



**SUDARSHAN
KANAGARATNAM**
Barrister

+61 2 8239 0220
skanagaratnam@banco.net.au

Admissions	2013	Barrister
	2003	Solicitor

Qualifications Bachelor of Laws and Bachelor of International Business (Hon), Griffith University, Queensland (2001).

Practice areas Building and Construction, State Taxation, General Commercial, Insurance, Sports Law.

Prior experience	2006 - 2013	Kennedys Lawyers , Solicitor and Senior Associate, Litigation.
	2005 - 2006	Minter Ellison , Sydney, Solicitor, Litigation.
	2003 - 2005	Office of the Queensland Crown Solicitor , General and Transport Litigation.
	2001 - 2002	Associate to the Hon. Justice M a McMurdo AC, President, Queensland Court of Appeal .

Recent cases *Bupa HI Pty Ltd v Chief Commissioner of State Revenue* (NSW Supreme Court). Appearing for Bupa concerning liability to pay a levy under the *Health Insurance Levies Act 1982* (NSW). Led by R Seiden SC instructed by King & Wood Mallesons.

Current matters

Birdon Pty Ltd v Southerly Designs Pty Ltd (NSW Supreme Court). Liability for defective design of marine patrol boats. Unled instructed by Wotton + Kearney.

Campbelltown Central 2 Pty Ltd v Chief Commissioner of State Revenue (NSW Supreme Court). Whether certain deeds effected a transaction which falls within s 8(1) of the Duties Act. Unled, instructed by NSW Crown Solicitor.

Destination Sydney Consortium Investments Pty Ltd v Sydney Metro (Land and Environment Court). Class 3 proceedings concerning the compulsory acquisition of property under the *Land Acquisition (just Terms Compensation) Act 1991*. Led by R Lancaster SC instructed by Herbert Smith Freehills.

CPB Contractors Pty Ltd, John Holland Pty Ltd and Samsung C&T Corporation v N D Y Management Pty Ltd. Appearing for a joint venture engaged to design and construct a road tunnel part of the M4 East Motorway Project in Supreme Court proceedings against its electrical design contractor for design defects. Led by P Braham SC instructed by King & Wood Mallesons.

Godolphin Pty Ltd v Chief Commissioner of State Revenue [2023] NSWCA 44 (20 March 2023). Whether the “dominant use” of land was for the purpose of breeding and racing racehorses or the sale of horses. Led by T Wong SC instructed by NSW Crown Solicitor.

Acting in an arbitration concerning the *New Royal Adelaide Hospital* conducted under the ACICA Rules concerning a major construction dispute and a claim for misleading and deceptive conduct. Led by B Walker SC and E Hyde instructed by King & Wood Mallesons.

RHM Consultants Pty Ltd & Ors v Owners Corporation of Strata Plan 69357 (NSW Supreme Court). Appearing for a superintendent of building works in a case concerning alleged defective waterproofing membrane system. Unled, instructed by Wotton + Kearney.

Meridian Energy Australia Pty Limited v Chief Commissioner of State Revenue [2022] NSWSC 1074 (on appeal March 2023). Whether the acquisition of shares in a company was a 'relevant acquisition' so as to attract duty pursuant to the *Duties Act* 1997 (NSW) and the correct methodology to apply in valuing leases of land on which Hydroelectric Power Stations are situated. Led by S Balafoutis SC instructed by Crown Solicitors Office.

The Scots College v Woollahra Municipal Council [2022] NSWLEC 1379. Appearing for a private landowner in proceedings in the Land and Environment Court concerning adverse impact on residential amenity of noise. Unled, instructed by Herbert Smith Freehills.

Australian Rhythmic Gymnastics Limited v Gymnastics NSW Limited (NSW Supreme Court). Whether 'aesthetic group gymnastics' is a separate sport or discipline from gymnastics. Unled, instructed by Hall & Wilcox.

Sydney Football Club Pty Limited v Chief Commissioner of State Revenue (NCAT Proceedings). Whether certain payment made pursuant to 'Image Rights Agreements' were wages for the purposes of the Payroll Tax Act 2007 (NSW). Unled, instructed by NSW Crown Solicitor.

The Star Entertainment Sydney Properties Pty Ltd & Anor v Buildcorp Group Pty Ltd (NSW Supreme Court). Appearing for The Star in a claim for breach of contract concerning the supply and installation of aluminium composite panel cladding. Led by R Cheney SC instructed by Holding Redlich.

Home789 Resources Pty Ltd v Chief Commissioner of State Revenue (NCAT Proceedings). Common control provisions of the *Payroll Tax Act 2007* (NSW). Unled instructed by the NSW Crown Solicitor.

