

Zelie C F Heger

Eleven Wentworth
Level 11, 180 Phillip St
Sydney NSW 2000
DX 377 SYDNEY

heger@elevenwentworth.com
Tel: +61 2 9101 2307
Fax: +61 2 9232 7626

Outline

- Areas of practice:** Public and commercial law, including statutory interpretation, judicial and merits review, constitutional law, environment and planning law, revenue law, corporations law, equity and contract.
- Admitted to practice:** 9 April 2010
- Called to the Bar:** May 2013 (Highest Aggregate Mark in June 2012 Exams)
- Qualifications:** BA LLB (University Medal in Law and Hons I) (USYD); LLM (Cambridge)
- Employment history:** Solicitor, A/Senior Solicitor – NSW Crown Solicitor’s Office (Administrative Law Group, Constitutional and Native Title Law Group)
- Associate to the Hon. Chief Justice French AC, High Court of Australia
- Associate to the Hon. Chief Justice Black AC, Federal Court of Australia
- Lecturer in Evidence – University of Sydney, University of Technology Sydney

Education

- 2010 – 2011** **Master of Law, University of Cambridge**
- Studied on a *John Monash Scholarship, Cambridge Commonwealth Trust Scholarship* and *University of Sydney Travelling Scholarship*
 - Awarded First Class grade
 - Glanville Williams Prize (best performing LLM student at Jesus College)
 - Sir Peter Gadsden Prize (best performing Australian at Jesus College)
 - Jesus College Foundation Scholarship
 - Thesis focused on statutory interpretation and the separation of powers
- 2003 – 2007** **Bachelor of Laws, University of Sydney**
- University Medal and First Class Honours
 - Awarded various LLB prizes, including for Litigation (Evidence and Procedure), Third Year Law (Federal Constitutional Law; Law Lawyers & Justice) and International Law
 - World Champions of Jessup International Law Moot (2007) with Dillard Award for Best Memorial; and awards for Best Applicant, Respondent and Overall Memorial in the Australian Rounds
 - USYD Scholarship for Outstanding Achievement in the HSC
 - Exchange Scholarship to Universiteit Utrecht

- 2003 – 2005** **Bachelor of Arts (Philosophy; Government), University of Sydney**
- Emeritus Prof FA Bland Prize, John S D’Arcy Prize for Third Year Govt
 - Tish Proctor Memorial Prize, Turner Prize for First Year Govt
- 2002** **Higher School Certificate, Pymble Ladies’ College**
- University Admissions Index: 100.00
 - Dux of the School
 - First in State for Classical Greek; Premier’s Award for All-Round Excellence; Australian Students’ Prize

Employment

- 2011 – 2013** **NSW Crown Solicitor’s Office**
- A/ Senior Solicitor, Constitutional and Native Title Law Group
 - Drafted advices on constitutional and native title law
 - Briefed Attorney General on intervention in constitutional law cases
 - Instructed in proceedings under the *Aboriginal Land Rights Act 1983*
 - Solicitor, Administrative Law Group
 - Drafted advices on administrative law and statutory interpretation
 - Appeared as solicitor advocate in proceedings before the Administrative Decisions Tribunal and for the Attorney General in *Khoury v Mental Health Review Tribunal* (2012) 84 NSWLR 445
 - Instructed in judicial review proceedings
- 2013** **Casual Lecturer in Evidence, University of Sydney**
- 2012** **Tutor in Evidence & Criminal Procedure, University of Technology**
- 2009 – 2010** **Associate to the Hon Chief Justice French AC, High Court of Australia**
- 2009** **National Human Rights Consultation, Attorney-General’s Department**
- Engaged by the Department to assist the Brennan Committee in writing its final report to Government
- 2008 – 2009** **Associate to the Hon Chief Justice Black AC, Federal Court of Australia**
- 2008 – 2009** **Researcher, UN Guidelines on Human Trafficking**
- Assisted Dr Anne Gallagher in drafting the legal commentary to the *UN Recommended Principles and Guidelines on Human Rights and Human Trafficking*

Selected appearances

Constitutional law

Plaintiff M47/2018 v Minister for Home Affairs & Anor [2019] HCATrans 9 – attempt to re-open *Al-Kateb v Godwin* (2004) 219 CLR 562 – construction of *Migration Act 1958* (Cth) – whether detention where no real prospect of removal in the reasonably foreseeable future contrary to Ch III *Constitution* – instructed by AGS – led by S Donaghue QC and P Herzfeld

