

DAVID SHAW - Principal

David advises clients on a variety of corporate and commercial disputes and in relation to corporate regulatory inquiries and investigations. He has more than 30 years of experience, as a barrister in London and as a barrister and solicitor in Australia. Having practised initially at the criminal bar in London, he has, since emigrating to Australia in 1987, provided advice and representation in complex legal and factual disputes, in litigation, arbitrations and before regulatory bodies.

He has practised at leading international law firms in Sydney and Perth, and at a leading Perth boutique corporate/commercial law firm. He has acted for a broad range of clients, including listed Australian and international companies, high net worth individuals and liquidators, in a wide range of sectors, including resources, construction and engineering, real estate, insolvency and restructuring, manufacturing and information technology.

He has represented clients in the High Court of Australia, the Federal Court of Australia, State Supreme Courts (Western Australia, Victoria, New South Wales and Queensland), WA District Court, WA State Administrative Tribunal, the Administrative Appeals Tribunal, and in arbitrations and before regulatory bodies. He has also acted for clients in alternative forms of dispute resolution, including negotiations and mediations.

Qualifications & Admissions

- LLB (Hons), Kingston University, 1982
- Called to the Bar, Gray's Inn, London, 1983
- Solicitor of the Supreme Court of New South Wales, 1988
- Solicitor and Barrister of the Supreme Court of Western Australia, 1989
- Solicitor of the High Court of Australia, 1991

Key Experience & Notable Reported Decisions

Key experience includes:

- Acted in numerous complex proceedings in Western Australia and Victoria for the liquidators of the Great Southern group of companies, which conducted several failed managed investment schemes involving timber plantations and cattle. The various proceedings in Victoria, in which a number of allegations of misleading and deceptive conduct were made, comprised (at that time) the largest ever class action (in fact, a series of 16 class actions) heard in the Supreme Court of Victoria. The class actions were settled after trial, shortly before judgment was to be delivered, and there followed an application by the plaintiffs for approval of the settlement, and applications by the liquidators for approval of entry into the settlement deed and for approval of a scheme of arrangement to settle an estimated \$1.6 billion of potential claims by over 40,000 investors in the various managed investment schemes. David and Gandhi drafted the Scheme Booklet, and David attended with, and advised, the liquidators at the Scheme Meeting held in Melbourne, and appeared as counsel at the liquidators' applications.
- Acted for Wayne Dropulich in petitions filed by the Australian Electoral Commission and others in the High Court of Australia, sitting as the Court of Disputed Returns, concerning the consequences of the loss of 1,370 ballot papers in the 2013 Senate election.
- Acted for an international construction group headquartered in Spain, in proceedings commenced by its Australian ASX-listed joint venture partner in respect of losses suffered by the joint venture.
- Obtained an injunction in the Supreme Court of Western Australia on behalf of an 'oppressed' minority shareholder restraining the proposed removal of the shareholder as a director of a group of companies comprising one of Western Australia's largest residential builders. Notwithstanding that he was a minority shareholder, he was the founder, the driver and the 'public face' of the companies' businesses. In granting the injunction, the court held that the majority shareholders were arguably acting in an unfair and discriminatory manner in their attempt to effect the removal of our client from his directorships.

- Acted for the liquidators of two of the 'mezzanine finance' companies in the Westpoint group of companies. A major investigation into the group was undertaken by the Australian Securities and Investments Commission.
- Acted for the liquidators of the collapsed merchant bank, Rothwells Limited (In Liquidation) in numerous proceedings in the Federal Court, the Supreme Court of Western Australia and the Supreme Court of Queensland.
- Acted in numerous proceedings and investigations arising out of the collapse of Bond Corporation.
- Acted for the liquidators of a number of companies in the SAS Global group of companies in Federal Court proceedings concerning various land developments.
- Acted for a developer in numerous Supreme Court proceedings relating to a dispute with its joint venture partner in a large riverfront property development. The principal dispute concerned an allegation of improper use of joint venture funds by its joint venture partner. A successful application was made to the Court for the appointment of a receiver and manager to the assets of the joint venture pending the resolution of the various proceedings.
- Acted for numerous directors and officers of companies at compulsory examinations conducted by the Australian Securities and Investments Commission, and in respect of notices to produce books issued by the Australian Securities and Investments Commission.
- Acted for a prominent ASX-listed gold producer in relation to a numerous contractual disputes, including a dispute concerning an off-take agreement entered into with a major resources company.
- Acted for an ASX-listed uranium explorer in relation to a joint venture dispute and hostile takeover bid.
- Acted for Bond Media Limited in proceedings brought by Kerry Packer in respect of the redemption of \$200 million of redeemable preference shares.
- Acted for a prominent television production company and television presenters and other personnel in a private prosecution brought under surveillance devices legislation in New South Wales.
- Acted for the owner of the *Bistro des Artistes* restaurant in Subiaco in his dispute with his lessor concerning rent.
- Acted for Ruhrkohle AG in a contractual dispute with Coal & Allied.

