

## **FARID ASSAF**



**Admitted:** 2000

**Degrees:** Bachelor of Laws (University of New South Wales),  
Bachelor of Arts Hons (University of New South Wales)

### **Areas of Practice:**

Appellate  
Banking  
Bankruptcy  
Building and Construction  
Commercial  
Contracts  
Corporations  
Corporate Insolvency  
Equity  
Property  
Superannuation

### **Insolvency and bankruptcy**

Farid's practice encompasses all areas of corporate insolvency and bankruptcy law including all winding up and corporate restructuring work. Farid regularly advises and appears for both creditors and debtors in all types of insolvency and bankruptcy matters.

Farid is the author of *Statutory Demands – Law & Practice* published by LexisNexis Butterworths in 2008. The book contains a foreword by his Honour Justice Robert Austin of the Supreme Court of New South Wales (read the foreword by Justice Austin).

### **Corporations Law**

Farid has extensive experience in advising, and acting for, corporations. Recently, Farid appeared in *Rickus v Motor Trades Association of Australia Superannuation*

*Pty Ltd* before the Full Federal Court and *Motor Trades Association of Australia Superannuation Fund Pty Ltd v Rickus (No 3)* (2008) 69 ACSR 264 (with Douglas QC). Farid has also acted and appeared for clients being investigated or prosecuted by the Australian Securities and Investments Commission, the Australian Prudential Regulation Authority and the Australian Competition and Consumer Commission. In his second year at the Bar, Farid acted, and appeared for (with Foster SC as he then was), the then North Sydney District Rugby League Football Club Limited in relation to an oppression action. In 2002 Farid appeared in *Arkin v Tridon Australia Pty Ltd* 43 ACSR 610 which considered a director's right of access to company records where the validity of the director's appointment is challenged. Prior to being called to the Bar, Farid developed experience and expertise as in-house lawyer with ASIC in the area of financial services law. Shortly after coming to the Bar, Farid was briefed by ASIC to provide advice on various aspects of the then *Financial Services Reform Bill*.

## **Superannuation**

Whilst at the Bar Farid has developed expertise in the area of superannuation law. In 2005, Farid (together with De Wijn QC of the Melbourne Bar) advised the Motor Trades Association of Australia Superannuation Fund Pty Ltd as to whether commission payments form part of the notional earnings base of employee members of a superannuation fund for the purposes of the *Superannuation Guarantee (Administration Act)* 1992. Farid also regularly advises the Motor Trades Association of Australia Superannuation Fund Pty Ltd in relation to superannuation and corporations law issues.

## **Commercial Law**

Farid has advised and appeared for both plaintiffs and defendants in numerous commercial cases in the District Court, Supreme Court, Federal Court and in mediations and arbitrations involving breach of contract, negligence, estoppel and misleading and deceptive conduct in a wide range of commercial settings. In 2002, Farid acted for the NSW Lotteries Corporation (with McDougall QC as he then was) in a claim brought against it by a plaintiff who had inadvertently been entered into an incorrect Lotto draw. In 2005 and 2006 Farid acted and appeared for AWB Limited (with Newlinds SC) in a large commercial claim in the Federal Court involving misleading and deceptive conduct and breach of contract. Other recent commercial matters in which Farid has been briefed include:

- *Royal Guardian Mortgage Corporation and anors v CLIC Mortgage Group Pty Ltd and 2 ors* a matter involving allegations of resulting trust, breach of confidence and misleading and deceptive conduct in the Supreme Court of New South Wales.
- *MacPherson v MacPherson* a matter in the Supreme Court of New South Wales concerning specific performance of a contract.
- *Thiess Pty Ltd v Aquatherm Australia Pty Limited* – in this matter in the Supreme Court of Queensland, Farid acts for the defendant in a claim

brought for alleged breach of implied terms of a contract implied by the *Sale of Goods Act*.

## **Equity and Trusts**

Farid has acquired a considerable amount of experience in matters involving equitable principles particularly in a commercial context. Farid has acted for clients in matters involving partnership, breaches of fiduciary duty, equitable fraud, equitable liens, resulting trusts, constructive trusts and other trust law issues (particularly in the context of unit-trusts and managed investment schemes).

## **Banking and finance**

Farid's practice encompasses a wide variety of banking matters. In 2005, Farid was successful in obtaining Anton Piller and Mareva orders on behalf of Westpac Banking Corporation following a client's default under a hire purchase agreement. Farid has regularly appeared on behalf of mortgagees where he has been successful in obtaining, inter alia, monetary orders and orders for possession. During his first few years at the Bar, Farid developed a significant amount of experience in advising and acting for debtors (particularly farmers) in claims involving a mortgagee's power of sale, unconscionable conduct, undue influence and *Contracts Review Act* issues. In 2006, Farid appeared in *Higgs and Ors v Thompson Bht the Protective Commissioner and Ors* [2006] NSWSC 920 concerning a mortgage given by an elderly father over his home to secure a loan for a daughter's business and whether the father was entitled to relief under the *Contracts Review Act*. In late 2008, Farid acted in *Angas Securities Limited v Bradley and anor* concerning relief under the *Farm Debt Mediation Act*.

