LIST G
BARRISTERS

Ben Petrie

Ben has a broad commercial practice and is regularly instructed in complex and high-value disputes.

QUALIFICATIONS

Master of Laws - University College London
Bachelor of Laws (Hons)
Bachelor of Science
Bachelor of Arts

CORRESPONDENCE

P 03 9225 8558
E ben.petrie@vicbar.com.au

CHAMBERS

Aickin Chambers
Level 19 Room 6
200 Queen Street
Melbourne VIC 3000

COMMERCIAL LAW

Appellate | Bankruptcy | Building & Construction | Corporate Insolvency | Corporations & Securities | Energy & Resources | Equity & Trusts | Insurance | Sports Law | Banking & Finance | Class Actions | Commercial Arbitration | Consumer Law | Contractual Disputes | Real Property

TORT LAW

Product Liability | Professional Negligence | Appellate | Class Actions | Major Torts | Negligence

Ben's practice encompasses general contractual disputes, major construction and engineering projects, energy and resources, insolvency, banking and finance disputes, corporations matters, oppression proceedings, equity and trusts, product liability, and professional liability matters. Ben also maintains an arbitration practice, particularly in the areas of major projects and construction and sports law.

He is ranked in the Asia Pacific Legal 500 as one of Australia's leading junior barristers for commercial disputes.

He appears in commercial courts throughout Australia and in international arbitrations in the Asia-Pacific region under arbitral rules including UNCITRAL, ICC, SIAC and ACICA.

Prior to coming to the bar, Ben worked for a number of years at Clayton Utz, where he was a senior associate based out of the Sydney and Melbourne offices.

Ben holds a Master of Laws from University College London, in addition to a LLB (Hons), BSc, and BA. While a student, Ben was the recipient of a number of academic awards and scholarships.

Liability limited by a scheme approved under Professional Standards Legislation.

Recent Cases

APPELLATE

Ben has significant experience at appellate level, both led and unled. Some select appeals in which Ben has appeared include the following:

Feeney v Southsar Homes Pty Ltd [2024] VSCA 153: Ben was led on appeal by David Collins KC for the successful appellant, and appeared unled at trial. Among other things, the case delineates between circumstances in which a Court will imply terms into a contract for business efficacy;

Yume Group Holdings v Ashthorn [2024] VSCA 134: Ben appeared unled on appeal for the successful appellant, and also appeared unled at trial. The case concerned the interpretation of a professional services agreement, an analysis of pre-emptive rights, and the circumstances in which a number of contracts will be regarded as a single transaction;

Brotherhood of St Laurence v Sarina Investments Pty Ltd [2024] VSCA 46: Ben was led on appeal by Perry Herzfeld SC for the successful appellant, and appeared unled at trial. The case establishes that a commercial landlord's duty to maintain premises can, subject to the formulation of the terms, have a pre-emptive or preventive element and so can be distinguished from a duty to repair.

Knight 34 Langdon Road v Bell [2023] VSCA 54: Ben was led by Michael Wise KC at trial and on appeal for the successful party. The case establishes that, to be "ready willing and able" to complete a contract of sale, a purchaser need not have the purchase moneys in their "back pocket" at all times, and need only be able to make payment when the time for performance falls due;

Haque v Bendigo & Adelaide Bank Ltd & Anor [2020] VSCA 17: Ben appeared unled for the successful appellant in what remains the only successful Victorian appeal by a group member in the cohort of enforcement proceedings arising out of the Great Southern class action;

Burkett v Bendigo & Adelaide Bank Ltd & Anor : Ben was by Michael Osborne KC on appeal (as his Honour then was). The matter resolved favourably prior to hearing;

Braham Investments Pty Ltd v Wantrup [2018] VSCA 291: Ben acted for the successful appellant in a claim

for breach of trust and equitable compensation arising out of the defalcation of trust funds held in a solicitor's trust account;

Macks v Viscariello [2017] SASCFC 172: Ben appeared for the successful respondent on appeal before the Full Court of the South Australian Supreme Court, led by Declan Hyde, in a proceeding that principally concerned a liquidator's breaches of ss 181 and 182 of the Corporations Act.