High Court

Ramsay Health Care Australia Pty Limited v Adrian Compton [2017] HCA 28, (2017) 91 ALJR 803 (17 August 2017). Circumstances in which a bankruptcy court determining proof of debt under s. 52(1)(c) of the *Bankruptcy Act 1966* (Cth) can exercise its discretion to go behind a judgment. Led by G Reynolds SC instructed by Pavuk Legal.

Expense Reduction Analysts Group Pty Ltd & Ors v. Armstrong Strategic Management and Marketing Pty Limited & Ors [2013] HCA 46, (2013) 250 CLR 303. Concerning client legal privilege, waiver of privilege and whether the appellant's actions were inconsistent with maintaining a claim of privilege. Led by N Hutley SC and E Hyde instructed by Norton Rose Fulbright Australia.

NSW Court of Appeal

Godolphin Pty Ltd v Chief Commissioner of State Revenue [2023] NSWCA 44 (20 March 2023). Whether the "dominant use" of land was for the purpose of breeding and racing racehorses or the sale of horses. Led by T Wong SC instructed by NSW Crown Solicitor.

P & S Kauter Investments Pty Ltd v Arch Underwriting at Lloyd's Ltd [2021] NSWCA 136. Appearing for underwriters avoiding a policy of insurance for fraudulent misrepresentation. Led by J Sexton SC instructed by Kennedys Australia.

Benidorm Pty Ltd v Chief Commissioner of State Revenue [2020] NSWSC 471 (30 April 2020). Concerning the definition of "declaration of trust" in the *Duties Act* (NSW). Led by R Seiden SC instructed by Crown Solicitors Office.

Sydney Local Health District v Macquarie International Health Clinic Pty Limited (NSW Court of Appeal). Concerning the correct method of assessing damages for trespass by a landlord and the applicability of 'mesne profits' and the 'user principle'. Led by N Hutley SC instructed by S Moran & Co.

Macquarie International Health Clinic Pty Limited v Sydney Local Health District [2020] NSWCA 161 (3 August 2020). Dispute concerning the termination of long term leases and breach of contract to build a private hospital. Led by N Hutley SC instructed by S Moran & Co.

FYNA Projects Pty Ltd v Chief Commissioner of State Revenue [2018] NSWCA 331 (19 December 2018). Concerning the definition of "taxpayer" under the *Taxation Administration Act* (NSW). Led by T Hale SC instructed by Diamond Conway.

Roads and Maritime Services v Desane Properties Pty Ltd v Desane Properties Pty Limited [2018] NSWCA 196 (6 September 2018). Validity of a property acquisition notice. Led by N Hutley SC instructed by NSW Crown Solicitor.

Jingalong Pty Limited v Todd [2015] NSWCA 7 (12 February 2015). Whether a settlement agreement entered into by multiple parties following mediation was binding and enforceable as an accord and satisfaction. Led by R Dubler SC instructed by AL Wunderlich & Co.

**Supreme Court of
NSW**

The Star Entertainment Sydney Properties Pty Ltd v Buildcorp Group Pty Ltd [2023] NSWSC 241. Application to amend pleading, whether defendant's ability to cross-claim may be time-barred. Unled instructed by Holding Redlich.

Forge Group Ltd (In Liq)(Receivers and Managers Appointed) v Hutchinson (No 2) [2021] NSWSC 576. Resisting an application by auditors of Forge Group to bring a cross-claim for equitable contribution from the former directors of Forge Group. Unled and instructed by Jackson McDonald.

Macquarie International Health Clinic Pty Limited v Sydney Local Health District [2019] NSWSC 1199 (12 September 2019). Dispute concerning the termination of long term leases and breach of contract to build a private hospital. Led by N Hutley SC and E Hyde instructed by S Moran & Co.

Acciona Infrastructure Australia Pty Ltd v Transport for NSW NSWSC 2018/99002 (no issued judgment). Dispute concerning the Sydney light rail. Led by D Miller SC instructed by King & Wood Mallesons.

Marketlend Pty Ltd v Yura Yungi Aboriginal Medical Service [2018] NSWSC 1406 (12 September 2018). Appeal from decision on jurisdiction of the Local Court of NSW. Unled instructed by Pavuk Legal.

Desane Properties Pty Limited v State of New South Wales [2018] NSWSC 553 (1 May 2018). Appearing for the State of NSW in a claim for misleading and deceptive conduct concerning the compulsory acquisition of land. Led by J Marshall SC instructed by NSW Crown Solicitor.

