

IN THE FEDERAL COURT OF AUSTRALIA
VICTORIA DISTRICT REGISTRY

VID of 2011

IN THE MATTER OF WILLMOTT FORESTS LIMITED (RECEIVERS AND MANAGERS
APPOINTED) (LIQUIDATORS APPOINTED)
ACN 063 263 650

WILLMOTT FORESTS LIMITED (RECEIVERS AND MANAGERS APPOINTED)
(LIQUIDATORS APPOINTED)
ACN 063 263 650

IN ITS PERSONAL CAPACITY AND IN ITS CAPACITY AS RESPONSIBLE ENTITY OF
EACH OF THE MANAGED INVESTMENTS SCHEMES LISTED IN SCHEDULE 1 AND IN
ITS CAPACITY AS MANAGER OF THE UNREGISTERED MANAGED INVESTMENT
SCHEMES LISTED IN SCHEDULE 2
First Plaintiff


CRAIG DAVID CROSBIE
Second Plaintiff

IAN MENZIES CARSON
Third Plaintiff

CERTIFICATE IDENTIFYING EXHIBIT

This is the exhibit marked "CDC-31" now produced and shown to **Craig David Crosbie** at
the time of swearing his affidavit on 11 May 2011.

Before me:


MEAGAN LOUISE GROSE
Arnold Bloch Leibler
Level 21, 333 Collins Street
Melbourne 3000
An Australian Legal Practitioner within the
meaning of the Legal Profession Act 2004

Filed on behalf of the Plaintiffs
ARNOLD BLOCH LEIBLER
Lawyers and Advisers
Level 21
333 Collins Street
Melbourne 3000

DX 38455 Melbourne
Tel: 9229 9999
Fax: 9229 9900
Ref: 01-1565015
(Leon Zwier)

**BUTLER, McINTYRE
&
BUTLER**

Lawyers
ESTABLISHED 1824

Partners

PETER J. JOYCE
GARY R. GRANT
PHILLIP A. KIMBER
ROBERT E. HUDSON
JOHN T. LEWINSKI
CON TSAMASSIROS
DANIEL F.M. ZEEMAN
DAMIEN J. GEASON
KIM L. BAUMELER
SIMON P. WILDING
ANNA E. GRANT

Associates

ANNE E. BROWN
MAREE A. NETTLEFOLD
JENNY RUDOLF
JASON G. SAMEC
FELICITY K. LEONARD
ROBYN L. RUMBOLD
ALISON WELLS

20 MURRAY STREET,
G.P.O. BOX 980,
HOBART,
TASMANIA, 7001,
DX: 113 HOBART
Website www.bmbtas.com
FACSIMILE: 03 6223 8744
TELEPHONE: 03 6222 9444

OUR REF:
YOUR REF:

13 January 2011

The Managers
PPB
Level 21, 181 William Street
MELBOURNE VIC 3000

By email: melb@ppb.com.au

Dear Sirs

**OUR CLIENT: DR GORDON WISE
WILLMOTT FORESTS LTD
PLANTATION BENDOC 2**

We act for Dr Gordon Wise and note that you are Administrators appointed to Willmott Forests Ltd.

Our client, pursuant to the attached Lease and Service Contract is the owner of trees on Certificate of Title Volume 7469 Folio 097. That property forms part of Willmott Forests Ltd's (Bendoc No. 2) project.

Our client wishes to harvest those trees immediately. He wishes to use a private contractor to do so. So that that can occur can you please confirm that:

- Our client is the owner of the trees as referred to; and
- Is free to harvest those trees immediately.

We look forward to your response and note that if you have any queries please do not hesitate to contact the writer on 6222 9454 or on the email address below.

Yours faithfully
Butler McIntyre & Butler

Per:

Damien Geason

Direct email : dgeason@bmbtas.com
Direct ☎ (03) 6222 9454

1. Lessor: H. J. SELECTED PROPERTIES PTY. LTD. of 7th Floor, 521 Toorak Road, Toorak

2. Lessee: *Dr. S. M. Wilson*

3. Demised Land: ALL THAT land delineated and coloured red on the Plan annexed hereto being an area agreed as being 16 acres 6.48 hectares and being Lease No. 48 Bendoc 2(b)

4. Term: LAND COMPRISES PART OF PORTION 78 AND PORTION 73A PARISH OF BENDOCK FULTON YEARS. COUNTY OF CROAJINGALONG

5. Commencing Date: BEING ALSO PART OF THE LAND IN CERTIFICATE OF TITLE VOL. 7469 FOL. 097

6. Rent: 1st Year 16 acres @ \$100.00 = \$1,600
 2nd Year 16 acres @ \$100.00 = \$1,600
 3rd Year 16 acres @ \$100.00 = \$1,600
 4th Year 16 acres @ \$100.00 = \$1,600
 TOTAL \$6,400

Thereafter 16 acres @ \$25.00 = \$400 per annum hereafter any increase in the Consumer Price Index (All Groups for the City of Melbourne) 7. Payable: Annually in advance.

