

Professional Profile

ANDREW BROADFOOT QC

Professional Experience

- Barrister at the Victorian Bar since 2002. Member of the Western Australian Bar Association. Formerly a solicitor in Melbourne and in Perth practising in tax, energy and resources law, and commercial litigation.
- Appointed Senior Counsel by the Chief Justice of the Supreme Court of Victoria on 22 November 2016. Subsequently appointed Queen's Counsel by the Governor of Victoria, on the recommendation of the Attorney General.
- Practice consists of appearances and advice in relation to issues concerning taxation law, commercial law, torts, administrative law and arbitral proceedings. Principally clients are involved in the mining, petroleum and financial sectors; familiar with the mining legislation in WA, Queensland and New South Wales and the offshore petroleum legislation. Apart from private sector clients, have also represented Commonwealth and State authorities in a variety of matters including taxation appeals, matters concerning statutory interpretation, judicial review, torts, securities regulation, and the "Abalone class action" which concerned liability in negligence for pure economic loss arising from a herpes like virus that killed a large proportion of Victoria's wild abalone stocks. National practice, having appeared in Melbourne, Sydney, Perth, Brisbane and Hobart, in Commonwealth and in State jurisdiction.
- Familiar with complex litigation and an experienced user of litigation management technology. Extensive experience working in and leading litigation teams and formulating litigation strategy. Prior to taking silk acted as mentor to seven readers joining the Victorian Bar.
- Experienced in dealing with both lay and expert evidence and witnesses. Have cross-examined experts practising in numerous disciplines including valuation, science, engineering, economics, medicine, health and safety in the context of resource projects and accounting.
- Member of the Victorian Bar Audit and Finance Committee.

Appearances

Selected Appeals

- *Lewski v C. of T.* [2017] FCAFC 145.
Income tax; incurrence of outgoings; present entitlement of trust beneficiary.
- *Elecnet (Aust) Pty Ltd v C. of T.* (2016) 259 CLR 73.
Income tax; trust law principles; statutory interpretation.
- *Wright Prospecting Pty Ltd v Hancock Prospecting* (2016) 330 ALR 140.
Interpretation of Western Australian resources legislation; government contracts; Ministerial powers.
- *Marriner v Australian Super Developments Pty Ltd* [2016] VSCA 141.
Dispute between joint venturers; accessorial liability for breaches of trust.
- *PTTEP Australasia (Ashmore Cartier) Pty Ltd v C. of T.* (2014) 222 FCR 592.
Petroleum resource rent tax dispute concerning sale of oil from an offshore facility; contractual interpretation; statutory interpretation.
- *True Value Solar Holdings Pty Ltd v Fernandez* [2013] VSCA 24.
Company law; derivative proceedings; dispute between joint venturers.
- *Mitsui & Co (Australia) Ltd v C. of T* [2012] FCAFC 109.
Income tax dispute regarding petroleum facilities; capital allowances; regulatory regime under petroleum legislation.
- *IOOF Building Society Limited v Foxeden Pty Ltd* (2009) 23 VR 536.
Contracts; implied terms as to notice of termination; promissory estoppel.
- *Esso Australia Resources Pty Ltd v C. of T.* (2012) 200 FCR 100.
Petroleum resource rent tax; deductible expenditure relating to operating costs of offshore facilities and intercompany technology access payments between members of a multi-national group of oil companies.

- *Esso Australia Resources Pty Ltd v C. of T.* (2011) 199 FCR 226.
Petroleum resource rent tax; assessable petroleum receipts and valuation of crude oil, LPG and natural gas at various points in integrated oil and gas production, refining and processing, and distribution infrastructure; statutory interpretation.
- *Regent Holdings Pty Ltd v State of Victoria* (2012) 36 VR 424.
Class action procedure; discovery from group members other than named plaintiffs.
- *C. of T. v Axa Asia Pacific Holdings Ltd* (2010) 189 FCR 204.
Capital gains tax; scrip for scrip rollover; application of anti-avoidance provisions to corporate reconstruction and asset sale transaction devised by Macquarie Bank.

Selected first instance disputes and arbitrations

- *Babcock & Brown DIF III Global Co-Investment Fund v Babcock & Brown International Pty Ltd* (2016) 338 ALR 297.
Conflicts of laws; exclusive jurisdiction clauses; *forum non conveniens* principles.
- *Lucas v C. of T.* [2015] FCA 598.
Judicial review; tax administration; capital gains tax.
- *Regent Holdings Pty Ltd v State of Victoria* [2013] VSC 601.
Liability in negligence for pure economic loss; whether duty of care owed requiring exercise of discretionary statutory powers; causation: expert evidence in epidemiology and virology; expert accounting evidence on valuation of resources (discount rates, cost of capital).
- *Kalenik v Apostolidis and C. of T. (No 2)* [2013] VSC 395.
Property law; trusts; nature of security interests.
- *Wright Prospecting Pty Ltd v Hancock Prospecting (No 7)* [2016] WASC 305.
Partnership dispute; joinder of necessary parties; various other issues.
- International arbitration between joint venture participants in an offshore petroleum facility and a contractor. Contractual interpretation; expert evidence concerning scale accumulation, reservoir management and operation of wells and pipelines.

- International arbitration between joint venture participants in an offshore petroleum facility and a contractor. Tax indemnities under a lease for a floating production, storage and offloading (FPSO) facility; survey, maintenance and operating practices for an FPSO.

Selected pro bono appearances

- *SRPB v Tax Practitioners' Board* [2016] AATA 456.
Registration of tax agents; administrative law; code of professional conduct.
- *SRPB v Tax Practitioners' Board* [2015] AATA 292.
Application for recusal; apprehended bias.
- *Rural Export & Trading (WA) Pty Ltd v Hahnheuser* (2009) 177 FCR 398
Trade practices; movement of goods from Australia; damages; causation.

Contact details

Chambers

Level 28, Aickin Chambers
200 Queen Street
MELBOURNE VIC 3000
Clerk's Telephone
Email

Postal Address

c/- Dever's List, Owen Dixon Chambers
205 William Street
MELBOURNE VIC 3000
+61 3 9225 7999
broadfoot@vicbar.com.au

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