



### Jonathon Ellis

**Partner**

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Jonathon Ellis is an experienced disputes and regulatory investigations lawyer who has over 15 years' experience in commercial dispute resolution issues, having worked on some of country's most complex and high profile disputes.

His experience includes advising clients on major technology, defence and financial services disputes, anti-bribery and corruption law issues, the interpretation and administration of contracts, compliance with corporations laws, conducting investigations and responding to large regulatory investigations.

Jonathon has acted for clients in proceedings before the High Court of Australia, Federal Court of Australia, Supreme Courts of New South Wales, Queensland and Victoria, as well as mediation, and other alternative dispute resolution processes. He also has extensive cross-border disputes experience involving jurisdictions including the USA, Guernsey, Jersey, Iceland, the BVI and Luxembourg.

Jonathon leads our Australian Defence and Aerospace practice regularly advising Australian and international defence contractors on both commercial and disputes matters.

In 2020 The Legal 500 listed Jonathon as a "Rising Star" in dispute resolution and he has been acknowledged as a "practitioner to note" for anti-bribery and corruption work and financial services disputes.

- Finance
- Litigation, Arbitration and Investigations
- Investigations
- Banking and Finance Litigation
- Corporate and Securities Litigation
- IT and Telecoms Disputes
- Commercial Contracts
- Global Governance and Compliance

- Financial Services
- Technology
- Industrials

- Acting for an international defence contractor on disputes with third party vendors.
- Advising shareholders in DRA Global Limited in a shareholder dispute with the company including prosecuting urgent proceedings in the Federal Court to secure urgent relief.
- Conducting a review of a regulated financial services company as part of a response to a regulatory investigation.
- Acting for various global technology companies in Australia including on interpretation of contracts, disputes arising with customers and vendors.

- Advising global companies on disputes arising under distribution agreements covering Australia.
- Acting for one of Australia's "Big 4" banks in proceedings against it in the Supreme Court of Victoria for alleged breach of contract and misleading conduct in connection with arrangements for processing of credit card transactions.
- Acting for a lead contractor on major LNG project on disputes (including urgent injunctive relief proceedings) with a sub-contractor regarding security.
- Acting for companies in responding to requests for information from regulators including documents and witness interviews under compulsion.
- Acting for an anti-corruption authority in proceedings regarding misfeasance in public office by officers of that body.
- Acting for trustees in multi-national litigation arising from collapse of an Icelandic bank.
- Responding to complex investigations by regulators in various jurisdictions including a significant and high profile dawn raid.
- Advising multi-national companies on anti-bribery and corruption issues, procedures and providing training.
- Acting for an international defence contractor on disputes with third party vendors.
- Advising shareholders in DRA Global Limited in a shareholder dispute with the company including prosecuting urgent proceedings in the Federal Court to secure urgent relief.

## CREDENTIALS

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### Professional Qualifications

- Solicitor of the Supreme Court of New South Wales
- Solicitor of the High Court of Australia
- Solicitor registered with the Law Society of New South Wales

### Education

- Bond University, Bachelor of Laws (Hons), Bachelor of Arts

### Memberships

- Law Society of New South Wales

## INSIGHTS

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### Publications

#### **ASIC's call for improved whistleblower policies**

20 October 2021

On Wednesday, 13 October 2021, ASIC called on Australian CEOs for better compliance with the whistleblower protection regime under the *Corporations Act 2001* (Cth).

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#### **Privilege - you can't have your cake and eat it too**

14 October 2021

It is crucial for inhouse lawyers and legal advisers to understand the extent to which legal professional privilege applies when conducting investigations. A recent Australian Federal Court case has handed down an important reminder on privilege – finding that, while notes of interviews and outlines of evidence created during internal investigations were protected by privilege at the time they were created, conduct following that was inconsistent with maintenance of confidentiality waived privilege, even when done with the best of intentions.

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## **An update from Down Under on whistleblower laws**

5 October 2021

Australia's stringent whistleblower protections have led to a tenfold increase in whistleblower reports which result in internal investigations.

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## **Virtual Hearings 2021**

21 September 2021

Virtual hearings

In this latest report in the Virtual Hearings series we set out a summary of data-driven conclusions and personal observations from clients and litigators from around the globe.

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## **Dawn Raid Response Kit**

13 August 2021

DLA Piper would welcome the opportunity to work with you in relation to the development of a Dawn Raid Response Kit and is available to assist you to respond to any dawn raids should the need arise.

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## **Continuous disclosure reform - not a free pass**

12 August 2021

The temporary changes to the continuous disclosure and misleading and deceptive conduct laws which were introduced at the beginning of the COVID-19 pandemic have now been made permanent.

