

## Damien McAloon



Damien McAloon practises in a broad range of commercial matters

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### QUALIFICATIONS

Bachelor of Laws (Hons)(Melb)  
Bachelor of Arts (Melb)

### CORRESPONDENCE

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### CHAMBERS

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### COMMERCIAL LAW

Appellate | Banking & Finance | Bankruptcy | Consumer Law | Contractual Disputes | Corporate  
Insolvency | Corporations & Securities | Equity & Trusts | Insurance | Real Property | Sports Law

Damien McAloon is a commercial barrister with particular experience in contract, corporations and trust disputes and litigation relating to financial services, securities enforcement, real property and directors' duties.

Damien has appeared in *Doyle's Guide's* listing of the leading Commercial Litigation & Dispute Resolution Junior Counsel in Australia.

In addition to his general commercial practice, Damien has extensive experience in insolvency matters. In that setting, he has acted for secured and unsecured creditors, company directors and insolvency practitioners.

Prior to coming to the Bar, Damien was a solicitor and conducted a broad range of litigation matters in the Federal Court, all Victorian Courts and other state Supreme Courts.

*Liability limited by a scheme approved under the Professional Standards Legislation*

## Recent Cases

### CORPORATIONS (INCLUDING CORPORATE INSOLVENCY AND OPPRESSION CLAIMS)

*Nipps, in the matter of i-Prosperity Pty Ltd (in liq)* [\[2023\] FCA 1446](#) (Corporate insolvency: extension of time to bring voidable transaction claims)

*Deppeler, in the matter of Moulamein Grain Co-Operative Limited (in liquidation) (No 2)* [\[2023\] FCA 658](#); *Deppeler, in the matter of Moulamein Grain Co-Operative Limited (in liquidation) (No 3)* [\[2023\] FCA 803](#) (Court-appointed receivership; treatment of property held by co-operative in liquidation; entitlement to remuneration)

*Longley, in the matter of Dixon Advisory & Superannuation Services Pty Ltd (Administrators Appointed (No 2))* [\[2022\] FCA 950](#) (Corporate insolvency: extension of convening period)

*Re Intellicoms Pty Ltd (in liq)* [\[2022\] VSC 228](#); *Re Intellicoms Pty Ltd (in liq) (No 2)* [\[2022\] VSC 310](#) (Corporate insolvency: creditor-defeating disposition; relief) [led by H Austin KC]

*Hylepin Pty Ltd v Doshay Pty Ltd* (2021) 288 FCR; 156 ACSR 562 [\[2021\] FCAFC 201](#); (Corporations: oppression; alleged breach of duties) [led by C Caleo KC]; (2020) 148 ACSR 30; [\[2020\] FCA 1370](#) [led by M Osborne KC]

*Kucianski (liquidator), in the matter of Johnson Roofing Pty Ltd (in liquidation)* [\[2021\] FCA 1370](#) (Corporations: empowering liquidator of bare trustee to deal with trust property)

*McCallum, in the Matter of Re Holdco Pty Ltd (Administrators Appointed)* (2020) 145 ACSR 243; [\[2020\] FCA 666](#); *McCallum, in the Matter of Re Holdco Pty Ltd (Administrators Appointed) (No 2)* (2021) 391 ALR 418; 159 IPR 226; [\[2021\] FCA 377](#) (Corporate insolvency: disposal of property of companies in administration)

*Deppeler, in the matter of Asten Holdings Pty Ltd (in liq)* [\[2020\] FCA 1107](#) (Corporate insolvency: dealing with trust assets)

*Re N.W.E.L. Pty Ltd (in liq)* [\[2018\] VSC 634](#) (Corporate insolvency: unfair preference claim)

*In the matter of Dalstonville Pty Ltd (in Liq) and Don Leunig Pty Ltd (in Liq)* (2018) 133 ACSR 473; [\[2018\] VSC 774](#) (Corporate insolvency: application to set aside summonses for public examinations)

*In the Matter of Innovateq Pty Ltd* [\[2018\] VSC 124](#) (Corporations: application for leave to bring derivative proceeding; winding up application) [led by J Peters KC]

*Re Cyberduck Software Pty Ltd (In Liq) & Anor* (2018) 125 ACSR 79; [\[2018\] VSC 122](#) (Corporate insolvency:

uncommercial transaction claim; discretion under s 588FF of the *Corporations Act*).

*Lopez & Verge v Pawksi* [\[2017\] WASC 338](#) (Corporations: liquidators' application for directions; "indoor management rule")

*Re Pt Cook Community Entertainment Facility Pty Ltd* [\[2017\] VSC 727](#) (Corporations: appeal against reinstatement) [led by P Bick KC]

*FF (R & D) Pty Ltd v ASIC* [\[2017\] VSC 482](#) (Corporations: reinstatement; application for *nunc pro tunc* leave to proceed against company in liquidation).