## **Appellate**

Farid has appeared in numerous appeals. In 2001 Farid was junior counsel (with Rares SC as he then was) in *Commonwealth Bank of Australia v Hadfield* (2001) 53 NSWLR 614, a New South Wales Court of Appeal decision which clarified the equitable jurisdiction of the District Court. More recently, Farid was successful in obtaining an indemnity costs order in the Court of Appeal in the matter of *Bilous v Mudaliar* (No 2) [2006] NSWCA 239 in relation to an application to amend a judgment under the slip rule. In 2007, Farid appeared before the New South Wales Court of Appeal on behalf of the landlord respondent in a commercial lease dispute (*Dr Bronte Douglass v Lawton Pty Limited and Anor* [2007] NSWCA 89 and *Dr Bronte Douglass v Lawton Pty Limited* (No 2) [2007] NSWCA 90).

## **Administrative Law**

In 2005 Farid appeared for the Civil Aviation Safety Authority in the Administrative Appeals Tribunal where Farid successfully resisted a challenge to the decision of the Authority to refuse to issue an aircraft maintenance licence (*Re Ekinci and Civil Aviation Safety Authority*) [2005] AATA 789. More recently Farid

acted for the Motor Trades Association of Australia Superannuation Fund Pty Ltd in a matter against the Australian Prudential Regulation Authority (*MTAA Superannuation Fund Pty Ltd v Australian Prudential Regulation Authority* (2008) 248 ALR 775). The matter involved an application under the Administrative Decisions (Judicial Review) Act and issues relating to section 39B of the *Judiciary Act, 1903*. Farid has also appeared at ASIC administrative hearings both prior to, and after, coming to the Bar.

## **Pro Bono Matters**

Farid has represented clients in the Anti-Discrimination Board and in the Consumer Trader and Tenancy Tribunal on a pro bono basis. Currently Farid is briefed to appear in the New South Wales Coroners Court for the family of a prisoner murdered while in custody.

## **Other legal experience**

Between 1998 and June 2000 Farid was employed as an in-house lawyer with the Australian Securities and Investments Commission where Farid was responsible for appearing and acting for ASIC at courts, tribunals and administrative hearings and also advising and acting for ASIC in relation to a wide variety of regulatory, enforcement, policy and legal issues.

## **Publications**

*Statutory Demands – Law and Practice*, Lexis-Nexis Butterworths, 2008 (read the reviews in the Law Society Journal and Bar News).

“What Will Trigger ASIC's Civil Enforcement Strategies?” (2002) 40(4) *LSJ* 60.

“Bypassing the Liquidator - Bringing Proceedings on Behalf of a Company in Liquidation” (2003) 41(10) *LSJ* 58.

“Statutory Demands – the taxman’s weapon of choice” in *Financial Fallout*, December 2008, LexisNexis Butterworths.

“Casenote - *Ilhan v Cvitanovic* (2009) 69 ACSR 702” in Butterworths Corporations Law Bulletin, Bulletin 15, 7 August 2009.

## **Forthcoming publications**

“Chapter 5.1 Arrangements and Reconstructions” in *Australian Corporations Law Principles and Practice* (update).

“Ch 5.2 Receivers and Controllers of Corporate Property” in *Australian Corporations Law Principles and Practice* (update).

“Ch 5.5 Voluntary Winding Up” in *Australian Corporations Law Principles and Practice* (update).

“Banker and Customer” in *Halsbury’s Laws of Australia*.

“Setting aside a statutory demand – a survival guide” (forthcoming publication in the Law Society Journal).

## **Papers presented**

“Recent Developments in Corporations Law – CLERP 9 and the Whistleblower Protection Reforms” paper prepared and presented to the College of Law on 23 March 2005.

“Illegal Fundraising – Recent Developments” paper delivered and presented to the Australian Securities and Investments Commission on 25 October 2006.

“Setting aside a statutory demand” paper presented to the New South Wales Bar Association (chaired by Justice Robert Austin of the Supreme Court of New South Wales).

## **Admissions**

Australian Capital Territory

New South Wales

Queensland

Dubai International Financial Centre Courts (Part 2 – Advocate)

## **Languages**

English

Arabic

## **Membership of Professional Bodies**

Insolvency Practitioners Association of Australia (IPAA).

Fellow of the Commercial Law Association of Australia Ltd (CLA).

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