GENERAL COMMERCIAL

Ben has considerable experience in general commercial litigation across a diverse range of industries. Some highlights include:

Seven Network v Cricket Australia : Ben acted for Cricket Australia in Federal Court proceedings, led by Jeff Gleeson KC and Albert Dinelli KC, in defence of long running proceedings commenced by the Seven Network regarding the media rights agreement entered into between the parties;

Jeanswest franchise dispute: acted for Jeans West in a dispute with multiple franchisees regarding franchise agreements;

Alfred Health: acted for Alfred Health in in the Supreme Court of Victoria in relation to a dispute with a major pharmaceutical company under a supply agreement;

National Australia Bank Limited : acted for NAB, led by Claire Harris KC, in relation to a dispute with a well-known commercial real estate company, arising from a major power outage affecting NAB's infrastructure;

Yarra Valley Water: Ben acted for YVW in the Supreme Court of Victoria in a dispute with a commercial property developer entailing allegations of misleading and deceptive conduct regarding the supply of water to the development;

Kogan Australia Pty Ltd v eStore Logistics Pty Ltd : Ben is presently acting for eStore, led by Hamish Austin KC, in proceedings commenced by Kogan in the Supreme Court of Victoria regarding a dispute under a logistics services agreement;

QBE: Ben has acted for and advised QBE in a number of cases regarding builders warranty insurance and alleged breaches of domestic building legislation;

Capital Grand Development: Ben has represented Capitol South Yarra Pty Ltd in a number of proceedings concerning the exclusive Capital Grand development in South Yarra;

Vicland Business Pty Ltd: Ben represented Vicland in proceedings against a former project manager regarding a major commercial development in inner-Melbourne;

Balmoral Quay Pty Ltd v DPKG & Anor : Ben represented Balmoral Quay Pty Ltd in proceedings commenced in the Supreme Court of Victoria, in a dispute with the former project manager of the Balmoral Quay development in Geelong.

MAJOR PROJECTS, BUILDING, CONSTRUCTION AND ENGINEERING DISPUTES

Ben has a wealth of experience in disputes involving large infrastructure and construction projects, commercial developments, and residential building disputes, often involving large volumes of technical expert evidence. He has acted both for and against government departments and authorities, commercial property developers, engineers,

builders, and individuals. Some select cases include:

Hydro Tasmania – Basslink Interconnector: led by John Rowland KC , Ben acted for Hydro Tasmania in a long running arbitration before the Hon. Robert French, in relation to the failure of the Basslink undersea cable in December 2015. Ben acted in subsequent proceedings in the Federal Court (again led by John Rowland KC) concerning a dispute between the parties to the arbitration arising out of the effect of the arbitral award (now resolved).

Titomic Limited v TAUV Pty Ltd : acted for Titomic, an engineering company that supplies to the defence, aerospace, mining and energy industries, in proceedings commenced by a military equipment company concerning the design of military grade materials and equipment;

Alfred Health: advised Alfred Health in relation to a dispute regarding the design and construction of a specialist cancer ward;

Bells v Knight 34 Langdon Road Pty Ltd & Ors [2022] VSC 497: Ben was led by Michael Wise KC, acting for the Plaintiffs, in complex proceedings concerning alleged breaches of the *Building Act 1993* (Vic), Domestic Building *Contracts Act 1995* (Vic), *Sale of Land Act 1962* (Vic);

Fumberger v Wisdom Properties Group Pty Ltd : Ben is acting for Wisdom in the Supreme Court of NSW in proceedings concerning alleged defects.

CORPORATIONS, INSOLVENCY, BANKING AND FINANCE

Ben has particular expertise in corporations and insolvency matters.

Among other things, he regularly acts for liquidators, administrators, trustees and company directors. He has appeared in the Supreme Court and at appellate level in contentious matters involving breaches of directors' duties, insolvent trading claims, uncommercial transactions, and unfair preferences, and often acts in non-contentious matters in the administration process, including applications for remuneration orders and applications for directions from the court.

Ben also has extensive experience in in disputes concerning joint ventures, loan agreements, guarantees, mortgages and shareholders agreements.

Some significant cases in which Ben has been involved include:

Receivers and Managers: Ben acted for a solicitor in successfully resisting a claim by a liquidator that a solicitor who acts on instructions to sell a property for a mortgagee in possession acts in the capacity as a “controller” of property (see *Bolwell & Anor v NWC Finance Pty Ltd & Ors* [2024] VSC 30);

Oppression: acting for a start-up logistics company in the Supreme Court of NSW against a former managing director and a Commonwealth department shareholder;

Retail share trading: a Federal Court proceeding against a trading house for alleged breaches of disclosure obligations, breach of financial services license conditions, misleading and deceptive conduct, and unconscionable conduct, in connection with trades made on an online trading platform;

Shareholder Agreement dispute: acted for a shareholder in a dispute with a national fitness brand under shareholder agreement.

