

# DAVID MACKAY

Barrister

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With over 20 years combined experience as a barrister and solicitor, David advises and appears for corporate clients and individuals on instruction from top-tier, mid-tier law and small law firms, as well as in-house legal departments. While he maintains a broad practice, David has acquired specialist knowledge and expertise in the areas of commercial law and equity, corporations law, insolvency and bankruptcy, employment law, property law and commissions and inquiries.

His extensive litigation experience extends to appearing at trial and appellate level in various Australian jurisdictions, and before commissions of inquiry (such as ICAC) and statutory tribunals. Complementing his practice as an accomplished advocate, David also appears on behalf of clients at mediations.

David holds a Master of Laws, Bachelor of Laws (with Honours) and Bachelor of Arts (with Honours) from the University of Sydney. Prior to being called to the Bar, he gained considerable experience as a solicitor in the Commercial Litigation Department of top-tier firm Minter Ellison for almost a decade, during which time he acted for clients in complex and high profile matters. Such experience has served to give David a deep understanding as to needs, expectations and preferences of solicitors and their clients. To this end, David is committed to working in partnership with his instructing solicitors to develop the best strategies to achieve optimal legal and commercial results for the client.

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## ADMISSIONS

- 2007 Admitted to the Bar of New South Wales
- 1996 Admitted as a Solicitor of the Supreme Court of New South Wales

## PROFESSIONAL QUALIFICATIONS AND COURSES

- 2017 Advanced Trial Advocacy Intensive Australian Bar Association
- 2009 Master of Laws: University of Sydney
- 1995 Bachelor of Laws (Honours): University of Sydney
- 1992 Bachelor of Arts (Honours): University of Sydney

## PROFESSIONAL EXPERIENCE

- 2014 - present Barrister, PG Hely Chambers
- 2007 - 2013 Barrister, Sixth Floor Wentworth Chambers
- 1998 - 2007 Senior Associate, Minter Ellison - Commercial Litigation Department
- 1997 - 1998 First Associate to the Honourable Justice Emmett in the Federal Court

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## PRINCIPAL AREAS OF PRACTICE

|                              |                           |
|------------------------------|---------------------------|
| Commercial Law and Equity    | Insurance                 |
| Competition and Consumer Law | Real Property             |
| Corporations Law             | Commissions and Inquiries |
| Employment Law               | Succession                |
| Insolvency and Bankruptcy    |                           |

## PROFESSIONAL MEMBERSHIPS

- Member Australian Restructuring Insolvency and Turnaround Association (ARITA)
- Member New South Wales Bar Association

## SELECT CASES

David has considerable experience appearing led and unled for clients in complex hearings and appeals in a wide variety of jurisdictions. Significant matters in which he has appeared are as follows.

### High Court of Australia

- *Marcolongo v Chen* ([2011](#)) [242 CLR 546](#) – Acted for respondents in relation to a claim under s 37A of the *Conveyancing Act* (led by Tim Hale SC)

### Vanuatu Court of Appeal

- *Iririki Island Holdings Pty Ltd v Mocha Limited (trading as Vancorp Construction)* – Court of Appeal case 2302 of 2017 – Acted for appellant in appeal against single judge’s decision. Granted a temporary practicing certificate to appear in Vanuatu

### New South Wales Court of Appeal

- *Turnbull v Strange* ([2018](#)) [NSWCA 157](#) – Acted for appellant in relation to application to set aside a subpoena (led by Todd Alexis SC)
- *Treloar Constructions Pty Ltd v McMillan* ([2017](#)) [318 FLR 58](#) – Acted for creditor in an appeal regarding a claim for insolvent trading (led by Todd Alexis SC)
- *Hasler v SingTel Optus Pty Ltd; Curtis v SingTel Optus Pty Ltd; SingTel Optus Pty Ltd v Almad Pty Ltd* ([2014](#)) [87 NSWLR 609](#) – Acted for respondent and appellant employer against former employees and companies in relation to several appeals concerning claims for breach of contract, breach of the *Corporations Act*, breach of fiduciary duty and the second limb of *Barnes v Addy* (led by Jeremy Stoljar SC)

### Queensland Court of Appeal

- *QNI Resources Pty Ltd and QNI Metals Pty Ltd v NQ Pipeliners No. 1 and No. 2 Pty Ltd* ([2017](#)) [QCA 297](#) – Acted for appellants in application to set aside four statutory demands (led by Pat Zappia QC)

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## NSW Court of Criminal Appeal

- *Maitland v R; Macdonald v R* [[2019](#)] [NSWCCA 32](#) - acted for appellant in relation to appeal concerning the common law offence of misconduct in public office by a former Minister of the Crown (led by Phil Boulten SC)