Leppington Pastoral Co Pty Ltd v Chief Commissioner of State Revenue [2017] NSWSC 9, 2017 ATC 20-604. Whether the 'dominant use' of land is for primary production so as to attract an exemption from land tax under the *Land Tax Management Act 1956* (NSW). Led by I Young instructed by NSW Crown Solicitor.

Independent Private Hospitals Pty Limited & Anor v NIB Health Fund Limited Supreme Court Proceedings 2016/375739 (15 December 2016). Application for urgent injunctive relief. Unled for the applicant instructed by Bruce & Stewart Lawyers

UNSW Global Pty Ltd v Chief Commissioner of State Revenue [2016] NSWSC 1852, 2016 ATC 20-599. Concerning the ambit of the employment agency provisions in the *Payroll Tax Act 2007* (NSW). Led by P Taylor SC instructed by NSW Crown Solicitor.

Macquarie International Health Clinic Pty Ltd v Sydney Local Health District; Sydney Local Health District v Macquarie Health Corporation (No 10) [2016] NSWSC 1587 (10 November 2016). Damages for trespass and the method of assessing damages, ‘mesne profits’ and the ‘user principle’. Led by R Dubler SC instructed by S Moran & Co.

National Rugby League Limited v J Hopoate Supreme Court Proceedings 2016/70226. Power of the of NRL to regulate, by contract, the conduct of an NRL Club and the justiciability of issues said to arise between NRL and a stranger to that contractual regime. Led by N Hutley SC instructed by Kennedys Lawyers.

Macquarie International Health Clinic Pty Ltd v Sydney Local Health District (No 9) [2016] NSWSC 155 (1 March 2016), (2016) 215 LGERA 137. Concerning the circumstances in which a development consent granted by the Land and Environment Court of New South Wales will lapse. Led by R Dubler SC instructed by S Moran & Co.

**Federal Court of
Australia**

HFPS Pty Limited (Trustee) v Tamaya Resources Limited (In Liq) (No 2) [2016] FCA 446 (28 April 2016). Shareholder class action concerning auditor’s contractual, statutory and common law duties, continuous disclosure obligations, availability of market based reliance and the correct measure of damages. Led by E Hyde instructed by Maurice Blackburn.

Addenbrooke Pty Limited v Duncan (No 6) [2015] FCA 793 (5 August 2015). Concerning the ambit of stockbrokers’ duties to sophisticated investors, misleading and deceptive conduct and consequential issues of reliance. Led by G Rich SC and instructed by Watson Mangioni Lawyers.

Austcorp Project Number 20 Pty Ltd v LM Investment Management Ltd (in liq) [2014] FCA 1371 (15 December 2014). Security for Costs. Unled instructed by Moray & Agnew Lawyers.

**NSW Civil and
Administrative
Tribunal**

GFC Maitland Pty Ltd v Chief Commissioner of State Revenue NCAT Proceedings No 2019/00392993. Application to be excluded from a group under the *Payroll Tax Act* (NSW). Unled instructed by the NSW Crown Solicitor.

Strathavon Resort Pty Ltd v Chief Commissioner of State Revenue NCAT Proceedings No 1610571 (7 April 2017). Applicability of an exemption from land tax on the basis of s.10Q *Land Tax Management Act 1956* (NSW), exemption for boarding houses. Unled instructed by the NSW Crown Solicitor.

Kelvest Pty Ltd, Kelserve Pty Ltd and the estate of the late Michael Kelaher v Chief Commissioner of State Revenue NCAT Proceedings No 1610579. Application of de-grouping provisions of *Payroll Tax Act 2007* (NSW). Unled instructed by the NSW Crown Solicitor.

Rayek v Chief Commissioner of State Revenue [2015] NSWCATAD 40 (2 February 2015). Residence requirement for eligibility for the first home owner grant, penalty and interest. Unled instructed by the NSW Crown Solicitor.

Palm Grove Farming Pty Ltd v Chief Commissioner of State Revenue NSWCATAD. Application of the grouping provisions in the *Payroll Tax Act 2007* (NSW). Unled instructed by the NSW Crown Solicitor.

Interstate matters *Canberra Airport Pty Ltd v ACT Revenue Office* AT Proceedings No 14/51. Determination of the unimproved land value of the site on which Canberra Airport is situated, improvements and methods of valuation. Led by P Walker SC instructed by ACT Government Solicitor.

Commissions of Inquiry *Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry* (2018), part of the Counsel Team appearing for National Australia Bank instructed by Herbert Smith Freehills.