Lentball & Ors v Westpac Banking Corporation & Anor (2019, Resvd, FCAFC) – joint sitting of FCAFC and NSWCA to determine constitutional challenge to making of common fund orders in class actions – whether acquisition of property otherwise than on just terms or contrary to Ch III *Constitution* – instructed by Shine Lawyers – led by J Gleeson SC and W Edwards

Alford v Parliamentary Joint Committee on Corporations and Financial Services [2018] HCA 57 – application to restrain Parliamentary Joint Committee on Corporations and Financial Services from acting upon order to attend as a witness – appeared for Cth AG intervening – instructed by AGS – led by S Free SC

Clubb v Edwards; Preston v Avery (2018, HCA, Resvd) – challenge to “safe access zone” legislation in Victoria and Tasmania – implied freedom of communication on government and political matters – appeared for NSW AG intervening – instructed by NSW CSO – led by J K Kirk SC

Work Health Authority v Outback Ballooning Pty Ltd [2019] HCA 2 – s 109 inconsistency between Cth civil aviation law and NT work health and safety law – appeared for Cth AG intervening – instructed by AGS – led by S Donaghue QC, and leading T Wood

Re WS (No 2) [2017] NSWSC 475 – adoption application – inconsistency between Cth Family Law Regulations and *Adoption Act 2000* (NSW) – appeared for Cth AG, instructed by AGS

Bell Group NV & Anor v State of Western Australia [2016] HCA 21 – validity of WA legislation removing funds from Bell Group liquidator and vesting them in WA State authority – inconsistency with Cth Tax and Corporations legislation – instructed by AGS – led by J Gleeson SC, J Watson and M O’Meara

Duncan v Independent Commission Against Corruption [2015] HCA 32 – validity of NSW legislation validating various corrupt conduct findings against Cascade Coal directors – instructed by NSW Crown Solicitor’s Office – led by B Walker SC, G Watson SC and S Free

Duncan v State of NSW; Cascade Coal Pty Ltd & Ors v State of NSW; Nucoal Resources Ltd v State of NSW [2015] HCA 13 – validity of NSW legislation cancelling Cascade Coal exploration licences - instructed by NSW Crown Solicitor’s Office – led by M G Sexton SC and S Free

Administrative law / statutory construction

Mabony v Dental Council of NSW [2018] NSWCATOD 146 – construction of s 158/158A of Health Practitioner Regulation National Law – instructed by NSW CSO

Ascenio v Department of Fair Trading [2018] NSWCATAD 136 – review of refusal to grant tattooist licence under *Tattoo Parlours Act 2012* – instructed by NSW CSO

Banerji v Minister for Immigration and Border Protection & Ors [2017] HCATrans 101 – application for summary dismissal – judicial review of termination of employment – instructed by Ashurst

Duncan v Independent Commission Against Corruption [2016] HCATrans 305 (application for special leave); [2016] NSWCA 143; [2014] NSWSC 1018 – judicial review of ICAC’s corrupt conduct findings against Cascade Coal directors – instructed by NSW CSO – led by B Walker SC/G Watson SC and S Free

Boele v Rinbac Pty Ltd [2015] HCATrans 156 – application for special leave – judicial review of District Court’s decision made in exercise of appellate jurisdiction under *Consumer, Trader and Tenancy Tribunal Act 2001* (NSW) – instructed by Fox & Staniland Solicitors – led by B Walker SC

Board of Studies, Teaching & Educational Standards v Vandenborenkamp [2016] NSWCA 268 – construction of *Education Act 1990* (NSW) – s 109 inconsistency with parenting orders made under *Family Law Act 1975* (Cth) – direct brief – led by J K Kirk SC

Stuart v A/Deputy Secretary of Department of Justice [2016] NSWSC 1179 – application for judicial review of declaration applying lock out laws to Sydney CBD Bar – instructed by NSW CSO

SZTWD v Minister for Immigration and Border Protection [2015] FCAFC 3 – application for judicial review of refusal of protection visa – pro bono direct brief

Petch v ICAC & Minister for Local Government, Ex tempore, 2 December 2014 – application to restrain Minister from advising Governor on Councillor Petch’s dismissal – instructed by NSW CSO