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## **Supplementary – Australia – Whistleblowing Laws in Europe: An international guide**

June 2021

This article will focus primarily on whistleblowing protections in the private sector, but it also provides an overview on the systems in place in the public sector below.

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## **You can't have your cake and eat it too...**

11 June 2021

In *Commonwealth Director of Public Prosecutions v Citigroup Global Markets Australia Pty Ltd* [2021] FCA 511, the Federal Court handed down an important reminder to in-house lawyers and legal advisers on legal professional privilege, finding conduct that was inconsistent with maintenance of confidentiality waived privilege - even when done with the best of intentions.

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## **Away with anonymous shell companies for good?**

12 March 2021

On 24 February 2021, Transparency International submitted a global petition to the UN General Assembly preparing for the United Nation's first ever Special Session against Corruption, UNGASS 2021, which will take place in June 2021.

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### **Get out of jail free? Not quite - ASIC launches new immunity policy for market misconduct offences**

26 February 2021

ASIC launched on Wednesday a new and previously unannounced immunity policy for market misconduct offences.

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### **Proposed changes to anti-money laundering and counter-terrorism financing rules**

24 February 2021

The Australian Transaction Reports and Analysis Centre (**AUSTRAC**), Australia's financial crime regulator, recently released draft *Anti-Money Laundering and Counter-Terrorism Financing Rules (Draft Rules)* and is seeking industry input on the Draft Rules as part of a public consultation. The deadline for submissions to AUSTRAC is 11 March 2021.

If passed, the Draft Rules will further support the recent amendments and will give effect to recommendations from a 2015 report by the Financial Action Task Force (**FATF**) and a 2016 statutory review of the AML/CTF Act.

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### **Corruption Perceptions Index 2020 – an Asia Pacific perspective**

11 February 2021

Late last week, Transparency International released its 2020 Corruption Perception Index (CPI), which ranks 180 countries by their levels of perceived corruption on a scale of zero to 100 (zero being very corrupt and 100 being very clean).

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### **Australian Regulatory Landscape**

19 November 2020

A perfect storm is gathering over the Australian regulatory landscape. Record fines to financial institutions, increased regulator enforcement efforts, new corporate crime legislation and yesterday's arrest of a former Leighton Holdings senior executive on foreign bribery charges are emblematic of a sea change. Now more so than ever, it is vital organisations have robust governance, reporting, and compliance programs in place, or face stern regulatory action.

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### **GIR Insight: Asia-Pacific Investigations Review 2021**

15 October 2020

DLA Piper has contributed a chapter on internal investigations in Australia to the recently released GIR Asia-Pacific Investigations Review 2021. Our chapter provides a brief overview of the key considerations relevant to conducting an effective Australian internal investigation and sets out some strategies to achieve a prompt and robust outcome.

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### **NSW Government response to the Legislative Council's Standing Committee inquiry into the Modern Slavery Act 2018 (NSW)**

29 September 2020

Since its enactment, the Modern Slavery Act 2018 (NSW) (NSW Act) has been shrouded in conjecture and uncertainty as to if and when it will commence due to conflicting provisions with the Modern Slavery Act 2018 (Cth) (Commonwealth Act). On 24 September 2020, in

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response to a report by the NSW Legislative Council's Standing Committee, the NSW Government sought to put the debate to rest by conditionally committing to commence the NSW Act by 1 January 2021. While the NSW Government remains reluctant to commence a regime that is inconsistent with the Commonwealth Act – with particular regard to reporting thresholds – it has declared that it will engage in discussions with the Commonwealth Government with a view to achieving a harmonised modern slavery regime. To the extent that the NSW Act complies and is not inconsistent with the Commonwealth Act, we can expect to see the regime in force in early 2021.

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## The Final Findings: ALRC's Report on Criminal Corporate Responsibility in Australia

8 September 2020

The Australian Law Reform Commission's (ALRC) Final Report on Corporate Criminal Responsibility was tabled in the Federal Parliament last week.

The Final Report advocates for broad reform in the definition, regulation, and prosecution of corporate offences. It delivers a focused concentration on misconduct and individual accountability for those involved in the management of corporate entities that engage in wrongdoing.

Against the backdrop of the Financial Services Royal Commission's findings, the ALRC has endeavoured to understand why there are so few prosecutions against corporations in Australia, particularly relative to the prosecution of individuals. In doing so, it has examined the fundamental principles underpinning the regulation of corporations, and the proper role of the criminal law to denounce particularly egregious conduct, in order to make **twenty reform recommendations** that it considers will provide clarity around criminally prosecuting corporate wrongdoing and will make corporations less likely to view civil penalties as merely a 'cost of doing business'.

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## Australia pivots its Defence strategy

3 August 2020

On 1 July 2020, Australia announced a pivot to its defence posture and strategy based on increased spending, force projection and enhanced capability to meet the regional disruption caused by China's muscle flexing.