8. Use of demised land: Any such use selected by the Lessee in his unqualified discretion as accords with the uses prescribed or permitted by the relevant Town Planning Authorities.

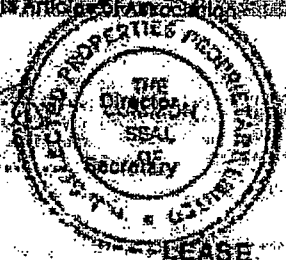
9. Further Term: Five Years or until the trees are marketed.

IN WITNESS WHEREOF the parties hereto have executed these presents this 27 day of 7 1985

SIGNED, SEALED AND DELIVERED by the said LESSEE in the presence of *X. Stubbs*

VICTORIA STAMP DUTY \$50 \$3
 VICTORIA STAMP DUTY \$10 \$3

THE COMMON SEAL of H. J. SELECTED PROPERTIES PTY. LTD. in the presence of



THIS LEASE BETWEEN the parties named and described in the Schedule hereto being the LESSOR of the one part and the Lessee of the other part WITNESSETH that the Lessor at the request of the Lessee HEREBY DEMISES unto the Lessee ALL THAT land (hereinafter called 'the demised land') more particularly set out in the said Schedule subject however to the following special conditions prescribed under item A and also to the following covenants, conditions, powers and provisions contained in item B TO BE HELD for the term and at the rental set out in the said Schedule

SPECIAL CONDITIONS

- A. If the Lessee elects to plant the demised land with trees and to use and maintain it for purposes of afforestation:
 - (i) HE shall not be obliged to engage any particular contractor for the performance of the desired works and services whether nominated or recommended by the Lessor or by any other company firm or person but the Lessee shall have and retain the unrestricted freedom of choice of contractor or he may perform the requisite works and services himself.
 - (ii) If nevertheless the Lessee engages the Lessor or some contractor for works and services nominated or recommended or suggested by the Lessor or some company firm or person associated with or related to the Lessee such engagement shall be upon terms that the company firm or person so engaged shall not in any event directly or indirectly share in the use of the produce of the demised land.
 - (iii) THE Lessee shall not now or in the future join in any way directly or indirectly with any other person firm or company in any common enterprise involving the demised land or other land, situate or along with any other land, and the Lessee shall in any event and in every circumstance retain the right to determine when the demised land shall be planted and when the produce of the said land may be realized and marketed.
 - (iv) THE Lessee agrees to give to the owners or occupiers of any parcel of land adjoining the demised land such rights of way and access as are necessary for their proper use and enjoyment of that parcel but such rights of way and access shall be limited to the use of any existing pathway or firebreak delineated and shown on the plan of the demised land and shall in no circumstance be granted or used with a view to or as a result of any use in common of the demised land with any said adjoining parcel.
 - (v) THESE special conditions shall be construed as mutual covenants on the part of the Lessor and the Lessee and each shall have the power to require that the foregoing provisions shall be carried out and observed.