*Strategic Management Australia AFL Pty Ltd & Anor v Precision Sports & Entertainment Group Pty Ltd & Ors* (2016) 114 ACSR 1; [\[2016\] VSC 303](#) & [\[2017\] VSC 35](#) (Corporations: oppression (including relief and determination of fair value); duties of directors and officers) [led by M Osborne KC]

*Onebev Pty Ltd v Encore Beverages Pty Ltd* (2016) 50 VR 106; (2016) 309 FLR 289; [\[2016\] VSC 284](#) (Corporations: application to set aside statutory demand)

*Re Tomker Pty Ltd (in liquidation)* (2016) 315 FLR 164; 104 ATR 27; [\[2016\] VSC 656](#) (Insolvent trading; leave for director to object to tax assessment)

#### SECURITY ENFORCEMENT (INCLUDING PPSA, REAL PROPERTY MORTGAGE AND GUARANTEES)

*Laurus Group Pty Ltd (admin apptd) v Mitsui & Co. (Australia) Ltd (No 2)* [\[2023\] VSC 412](#) (Operation of PPSA; scope of "security interest")

*Hazelwood v Mercurio* [\[2021\] VSC 362](#) (Real Property: removal of caveat)

*Jayfield Pty Ltd v Cussen* [\[2020\] VSC 380](#) (Personal Property: disposal of uncollected goods; equitable lien; application of PPSA)

*Re Amerind Pty Ltd (receivers and managers apptd) (in liq)* (2017) 320 FLR 118; (2017) 121 ACSR 206; [\[2017\] VSC 127](#) (Securities: retention of title clause, operation of PPSA and section 588FL of the *Corporations Act*)

*Central Cleaning Supplies (Aust) Pty Ltd v Elkerton* (2015) 321 ALR 181; (2015) 296 FLR 25; [\[2015\] VSCA 92](#); (Contract: retention of title clause; Securities: operation of PPSA) [led by P Crutchfield KC]

#### CONTRACT, CONSUMER LAW AND EQUITABLE REMEDIES

*Re Haidi Holdings Pty Ltd* [\[2023\] VSC 739](#) (Application to set aside statutory demand; status of unpaid trust distributions)

*Australian Executor Trustees Limited v Lokit Investments Pty Ltd & Ors* [\[2023\] VSC 141](#) (Estoppel; Limitation of actions)

*Re Wonderful Capital Biotechnology Group Pty Ltd* [\[2022\] VSC 652](#) (Application to set aside statutory demand)

*Swiss Re International Se v LCA Marrickville Pty Ltd (Second Covid-19 insurance test cases)* (2022) 401 ALR 17; [\[2022\] FCAFC 17](#); (2021) 349 ALR 461; [\[2021\] FCA 1206](#) (Contract: insurance) [led by J Slattery KC]

*Li v So* [\[2021\] VSCA 32](#) [led by C Caleo KC]; (2019) 349 FLR 352; [\[2019\] VSC 515](#) [led by M Osborne KC]

(Equitable remedies: fiduciary relationship; loss of opportunity)

*Definity Clinic v AMD Rifat* [\[2021\] VSC 325](#) (Contract: construction of contract for sale of real property)

*Primary Flooring Pty Ltd v Australian Comfort Group Pty Ltd* [\[2019\] VSC 104](#) (Contract: implied terms; good faith in contract) [led by P A Neskovic KC]

*CA & CA Ballan Pty Ltd v Oliver Hume (Australia) Pty Ltd* (2017) 55 VR 62; [\[2017\] VSCA 11](#) (Equitable remedies: rectification of written sales agreements) [led by L Glick KC]

*Oliver Hume (Vic) Pty Ltd v Santa Monica (Aust) Pty Ltd* [\[2017\] VCC 1138](#) (Contract: agreement for sharing of estate agent's commission)

#### PRACTICE & PROCEDURE

*Business Service Brokers Pty Ltd v Optus Mobile Pty Ltd (No 3)* [\[2022\] VSC 283](#) (Application to amend and strike out pleadings) [led by D Collins KC]

*Fleiszig v Trumble* [\[2021\] VSC 659](#) (Application for consolidation of proceedings) [led by D Collins KC]

*Tonks, in the matter of Ambient Rail Pty Ltd (in liq) v Fishwick* [\[2020\] FCA 1755](#) (Security for costs)

*Flightdeck Geelong Pty Ltd v All Options Pty Ltd* (2020) 280 FCR 479; 147 ACSR 227; [\[2020\] FCAFC 138](#) (Representation of company in proceedings; procedural fairness for self-represented litigant) [led by T Boston KC]

*Andrews & Anor v Zuccubarr Pty Ltd & Ors* [\[2020\] VSC 675](#) (Security for costs)

*Regent 125 Pty Ltd v Brdar* [\[2019\] VSC 177](#) (Subpoena objection; legal professional privilege)

*PCCEF Pty Ltd v Geelong Football Club Ltd* [\[2018\] VSC 258](#) (Application to re-open case; application for special costs order) [led by P Bick KC]

## Memberships

Victorian Bar - Commercial Bar Association

Insolvency & Reconstruction Law Committee of the Law Council of Australia