

Areas of Practice

Alexander accepts briefs in all areas of law and regularly appears in the Federal Court of Australia, the NSW Supreme Court, and various other NSW courts. He maintains a broad commercial practice and has expertise in:

- competition, trade practices, regulation, and investigations
- consumer law and class actions
- commercial disputes involving contract, restitution, equity, property, and private international law
- corporations, insolvency, and restructuring law
- intellectual property law
- industrial and employment law

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.

Alexander also maintains a public law practice, which includes constitutional law and administrative law.

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, Dispute Resolution, Appeals

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 2 May
2023

Competition Law & Consumer Law

ACCC v Delta Building Automation Pty Ltd and Timothy Davis (FCA, ACD32/2021) (Bromwich J)

- Led by C Bannan for the respondents
- Alleged attempts to make or induce agreement containing cartel provision; exclusive dealing; anti-overlap

Wills v ACCC (HCA, S49/2023) (Application for Special Leave to Appeal to the High Court of Australia)

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

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. Judgment for the applicant/cross-respondent
- Misleading or deceptive conduct, trade mark infringement, passing off, good faith, exemplary damages

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
- Alleged breach of the Franchise Code, misleading or deceptive conduct, unconscionability, 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) (Penalty)

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

Other

- Worked on various aspects of other leading cases
- Considered various competition law issues in relation to financial services, transport, and digital platforms
- Advised multiple 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 applications should be made under ACCC's immunity and cooperation policies
- Advised on various s 155 notices and has appeared as counsel for respondents in s 155(1)(c) examinations

Non-competition restraints of trade

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

- Led by J Fernon SC for the plaintiff
- Restraint of trade in an employment context; non-competition; non-solicitation

DXC Eclipse Pty Ltd v Wildsmith [2023] NSWCA 98

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

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

- **Unled** for the defendant
- Restraint of trade; non-compete; breach of fiduciary 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
- Alleged breach 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); settled before trial

Royal Commissions and regulatory 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

Commercial disputes

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

- Led by Ian Roberts SC
- Contract claim, agency, rectification, restitution, unjust enrichment, and change of position

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

- **Unled** for the Defendant
- Restitution; breach of fiduciary duties; breach of duties under s 180 to s 183 of 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
- Contractual claim for services; construction of contract; interaction of contract with third party deed; mistake

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

- **Unled** for the plaintiff; defendant went into bankruptcy on eve of trial
- 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. Matter settled shortly after

Dalya Australia Pty Ltd v Frank & Tina Micali Pty Ltd (NSWLC 2020/00044291)

- **Unled** for the plaintiff at trial. Ex tempore judgment for the plaintiff with costs
- Contract claim for failure to take delivery of international freight, misleading or deceptive conduct

Brianda Pty Ltd t/a Brianda Projects v Simpson (NSWLC 2020/00339448)

- **Unled** for the plaintiff; default judgment for the plaintiff
- Residential construction dispute involving contract and quantum meruit claims

Yavari Holdings Pty Ltd v Good Deeds Pty Ltd (NSWLC 2020/00310691)

- **Unled** for the defendant
- Alleged breach of contract. Proceedings discontinued after Defence filed

Constitutional Law

[Confidential – proceedings not yet filed]

- Led by J Lazarus SC for the plaintiffs
- Whether a government has acquired the plaintiffs' property on other than just terms

Employment Law

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

Scott's Refrigerated Freightways Pty Ltd v Clay Mullens t/a Auto Outlet Direct (NSWLC 2020/00149926) (Still M)

- **Unled** for the plaintiff at trial; judgment for the plaintiff against both defendants with indemnity costs
- Whether second defendant negligent while employed by first defendant; vicarious liability of second defendant

Insolvency and Restructuring

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. Six day trial.
- 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

Final relief

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

- Led by B Mee
- Non-pecuniary relief (declarations, injunctions, corrective advertising, delivery up, exemplary damages)

Civil Procedure / interlocutory applications

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

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

- Led by J Fernon SC for the plaintiff
- Urgent interlocutory injunction to enforce restraints of trade in an employment context; non-competition

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 cost of hearing 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 at trial based on new matters raised by defendant in opening

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

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 section 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
- 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 various initiatives regarding 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 to defend the diesel emissions allegations
- 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.

	<p>Royal Commissions and Regulatory Inquiries</p> <ul style="list-style-type: none"> ▪ a major Australian bank in relation to a prudential inquiry conducted by the Australian Prudential Regulation Authority (APRA) ▪ a major Australian bank in relation to the Financial Services Royal Commission ▪ National Broadband Network (NBN) on the Royal Commission into National Natural Disaster Arrangements <p>Insolvency and restructuring</p> <ul style="list-style-type: none"> ▪ a defendant in insolvency proceedings in the Supreme Court of South Australia in relation to claims under the principles in <i>Barnes v Addy</i> (1874) LR 9 Ch App 244. Appeared as counsel in <i>Matthews v Shaw</i> [2014] SASC 74
Selected Presentations	<ul style="list-style-type: none"> ▪ 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	<ul style="list-style-type: none"> ▪ 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, <i>Allegations of Misuse of Market Power or Cartel Conduct in the Context of Patented Pharmaceutical Products</i> (Legalwise, 26 May 2022) ▪ Co-author of Adrian Zuckerman, Stephanie Wilkins, Jonathan Adamopoulos, Alexander Vial, Andrew Higgins, and Stephanie Hooper, <i>Zuckerman on Australian Civil Procedure: Principles of Practice</i> (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)