Australian Water Holdings) and ICAC Operation Spicer (Political Donations) (2014-2017)

- For the Hon. Senator Arthur Sinodinos (briefed by Arnold Bloch Leibler)

### **Recent Publications**

*The Extent and Limits of the Powers of ASIC and APRA in Superannuation* – Law Council of Australia Superannuation Lawyers Conference David McLean Memorial Address (2024) – to be published in *Australian Institute of Administrative Law Forum* February 2025 edition

*Implementing Royal Commission Recommendations* – Australian Institute of Administrative Law National Administrative Law Conference Address (2024) – published in *Australian Institute of Administrative Law Forum*, November 2024 edition

*Humanity on the Move: Climate Change, Refugees, and the Limits of International Institutions* – World Bar Conference 2024 – published on *Substack* October 2024

*Assisting Royal Commissions: Reflections from Counsel* – Australian National University School of Regulation and Global Governance – published in *Australian Bar Review*, September 2024 edition

*Insolvency of regulated superannuation trusts and their licensed trustees* – published in (2024) *Australian Restructuring, Insolvency & Turnaround Assn Journal* 26

*Computer says ‘no’: automation, algorithms and artificial intelligence in Government decision-making*” published in *Handbook for Judicial Officers*, Judicial Commission of New South Wales, also published in (2017) 13(3) *Judicial Review* 345

*New approaches to proof of foreign law: a practitioners' assessment* (co-authored with Justin Hogan-Doran SC) chapter in *Commercial Issues in Private International Law: A Common Law Perspective* - Hart Publishing (2019)