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## Australian Government overhauls its procurement legislation to give better protection to suppliers, contractors and consultants

3 August 2020

Australia's federal, state and territory governments are variously in the process of adjusting their procurement frameworks to give effect to Australia's obligations under international free trade agreements (FTAs). Each government has its own procurement framework, and so the approach to implementing the international FTAs differs in each jurisdiction.

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## Relief for Frustrated Contracts - can I get my deposit or be compensated for performance?

9 June 2020

A common issue in recent months has been recovery for deposits paid under the terms of an agreement entered into that has now been frustrated by the COVID-19 pandemic.

Now, as businesses start to open up and the economy takes its first steps towards normality, businesses may be looking to see where and how they can take steps to recover deposits or prices paid under the terms of what is now a frustrated contract.

Under Australian law, a contract is frustrated when it is incapable of being performed due to an unforeseen event or circumstance that arises after its formation by no fault of either party. The frustrating event must significantly change the contractual rights or obligations under the contract, making it impossible to fulfil.

While under the common law it is difficult to recover a deposit or other amount paid when a contract is frustrated, in New South Wales the Frustrated Contracts Act 1978 No 105 (NSW) (Frustrated Contracts Act), and legislation enacted in South Australia and Victoria, may provide an avenue to recover those sums.

This article focuses on the Frustrated Contracts Act in force in New South Wales. A table at the end of this article sets out the key provisions in the South Australia and Victoria legislation.

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## Individual Liability for Corporate Misconduct

2 APR 2020

The Australian Law Reform Commission (ALRC) has decided not to make any recommendations for specific law reform on how individuals in Australian companies should be held accountable for corporate misconduct. While there was an expectation that ALRC would recommend extensive reform in this area, it has instead recommended an overall review of the effectiveness of individual accountability mechanisms for corporate misconduct by December 2025.

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## If it walks like a duck and it quacks like a duck then it's probably a duck

16 MAR 2020

A recent decision of the High Court of Australia held that if an executive can affect significantly the financial standing of a subsidiary within a corporate group, the executive may be considered an officer of that subsidiary without holding, occupying or acting in a recognised office in the subsidiary. It affirmed prior decisions to the effect that the definition of "officer" in Australia's corporations law will be given a broad reading by courts with the consequent extended application of statutory duties, for example, to act in the best interests of the corporation and to exercise reasonable care and diligence.

In this brief update, we consider what the decision means for those running corporate groups in Australia, particularly in this time of heightened regulatory scrutiny of executive conduct.

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## Crimes Legislation Amendment (Combating Corporate Crime) Bill 2019

5 December 2019

On 2 December 2019, as part of its on-going commitment to strengthen Australia's foreign corporate bribery framework, previously discussed in [December 2017](#) and [April 2018](#), the Federal Government introduced the Crimes Legislation Amendment (Combating Corporate Crime) Bill 2019 (Cth) (the **Bill**). The Bill purports to address challenges associated with detecting and addressing serious corporate crime and is, with few exceptions, an identical reincarnation of its 2017 equivalent ([discussed here](#)) which lapsed earlier this year because of the Australian federal election.

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## Australia - Global bribery offenses guide

4 December 2019

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## Australian Law Reform Commission releases Discussion Paper on Corporate Criminal Responsibility

2 December 2019

On Friday 15 November, 2019 the Australian Law Reform Commission (ALRC) released a discussion paper on corporate criminal responsibility (Discussion Paper). The ALRC invited submissions from stakeholders on 23 proposals and 11 questions relating to the reform of Australia's corporate criminal law regime.

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## Events

### Previous

#### Talk Less, Listen More: The Importance Of Effective Whistleblowing Systems

17 Nov 2021

Webinar

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#### WIN In-House Counsel Day 2020, Melbourne

20 February 2020

WIN In-House Counsel Day 2020

Melbourne

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#### WIN In-House Counsel Day 2020, Brisbane

19 February 2020

WIN In-House Counsel Day 2020

Brisbane

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#### WIN In-House Counsel Day 2020, Sydney

18 February 2020

WIN In-House Counsel Day 2020

Sydney

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## NEWS

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#### DLA Piper announces partnership promotions for 2020

30 April 2020

DLA Piper is proud to announce that 67 lawyers have been promoted to its partnership. The promotions are effective as of April 1, 2020 in the United States and May 1, 2020 for EMEA and Asia Pacific. The promotions have been made across many of the firm's practice areas in 35 different offices throughout 13 countries.

Across the firm's practices globally, Corporate saw the largest intake of new partners with 19 promotions, followed by Litigation and Regulatory with 15. Intellectual Property and Technology and Finance and Projects had ten and eight promotions respectively, while there were six in Real Estate. Tax and Employment both had four, and there was one in Restructuring.

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