## NSW Supreme Court

- *Maria by her tutor Ivo de Oliveira v John Antonio Oliveira* [[2023](#)] [NSWSC 1130](#) – Acted for administrators of estate in relation to claims under the *Succession Act* (unled)
- *Interslice v CCA Investments – Bass Hill Pty Ltd* [2023] NSWSC (Judgment reserved) – Acted for lessee in relation to claim for damages for repudiation of lease (unled)
- *In the matter of Orix Corporation Ltd* [[2022](#)] [NSWSC 577](#) – Acted for former managing director in relation to use of telephone intercepts in proceedings (led by Mark Ashhurst SC)
- *Nova Employment Ltd v Michelle Hira & Ors* [[2021](#)] [NSWSC 1337](#) – Acted for defendants in relation to application for an interim injunction restraining the defendants from working for three months (unled)
- *TP ICAP Management Services (Australia) Pty Ltd v Bradley Howell & Ors* [[2021](#)] [NSWSC 656](#) – Acted for desk head of broker desk in four week case in the Commercial List in relation to claims for breach of contract, statutory duty and fiduciary duty as well as a cross-claim under ss.18 and 31 of the *Australian Consumer Law* and deceit (unled)
- *THC Holdings Pty Ltd v CMA Recycling Pty Ltd* [[2014](#)] [NSWSC 1136](#) – Acted for company and administrators in three-day case in the Commercial List concerning sale of goods, breaches of *Corporations Act* and duties of bailee (unled)
- *ASIC v Macdonald (No.11)* [[2009](#)] [256 ALR 199](#) and *(No.12)* [[2009](#)] [259 ALR 116](#) – Acted for former CEO in civil penalty proceedings for breach of ss 180 and 181 of the *Corporations Act* (led by Steven Finch SC and David Studdy SC)

## Federal Court of Australia (including the Full Court of the Federal Court)

- *Carter v Chubb Insurance Australia Ltd* [2023] FCA (Judgment reserved) – Acted for former managing director in relation to claim for costs of criminal proceedings and civil proceeding (led by Mark Ashhurst SC)
- *In the matter of Daylight Agency Co Pty Ltd (in liq)* [2024] FCA – Acted for liquidator in relation to application for approval of funding agreement under s. 477(2B) of the *Corporations Act* (unled)
- *McMillan v Warner (Trustee)* [[2022](#)] [FCAFC 20](#) (Full Court of the Federal Court) – Acted for bankruptcy trustee in relation to claim under s. 121 of the *Bankruptcy Act* (led by Todd Alexis SC)
- *Curtis v SingTel Optus Pty Ltd* [[2014](#)] [225 FCR 458](#) (Full Court of the Federal Court) – Acted for creditor in resisting application to set aside bankruptcy notice on grounds that judgment not attached at time of issue (unled)
- *Bolnisi Gold NL* [[2007](#)] [FCA 1668](#) and *(No. 2)* [[2007](#)] [165 FCR 45](#) – Scheme of arrangement (led by Ian Jackman SC)

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## Vic Supreme Court

- *Hird & Anor v Walkem* [2021] VSC 126 – Acted for liquidator and company in relation to application to amend (unled)

## Vanuatu Supreme Court

- *Iririki Island Holdings Pty Ltd & Ors ats Boatshed Inc & Ors* (21 June 2019, Vanuatu Supreme Court, Wiltens J) — Acted for owner/manager of resort in relation to interlocutory application to wind up the strata plan body corporate and appoint a liquidator. Granted a temporary practicing certificate to appear in Vanuatu (unled)

## Federal Circuit Court

- *Curtis v SingTel Optus Pty Ltd* [\(2014\) 286 FLR 96](#) – Acted for creditor in relation to a claim to set aside a bankruptcy notice by reason of judgment not being attached at time of issue (unled)

## District Court of New South Wales

David has appeared unled in numerous matters in the District Court regarding insolvency, contractual and commercial lease disputes.

## Local Court of New South Wales

David has appeared unled in numerous matters in the Local Court regarding contractual and commercial lease disputes and claims for misleading and deceptive conduct.

## Independent Commission Against Corruption (ICAC)

- *Operation Gerda* (2019) – Acted for former security operations manager at University of Sydney
- *Operation Spector* (2014) – Acted for former CEO of Railcorp
- *Operations Jarilo, Jasper and Acacia* (2011) and (2012-2013) – Acted for former Minister for Primary Industry and Mineral Resources Mr Ian Macdonald (led by Tim Hale SC)

## Royal Commissions

- Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry - Appeared for Insurance Australia Group Limited (led by Jeremy Stoljar SC)
- Royal Commission into Trade Union Governance and Corruption - Appeared for employee of superannuation fund (unled)

## RECENT PUBLICATIONS

- *Insolvent Trading – An Update* [2017] 29(3) ARITA J 34-37.