B. THE SAID COVENANTS CONDITIONS POWERS AND PROVISOS

1. THE LESSEE DOTH HEREBY COVENANT WITH THE LESSOR:

- (a) to duly and punctually pay during the decalred term unto the Lessor at his address herein the said rent on the days and in manner as set out in the said Schedule;
- (b) to pay during the term of this Lease all municipal and other rates and charges including excess water rates assessed in respect of the demised land and other like outgoings in respect thereof including any litigation charges;
- (c) not to do or permit anything to be done on the demised land or bring or keep anything therein which may in any way invalidate or violate the conditions of any insurance policies relating thereto or increase or cause to be increased the premiums payable in respect thereof;
- (d) to duly comply at his own expense with the provisions of the Labour and Industry Act 1953 and the Health Act 1955 or any Statutory re-enactment modification or amendment of any such Act and any regulations issued thereunder and any Commonwealth or State enactment or regulations notices directions orders requirements or demands of any Government Municipal or other authority affecting the demised land provided always that the Lessee shall not be required hereby to perform or carry out structural work unless the same be required by reason of the nature of the business carried on in the demised land;
- (e) not to assign or sublet or otherwise dispose of, or in any wise part with the possession of, or grant any licence to use the demised land or any part or parts thereof without the consent in writing of the Lessor first had and obtained and Section 144 of the Property Law Act 1954 shall not apply to this Lease;
- (f) at his own expense during the said term to destroy and keep down all rabbits and other vermin and thistles and other noxious weeds on the demised land;
- (g) to cultivate and manage the demised land in proper and husbandlike manner according to its use and not to use the demised land save for the purpose as set out in the said schedule and not to use or allow to be used the demised land for any illegal or objectionable purposes and not to carry on or allow or suffer to be carried on in the demised land any trade offensive or dangerous trade or do any act which is an annoyance or nuisance to the Lessor or adjoining owners or occupiers and not to hold or suffer to be held upon the demised land any auction sales;
- (h) to keep in good and substantial repair any fences on the demised land;
- (i) to permit the Lessor at all reasonable times to enter upon the demised land and examine the same and the said fences.

2. (a) THE LESSOR HEREBY COVENANTS WITH THE LESSEE THAT THE LESSEE PAYING THE SAID RENT AND PERFORMING AND OBSERVING THE COVENANTS BY THE LESSEE HEREIN CONTAINED AND THE RIGHT OF TENURE NOT HAVING arisen as hereinafter provided may peacefully and lawfully hold and enjoy the demised land during the said term without any interruption or disturbance by the Lessor or any person or persons claiming or to claim through or under the Lessor.

(b) THE LESSOR agrees to pay the costs of and incidental to this Lease and all stamp duty hereon.

3. IT IS HEREBY AGREED AND DECLARED AS FOLLOWS:

- (a) If the rent hereby reserved or any part thereof shall be in arrear for fourteen days after any of the days whereon the same ought to be paid as aforesaid (whether the same shall have been formally demanded or not) or if and whenever there shall be a breach or non-performance or non-observance of the covenants and conditions herein contained and on the part of the Lessee requiring him to remedy the same or if cause the Lessee shall have the property vested under any distress or execution or makes any arrangement with or assignment for the benefit of his creditors or becomes bankrupt or (being a company) is the subject of any proceedings for or takes any step towards liquidation or makes any arrangement or composition with its creditors it shall be lawful for the Lessor thereupon or at any time thereafter and upon the demised land or any part thereof in the name of the whole to re-enter and the same to have, possess and enjoy as of his former estate and thereupon the term hereby granted shall absolutely determine and be void but without prejudice to the right of action of the Lessor in respect of any breach of the Lessee's covenants herein contained;
- (b) If upon the expiration of the said term the Lessee shall remain in possession of the demised land without objection by the Lessor or Lessee shall be considered as from the date of expiry of the term hereby granted a tenant from week to week of the demised premises at the rental and payable in the manner set out in the said Schedule subject to the provisions of this lease as far as same can be construed to apply to a weekly tenancy;
- (c) If and whenever there shall occur any breach or any covenant condition provision or agreement on the part of the Lessee herein contained or to any other tenancy with or without his servants or agents or workmen to enter onto the demised land at all reasonable times and to do all such acts and things as the Lessor may consider proper or desirable in remedy or attempting to remedy any such breach or any part thereof and all moneys paid or expended by the Lessor in remedying or attempting to remedy such breach or part thereof shall be forthwith repaid by the Lessee to the Lessor and if not so paid shall be recoverable by the Lessor as rent in arrear;
- (d) The Lessor in relation to the demised land shall have the rights referred to in Section 111 of the Landlord and Tenant Act 1954;
- (e) The Lessor will upon the written request of the Lessee delivered to the Lessor not less than three months prior to the expiration of the said term and so long as there shall not then be any existing breach or non-observance of any of the covenants conditions agreements and provided on the part of the Lessee herein contained renew this Lease for the further term as set out in the said Schedule at a rental to be agreed upon and being agreement to be determined as fair and reasonable in all the circumstances then existing by an arbitrator appointed pursuant to the Arbitration Act 1950 and otherwise upon the same terms and conditions as are herein contained but excluding this agreement for renewal PROVIDED ALWAYS that any rental so determined by Arbitration shall not be less than the rental set forth in the Schedule hereto;
- (f) any notice requiring to be served hereunder shall be sufficiently served on the Lessor if forwarded by post or left addressed to him at his address shown herein and shall be sufficiently served on the Lessee if forwarded by post or left addressed to him at the demised land;
- (g) whatever herein appearing in relation to the context the word "Lessor" shall be deemed to mean the person or company for the time being entitled to the reversion of the demised land and the word "Lessee" shall be deemed to mean and include the Lessee his or her heirs executors administrators and permitted assignees or (being a company) its successors and permitted assignees and all covenants and agreements by the respective parties if consisting of more than one person or company shall be deemed to mean and include such persons or companies both jointly and severally.