Seven West Media Ltd v Commissioner, Australian Federal Police [2014] FCA 263 – application for judicial review of warrants issued to Channel Seven under *Proceeds of Crime Act 2002* (Cth) in respect of interviews with Schapelle Corby – instructed by Atanaskovic Hartnell – led by A Bell SC, G Jones and D Thomas

EY v Guardianship Tribunal NSW [2013] NSWCA 349 – application for leave to appeal – appointment of guardian under *Guardianship Act 1987* (NSW) – instructed by NSW CSO

Environment and planning

Ku-ring-gai Council v Bunnings Properties Pty Ltd (2018, NSWCA, Resvd) – whether LEC’s “amber light” approach to Class 1 planning appeals permitted by statute – instructed by Allens – led by J K Kirk SC

Randren House Pty Ltd v Water Administration Ministerial Corporation & Ors (2018, NSWLEC, Resvd) – judicial review and associated claims for remediation to land – instructed by NSW CSO

Help Save Mt Gilead Inc v Mount Gilead Pty Limited (No 4) [2018] NSWLEC 149 – challenge to validity of local environmental plan – instructed by Addisons

Local Democracy Inc v Minister for Local Government & Ors [2018] NSWLEC 9 – separate question – whether applicant should be granted an extension of time to challenge proposed amalgamation of Woollahra, Waverley and Randwick Councils – instructed by NSW CSO – led by A S Bell SC

Residents Against Intermodal Development Moorebank Incorporated v Minister for Planning [2017] NSWLEC 115 – summary dismissal – whether plaintiff inherited objector rights under *Associations Incorporation Act 2009* – instructed by Norton Rose Fulbright – led by A S Bell SC

Millers Point Fund Inc v Lendlease (Millers Point) Pty Ltd & Ors [2016] NSWLEC 166 – application for judicial review of modification to concept plan and SSD consent regarding Crown’s proposed casino at Barangaroo – instructed by Clayton Utz – led by I Pike SC

Dravin Pty Ltd v Blacktown City Council [2017] NSWLEC 38; [2016] NSWLEC 1447 – appeal from refusal to grant modification to development consent under s 96 of *Environmental Planning and Assessment Act 1979* (NSW) – instructed by Sparke Helmore

Community Action for Windsor Bridge Inc v Roads and Maritime Services [2015] NSWLEC 167 – application for judicial review of approval for demolition and reconstruction of Windsor Bridge under Part 5.1 of *EP&A Act* – instructed by Dept of Planning – led by J K Kirk SC

Trustee for the Gerald & Catherine Barnard Family Trust t/as Walkabout Wildlife Park v Minister for Planning and Infrastructure [2015] NSWLEC 1465 – merits review of approval for Calga sand mine – instructed by Dept of Planning – led by J Hutton

Darkinjung Local Aboriginal Land Council v Wyalong Coal Pty Ltd [2014] NSWLEC 71 – statutory construction – validity State significant development application – instructed by Ashurst – led by S Free

Northern Inland Council for the Environment Inc v Minister for Environment, Heritage and the Arts [2013] FCA 1419; [2013] FCA 993 – application for judicial review of Maules Creek Coal Project approval under *Environment Protection and Biodiversity Conservation Act 1999* (Cth) – instructed by Ashurst – led by N Williams SC and S Free

Tax / revenue law

Al-Jaafari Society Inc v Chief Commissioner of State Revenue [2017] NSWCATAD 283 – merits review of Chief Commissioner’s decision to reject application for exemption from stamp duty – appeared for Chief Commissioner – instructed by NSW CSO

Commissioner of Taxation v Primary Health Care [2017] FCAFC 131 – appeal from AAT decision – instructed by King & Wood Mallesons – led by M Richmond SC

Primary Health Care Limited and Commissioner of Taxation [2017] AATA 393 – merits review of Commissioner’s refusal to extend time for objection to notice of assessment under s 14ZX of *Taxation Administration Act 1953* (Cth) – instructed by King & Wood Mallesons – led by M Richmond SC

Soong v Commonwealth Department of Public Prosecutions [2014] NSWSC 1030 – appeal from Local Court conviction under *Taxation Administration Act 1953* (Cth) – instructed by Diamond Conway Lawyers – led by I Pike SC

Corporations law

In the matter of Citadel Financial Corporation Pty Ltd [2019] NSWSC 65 – application to set aside statutory demand for debts arising under taxation law – appeared for Deputy Commissioner of Taxation – instructed by AGS