Notable reported decisions include:

- *Alem Group Pty Ltd v Sanur Pty Ltd* [2016] WASAT 16: An application concerning the proper construction of a lease of premises under the *Commercial Tenancy (Retail Shops) Agreements Act 1985* (WA).
- *Australian Maritime Systems Ltd v McConnell Dowell Constructors (Aust) Pty Ltd* [2016]: An application to stay an action alleged to have been commenced in breach of an arbitration clause.
- *HP Mercantile Pty Ltd v Hartnett & Ors* [2015] NSWSC 1475: Concerning the proper construction of a suite of loan documentation in relation to a number of failed managed investment schemes.
- *Re Great Southern Managers Aust Ltd (in liq)* [2016] VSC 38: An application on behalf of the liquidators of Great Southern Managers Australia Ltd (in liq), under s411 of the *Corporations Act 2001* (Cth), for approval of a proposed scheme of arrangement.
- *The Australian Electoral Commission v Johnston & Ors; Wang v Johnston & Ors; Mead v Johnston & Ors* [2014] HCA 5: The High Court of Australia, sitting as the Court of Disputed Returns, answered questions of law arising in three petitions which disputed the election of six senators for the State of Western Australia to serve in the Senate of the Parliament of the Commonwealth of Australia.

- *Re Great Southern Managers Australia Ltd (in liq); ex p Jones, Weaver & Stewart (in their capacity as liquidators of Great Southern Managers Australia Ltd (in liq))* [2014] WASC 312: An application on behalf of liquidators (in respect of settlement of a series of actions commenced in the Supreme Court of Western Australia) for approval of entry into a settlement deed under s477(2B) of the *Corporations Act 2001* (Cth) and directions under s511 of the Act.
- *In the matter of Great Southern Managers Australia Ltd (in liq)* (unreported, Croft J, 17 December 2014): An application on behalf of liquidators (in respect of settlement of a series of class actions and individual actions commenced in the Supreme Court of Victoria) for approval of entry into a settlement deed under s477(2B) of the *Corporations Act 2001* (Cth) and directions under s511 of the Act.
- *Clarke (as trustee of the Clarke Family Trust) & Ors v Great Southern Finance Pty Ltd (Receiver & Manager Appointed) (in liq) & Ors* [2014] VSC 516: An application by the lead plaintiffs (in respect of settlement of a series of class actions commenced in the Supreme Court of Victoria) for approval of settlement of the class actions under s33V of the *Supreme Court Act 1986* (Vic).
- *Neptune Geomatics Pty Ltd v Greatship Subsea Solutions Australia Pty Ltd* [2012] WASC 477: An application to set aside a statutory demand, and whether the issue of the statutory demand amounted to an abuse of process.
- *Ritchie & Ors v Great Southern Managers Australia Ltd (in liq) (Receivers and Managers Appointed)* [2012] WASC 90: An application for particular discovery.
- *Ausco Modular Pty Ltd v Corporate Sports Australia Pty Ltd* [2012] WASC 283: An application to set aside a statutory demand.
- *Andrew Koh Nominees Pty Ltd aff KL Unit Trust v Pacific Corporation Ltd [No 3]* [2010] WASC 248: An application for a stay of civil proceedings until completion of criminal proceedings.
- *Andrew Koh Nominees Pty Ltd v Pacific Corporation Ltd [No 2]* [2009] WASC 207: An application for limited modification of the implied undertaking, in order to provide to WA Police as evidence of alleged criminal offences, answers to interrogatories produced in civil litigation.
- *Andrew Koh Nominees Pty Ltd & Anor v Receiver & Manager of the Balneum Joint Venture* [2007] WASC: An appeal concerning whether participants in a joint venture were “a party charged” and “liable to pay” legal costs and disbursements incurred by a receiver and manager and paid from joint venture property.
- *Covus Corporation Pty Ltd v AJ Lucas Drilling Pty Ltd* [2006] WASC 154: A cross-vesting application, to transfer third party proceedings to the Supreme Court of Victoria.
- *Remrose Pty Ltd v Allsilver Holdings Pty Ltd* [2005] WASC 251: An application for an injunction on behalf of an 'oppressed' minority shareholder restraining the proposed removal of the shareholder as a director of a group of companies.
- *Bond Brewing Holdings Ltd v Crawford* (1989) 1 WAR 517: Application to the Supreme Court of Western Australia for an injunction restraining the receiver appointed to Bond Brewing Holdings from taking any step under an order granted by Justice Beach in the Supreme Court of Victoria.

Professional Memberships

- Member, The Honourable Society of Gray's Inn
- Member, The Law Society of Western Australia
- Member, AMPLA