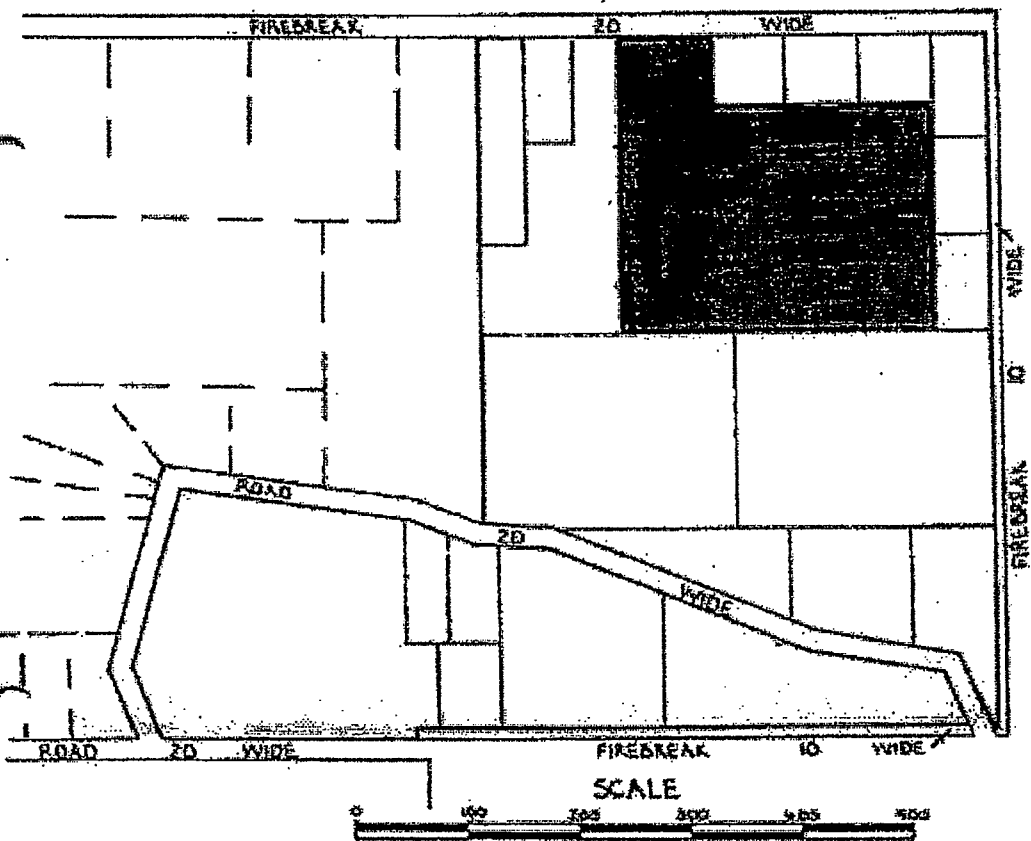
BENDOC No. 2(b)

LEASE AREAS (CONTINUED)

1985 PLANTATION

LAND COMPRISES PART OF PORTION 73 AND PORTION 73^A PARISH OF BENDOCK COUNTY OF CROAJINGALONG

BEING ALSO PART OF THE LAND IN CERTIFICATE OF TITLE VOL. 74-69 FOL. 097



Dr. G. WISE

PETER W. BURNS

REGISTERED LAND SURVEYOR & ENGINEERING SURVEYOR

1000 RIVERVIEW ROAD, SUITE 101, MELBOURNE, VIC 3006

PHONE: (03) 9412 1111 FAX: (03) 9412 1112

SEPTEMBER 1985

409

SPECIAL FINANCE.

CONTRACT FOR WORKS AND SERVICES.



