

Ben Luscombe was a disputes partner with King & Wood Mallesons from 1991-2009 working in its Perth, Melbourne and Sydney offices. In 2010, he established Cochrane Lishman Carson Luscombe (a boutique law firm in Perth) until it merged with Clifford Chance, where he practised as a disputes partner (principally in International Arbitration) until April 2022. He has 40 years' experience representing parties in major arbitration and dispute resolution/advisory work throughout Australia, Asia and Africa, with a focus on disputes arising from the energy and resources sector.

Ben is recognised as a leading expert in Dispute Resolution and has appeared in major legal directories including Chambers Asia Pacific, Legal 500 and Doyle's Guide. He has received an exceptional level of positive feedback from clients testifying to his flair for handling highly complex energy and resources-related mandates, notably including arbitrated as well as litigated matters. Specifically, Ben has been praised for his *"very targeted litigation advice and representation"* and *"understanding of the nuances"* (Chambers Asia Pacific 2019); *"the most thorough and exhaustive"* preparation and also as the go-to partner for any *"big litigation that is about to go nuclear"* (Chambers Asia Pacific 2017). On his work in the Energy sector, clients describe Ben as someone who *"provides succinct, commercially sensible advice even when considering technically complex legal questions"* – Legal 500 Asia Pacific: Energy (Transactions and Regulatory) Australia 2019.

Ben has been recognised by his peers as a top lawyer in the litigation and ADR categories of The Best Lawyers in Australia and was recognised by the market and his peers as the best arbitration lawyer in Western Australia (Best Lawyers 2017). Ben and his team won the 2016 and 2017 ADR Practice Group of the Year Award from the Australian Disputes Centre.

Ben was a director of various property management companies in the Gold Estates group in the 1990s and has been a director of Packer & Co, the Responsible Entity and investment manager of the Investigator Trust, for 10 years.

Ben's experience includes:

### **Major arbitration**

Saipem SA on a USD 1 billion dispute arising out of a contract for the construction of an LNG loading jetty for the Gorgon gas project off the Western Australian coast (UNCITRAL Rules, Perth seat; Western Australian governing law)

Saipem SA on a separate, but related, USD 1 billion dispute in connection with the same LNG loading jetty project (ICC Rules, Singapore seat; Western Australian governing law)

Kingsgate Consolidated Limited in an arbitration against Thailand under the Australia-Thailand Free Trade Agreement, and concerning the alleged expropriation of the Chatree Gold Mine

A major Australian energy supplier on both an arbitration with an existing offtaker in respect of an existing power project, and on the subsequent commercial settlement which included negotiation with an additional offtaker. The dispute was valued at over AUD 1.5 billion and the subsequent settlement resulted in a landmark energy project which will integrate an existing dual-fuel power station, a 30MW battery and a new 60MW PV plant making the project a world first solar-battery-gas hybrid, as well as being the largest off-grid solar farm in Australia

An international resources company in an ACICA arbitration over a project located in Africa

Churchill Mining plc and Planet Mining Pty Ltd in an ICSID arbitration against the Republic of Indonesia concerning the East Kutai Coal Project in Kalimantan, the investors' claims being brought

under the UK-Indonesia and Australia-Indonesia bilateral investment treaties respectively (ICSID Case No. ARB/12/14 and ARB/12/40)

Cortec (Pty) Ltd, Stirling Capital Ltd and Cortec Mining Kenya Ltd in an ICSID arbitration against the Republic of Kenya, the dispute arising out of the expropriation of a rare earth mine and other measures taken by the host State in alleged violation of the UK-Kenya BIT (ICSID Case No. ARB/15/29)

An Australian listed biofuel company in a SIAC arbitration against a Malaysian EPC contractor

Oleovest Pte Ltd in an ICSID arbitration against the Republic of Indonesia concerning an investment in an oleo chemical processing plant in Sumatra (ICSID Case No. ARB/16/26)

A Mauritian company in a dispute with the Government of the Democratic Republic of the Congo concerning measures taken against investments in a mining project