Oppression: acting for a well-known Melbourne fashion house against a former shareholder in the Supreme Court of Victoria.

Breach of liquidator's obligations: Ben appeared on appeal before the Full Court of the South Australian Supreme Court, led by Declan Hyde, in a proceeding that principally concerned a liquidator's breaches of ss 181 and 182 of the Corporations Act (see *Macks v Viscariello* [2017] SASCFC 172);
Oppression: acting for a Melbourne-based accounting partnership against a former partner of the firm in the Supreme Court of Victoria;
Ben has appeared in a number of cases for group members arising out of the Great Southern administration and group proceedings. These include *Haque v Bendigo & Adelaide Bank Ltd & Anor* [2020] VSCA 17, in which Ben appeared unled for the successful appellant in what remains the only successful Victorian appeal by a group member in this cohort of cases; and *Bendigo & Adelaide Bank Ltd & Anor v Burkett (No 2)* [2018] VSC 723, led by Andrew Harding SC at first instance and Michael Osborne KC on appeal (as his Honour then was) (resolved on appeal);

ENERGY AND RESOURCES

Ben acts in both on and off-shore energy disputes. He also acts in related commercial disputes concerning the application of the National Electricity Rules and National Gas Rules, contract, insurance, sale, purchase and financing of projects, including guarantee disputes. Recent cases include:

Hydro Tasmania – Basslink Interconnector: led by John Rowland KC , Ben acted for Hydro Tasmania in a long running arbitration before the Hon. Robert French, in relation to the failure of the Basslink undersea electricity cable in December 2015. Ben acted in subsequent proceedings in the Federal Court (again led by John Rowland KC) concerning a dispute between the parties to the arbitrationarising out of the effect of the arbitral award (now resolved);
Solar farm: advised a private solar farm corporation in a dispute with a joint venture partner under a project finance agreement, construction agreement and asset management agreement.

EQUITY AND TRUSTS

Ben has appeared in a number of cases, including in the Supreme Court and Court of Appeal, involving trust disputes and claims for equitable relief (including in relation to proceedings for alleged misuse of confidential information). Some recent cases include:

Braham Investments Pty Ltd v Wantrup [2018] VSCA 291: Ben acted for the successful appellant in a claim for breach of trust and equitable compensation arising out of the defalcation of trust funds held in a solicitor's trust account;
Fucheng Investment Australia Pty Ltd v Potaris : Ben acted for Fucheng, a large Chinese-based property developer, in the Supreme Court of Victoria against a former Chief Executive Officer in proceedings concerning alleged breaches of trust;
Share subscription agreement: Ben acted for a shareholder in a national fitness brand in relation to alleged breaches of a share subscription agreement, involving allegations of breaches of trust and unconscionable conduct. The matter resolved favourably;
Confidential information: Ben has acted in a number of cases regarding alleged misuse of confidential

information.

PRODUCT LIABILITY

Ben has acted in a number of product liability cases both for and against manufacturers and suppliers. Among other cases:

Pharmaceutical and medical devices: Ben was led by David Curtain QC in acting for Smith and Nephew in response to claims brought by recipients of hip implant products;
Vehicle manufacturer: Ben is presently acting for an international vehicle manufacturer in the Federal Court in relation to allegations of alleged safety defects under the ACL;
Ben has acted for a number of medical professionals in a range of cases, including in respect of claims for negligence for the implant of defective medical devices.

PROFESSIONAL LIABILITY / NEGLIGENCE

Ben is regularly briefed to act for and against medical and legal professionals in professional liability matters involving allegations of negligence.

ARBITRATION AND SPORTS LAW

Ben maintains an arbitration practice, particularly in the areas of major projects and construction, energy and resources, and sports law.

As well as being regularly instructed in arbitration proceedings, he is often brought in to deal with related supervisory court applications, applications for interim injunctive relief, jurisdiction challenges, appeals and enforcement of foreign awards.

In his sports law practice, Ben has acted for a number of organisations, including Cricket Australia, Rowing Australia, and the Victorian Amateur Football League, in the context of arbitrations, expert determinations, and tribunal proceedings.