WILLDANA FORESTS

FEBRUARY, 1985.
(2)

100 ACRE LOTS

MACQUARRIE FINANCIAL PLANNING SCHEME

MACQUARRIE FORESTS BENDOC 2 PLANTATION

Price per acre	2,250.00	1st year
Deposit (see costing (1))	<u>506.00</u>	Payment.
	<u>\$1,744.00</u>	506.00

ANNUAL COSTS

Interest @ 14% per annum paid in advance		244.00
--	--	--------

SPECIAL SERVICE FEE AND INSURANCES.

Service fee	18.00	
Plus allowance for interest in arrears	44.00	
Insurances to age 50 per acre per annum	<u>15.00</u>	
	77.00	
less \$44.00 if paid in advance	<u>44.00</u>	33.00

Lease rent \$400 \$100 per annum for four years			
\$25 per annum thereafter		<u>100.00</u>	*HJS.P/L
	100 acres x	<u>883.00</u>	<u>88,300.0</u>

All above plus Consumer Price Index (All Groups for the City of Melbourne,) 5 yearly adjusted.

2nd, 3rd & 4th YEAR ANNUAL PAYMENTS

Interest and charges	277.00		
Rent	<u>100.00</u>	377.00 x 100	37,700.0

5th TO 20th YEAR ANNUAL PAYMENTS

Interest and charges	277.00		
Rent	<u>25.00</u>	302.00 x 100	30,200.0

SPECIAL FINANCE.

PRICED ESTIMATE

PLANTATION DEVELOPMENT COSTS

1. SECONDARY CLEARING AND FENCING	<u>16</u> Acres	0.405 Ha @ \$195.00	\$ _____
2. INITIAL PLANTATION WORKS			
Surveyors fees in field work, setting out firebreaks and access ways: Removal of bracken fern and undergrowth ready for ripping or ploughing. Ripping and/or ploughing with one weedicide treatment, planting Pinus Radiata seedlings at an average of 680 per acre, constructing access roads and firebreaks including general supervision: Consultant Forester's fees and expenses:	<u>16</u> Acres	0.405 Ha @ \$1171.00	\$ <u>18,736</u>
3. MAINTENANCE			
(i) Second year, including replanting where considered practical, treatment of regrowth, fertilising, attention to access roads and firebreaks and general maintenance.	<u>16</u> Acres	0.405 Ha @ \$81.00	\$ _____
(ii) Third year, general maintenance including attention to roads and firebreaks.	<u>16</u> Acres	0.405 Ha @ \$46.00	\$ _____
(iii) Fourth year, general maintenance including attention to roads and firebreaks.	<u>16</u> Acres	0.405 Ha @ \$46.00	\$ _____
4. Fifth to twentieth year general maintenance including attention to roads and firebreaks.	<u>16</u> Acres	0.405 Ha @ \$624.00	\$ _____
5. SUNDRIES			
Insurances — Fire for period of 10 years for replacement cost, public risk: \$500,000.	<u>16</u> Acres	0.405 Ha @ \$87.00	\$ _____
TOTAL COST	<u>16</u> Acres	0.405 Ha @ \$2250.00	\$ _____

NOTE: Add the Special Service Fee of \$33.00 per acre per annum \$ _____
\$ _____

TERMS OF PAYMENT

A. CASH.....	<u>16</u> Acres	0.405 Ha @ \$2250.00	\$ <u>36,000</u>
B. DEPOSIT	<u>16</u> Acres	0.405 Ha @ \$ 506.00	\$ _____
BALANCE ON ACCEPTANCE.....	<u>16</u> Acres	0.405 Ha @ \$1744.00	\$ <u>27,904</u>

GENERAL CONTRACT FOR WORKS AND SERVICES

NAME DR. S.M. WISH
 ADDRESS 157 MAQUARIE ST.
HOBART.

TELEPHONE 235118.
 POSTCODE 7000.

Dear Sir,

Acting on your instructions, we herewith submit our estimate for carrying out the works and services listed below on your Freehold/Leasehold property situated at Bentley 2. Plantation and in accordance with the following:

TERMS AND CONDITIONS

1. The Contract price is payable as to the amount estimated.
2. The Contract is a fixed price for a period of one month from this date. Should the Contract not be accepted within this period the Company reserves the right to vary the price to cover any variation in costs of materials, rates of payments and working hours which may affect this Contract price.
3. The Company shall use its best endeavours to complete the works and services promptly, but shall not be responsible for loss or damage caused by delays in completion.
4. The Company will make good any defect resulting from faulty workmanship or defective materials but not otherwise.
5. All the terms and conditions of the Contract are set out in this document and no other representation or statements shall be relied upon.