ENI on a confidential arbitration against a supplier in respect of the Kitan oil field in the Timor Sea

Buyers and sellers in numerous gas-pricing disputes before arbitral tribunals and courts

### **Major Litigation**

Quadrant Energy Ltd in various disputes with its joint venture partner in respect of one of Australia's largest domestic gas hubs. The disputes comprised 4 separate WA Supreme Court actions:

(a) successful decision regarding the interpretation of the Spar gas field joint operating agreement (at issue was the right to operate this multi-billion dollar field) – the decision and our client's successful appeal were reported and are the subject of extensive commentary in the oil and gas sector;

(b) successful decision regarding the development of an AUD 300 million compression project on Varanus Island, off the coast of Western Australia – our client's interpretation of the JOA was upheld by the Supreme Court;

(c) proceedings regarding the interpretation of a gas balancing agreement; and

(d) proceedings regarding the interpretation of a pre-emption clause in various JOAs.

Lanco Infratech Ltd, an Indian listed company, and Griffin Coal in successfully defending a US\$3.5 billion breach of contract claim regarding a coal supply agreement (the acquisition by Lanco was then the largest investment ever made by an Indian company in Western Australia)

Apache in its (successful) defence of civil claims (for US\$2.4 billion) arising from the 2008 gas explosion at Varanus Island in Western Australia

Kingsgate on a claim in the NSW Supreme Court against a number of insurers regarding a \$200M Political Risk Policy

BHP Billiton Ltd in various contentious matters

Komatsu in a contract dispute in connection with the Super Pit at Kalgoorlie, Western Australia

An Australian contractor on a \$100m successful claim against the State Government of Western Australia related to the construction of the A\$1 billion Perth to Mandurah rail link

Wright family, a West Australian iron ore dynasty, in its successful high-profile defence of an inheritance claim made against the estate. The estate was estimated at about AU\$1 billion, making it the largest case of its kind in Australia. It has been the subject of extensive legal commentary and press. The Court of Appeal decision (and related HC decision), in particular, is of interest to all trust & estate lawyers in Australia

The former Chairman of Forge Group in the defence of claims in excess of \$100 million for alleged breaches of director's duties made in the Commercial List of the NSW Supreme Court

For a director on the Constitutional Law aspects of a high profile prosecution in connection with the international export of livestock

### **Dispute Resolution/Advisory**

International oil and gas companies on the Browse LNG Project, off the north western coast of Western Australia

An international oil and gas company on its operations at Barrow Island, Western Australia

A consortium of international oil companies in a dispute on maritime boundaries and resulting tax changes following the discovery of a group of small islands in the area of a gas field

Apache Corporation on its US\$3.75 billion sale of interests in LNG projects in Australia (Wheatstone) and Canada (Kitimat) to Woodside Petroleum Limited including the successful resolution of various post-closing contentious matters

Apache Corporation on the sale of its Australian oil & gas business to a consortium of private equity funds managed by Macquarie Capital Group Limited and Brookfield Asset Management for US\$2.1 billion (Oil & Gas Council Deal of the Year)

Shell on the sale of its Australian assets (US\$4 billion) and on various related contentious matters

An Australian oil and gas company on the protection of its rights and interests in the Timor Sea

### **Regulatory**

Acting for an international mining company on a cross-border regulatory investigation, involving the review of over 3 million documents

Successful defence of one of Australia's highest profile "Project Wickenby" tax prosecutions

Various major regulatory (especially ASIC) investigations

Magellan Metals on lead contamination issues in the Port of Esperance in Western Australia

Apache in its successful defence of a prosecution arising from the 2008 gas explosion at Varanus Island in Western Australia

Companies and senior employees on internal investigations regarding conduct of employees

A number of individuals, boards and corporations on regulatory investigations such as insider trading, misleading and deceptive conduct, continuous disclosure, anti-corruption and market manipulation, including providing advice on corporate governance issues

Acting on general regulatory issues for a variety of high net-worth individuals, and national and international companies, including issues arising from environmental and workplace health and safety incidents

On compliance issues relating to the development of policies and procedures in respect of insider trading and corporate governance