Total Cost as per estimate: -

No. of 16 acres
 0.405 Ha @ \$2250.00. Total \$ 36,000

I/WE THE UNDERSIGNED HEREBY ACCEPT YOUR ESTIMATE AND AGREE TO BE BOUND BY THE TERMS AND CONDITIONS AND CONTRACT PRICE LISTED ABOVE.

I/We enclose payment for number of acres 16 0.405 Ha \$14,128 as payment in full.
~~\$8,296~~

Deposit \$ 506.00

Balance on settlement \$ 1744.00 \$ 2,250.00

NOTE: Add the Special Service Fee of \$33 per acre per annum \$ _____

CONTRACT CONFIRMED

SIGNATURE [Signature]

SIGNATURE _____

WITNESS [Signature]

WITNESS _____

DATE 22.4.85

DATE _____

For and on behalf of

WILLDANA FORESTS CONTRACTING SERVICES PTY. LTD.

 Director/Secretary

Date _____



WILLDANA FORESTS

CONTRACTING SERVICES PTY. LTD.

Suite 12, Corner Park Lane and Fitzroy Street,
St. Kilda, Victoria 3182. Telephone: (03) 537 1522.

Arnold Bloch Leibler

Lawyers and Advisers

14 February 2011

Private & Confidential

Butler, McIntyre & Butler
GPO Box 980
Hobart TAS 7001

Attention: Mr Damien Geason

Your Ref
Our Ref JCS
File No. 011565015

Contact
Jane Sheridan
Direct 61 3 9229 9815
Facsimile 61 3 9229 9944
jsheridan@abl.com.au



Level 21
333 Collins Street
Melbourne
Victoria 3000
Australia
DX38455 Melbourne
www.abl.com.au
Telephone
61 3 9229 9999
Facsimile
61 3 9229 9900

Dear Sirs

Willmott Forests Limited (Administrators Appointed) ("WFL") and Dr Gordon Wise

We act for the Administrators of WFL. We refer to your letter of 13 January 2011.

The Administrators are in the process of reviewing the documents and correspondence in WFL's possession in relation to each of the schemes for which WFL was manager or responsible entity. That review includes consideration of whether relevant parties have complied with the terms of the documents. Accordingly, at this time, the Administrators cannot confirm that your client is the owner of trees on all or part of Certificate of Title Volume 7469 Folio 097 or, if it is the owner of trees on part of that land, whether that part and those trees can be identified with precision.

Until the ownership and identification of the relevant trees can be confirmed, the Administrators do not consent to the harvest of any trees by your client or its contractors. Prior to any such consent being given, the Administrators would also need to address issues of access, safety and insurance associated with any proposed harvesting operations.

Please contact Jane Sheridan if you have any questions.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Jane Sheridan', written over a white background.

Jane Sheridan
Partner

MELBOURNE SYDNEY

Partners
Mark M Leibler AC
Henry D Lanzer
Joseph Borensztajn
Leon Zwiér
Philip Chester
Ross A Paterson
Stephen L Sharp
Kenneth A Gray
Kevin F Frawley
Michael N Dodge
Jane C Sheridan
Steven Klein
Leonie R Thompson
Zaven Mardirossian
Jonathan M Wenig
Paul Sokolowski
Paul Rubenstein
Peter M Seidel
Alex King
John Mitchell
Nicole Gordon
Ben Mahoney
Sam Dollard
Lily Tell
Henry Skene
Andrew Silberberg
Lisa Merryweather
Jonathan Milner
John Mengolian

**Senior Litigation
Counsel**
Robert J Heathcote

Special Counsel
Danuta Czuchwicki
Simonne Einfeld

Senior Associates
Sue Kee
Jorja Cleeland
Caroline Goulden
Matthew Lees
Genevieve Sexton
Jeremy Leibler
Amelia Kelly
Benjamin Marshall
Kristina Verney
Seaton Theobald
Teresa Ward
Jason Blankfield
Kate O'Brien
Christine Fleer
Shaun Cartoon
Nancy Collins
Susanna Ford
Kimberley MacKay
Amanda Hutchings
Clint Harding

Consultants
Allan Fels AO
Steven M Skala AO