ASIC v Whitebox Trading Pty Ltd [2017] FCAFC 100 – whether *Criminal Code* (Cth) applies in civil penalty proceedings under Pt 9.4B of *Corporations Act 2001* (Cth) – appointed by the Court to act as contradictor, instructed by Quinn Emanuel – led by J Gleeson SC

Wambo Coal Pty Ltd & Anor v Sumiseki Materials Co Ltd [2015] HCATrans 56 – application for special leave – construction of constitution, oppression – instructed by Allens – led by N C Hutley SC

Contract

Ritchie v Advanced Plumbing & Drains Pty Limited (2018, SCNSW, Resvd) – application for leave to proceed against insurer under *Civil Liability (Third Party Claims Against Insurers) Act 2017* (NSW) – appeared for CGU Insurance – instructed by McCabe Curwood – led by P Greenwood SC

Dispute between two resources companies (2017) – arbitration before the Hon Kevin Lindgren – instructed by Piper Alderman – led by A Sullivan QC

AAI Limited t/as Vero Insurance v Solarus Projects Limited (in liq) [2014] NSWCA 168 – application for leave to appeal from order for separate question hearing – construction of insurance policy – instructed by DLA Piper Australia – led by A Leopold SC

Equity / trusts / property

Morrison-Conway & Anor; Estate of the Late Judith Christine Walsh [2018] NSWSC 685 – application for judicial advice under s. 63 of *Trustee Act 1925* – questions affecting charitable trusts – appeared for NSW AG, instructed by NSW CSO

Woolworths Limited v About Life Pty Ltd [2017] NSWSC 1117 – priorities dispute between Woolworths and Harris Farm regarding lease of premises at Kiaora Lane shopping centre in Double Bay – construction of right of first refusal granted to Woolworths – instructed by Corrs Chambers Westgarth – led by M J Darke SC

Glasby & Ors as trustees of the BCS Foundation v Attorney General of NSW [2017] NSWSC 837 – charitable trusts – application for cy-près scheme – appeared for NSW AG, instructed by NSW CSO

Owners Corporation of SP 71623 v Waldorf Apartments Hotel The Entrance Pty Ltd [2015] NSWSC 1658 – breach of fiduciary duties – construction of building management agreement – instructed by Paul Bard Lawyers – led by M Izzo

Tort

Kazal v Independent Commission Against Corruption (2019, SCNSW, Resvd) – motion for summary dismissal of proceedings claiming misfeasance in public office – appeared for ICAC – instructed by NSW CSO

Sparks v Hobson [2018] HCATrans 191 – application for special leave – medical negligence – application of ss. 5I and 5O of the *Civil Liability Act 2002* – instructed by Avant Law – led by J K Kirk SC, K Burke

Wright, Glen bht James Stuart Wright v Optus Administration Pty Limited & Anor [2017] HCATrans 159 – application for special leave – negligence – reasonable foreseeability – aggregation of corporate employees’ knowledge – instructed by Firths – led by B Walker SC

Norris v Routley [2017] HCASL 104 (application for special leave, decided on papers); [2016] NSWCA 367; [2015] NSWSC 883; [2015] NSWSC 1875 – hearing on quantum – action under *Compensation to Relatives Act 1897* (NSW) for damages arising from death of husband due to medical negligence – instructed by Avant Law – led by J K Kirk SC

Criminal law / coronial inquests

RG v The Queen [2017] HCASL 319 (decided on papers) – application for special leave to appeal from conviction for shoot with intent to murder – instructed by Bannister Lawyers – led by B Walker SC, A Djemal

Buckman v The Queen [2014] HCATrans 204 – application for special leave – inconsistency between Cth and NSW drug laws – instructed by Legal Aid NSW – led by C Loukas SC, J Lucy

Soong v Commonwealth Department of Public Prosecutions [2014] NSWSC 1030 – appeal from Local Court conviction under *Taxation Administration Act 1953* (Cth) – instructed by Diamond Conway Lawyers – led by I Pike SC

Inquest into the death of Hugh Lisle, 8 May 2014 – appeared for the Lisle family – direct brief

Practice and procedure

Kazal v Independent Commission Against Corruption [2018] NSWSC 1370 – motion to set aside notice to produce issued by plaintiff in misfeasance in public office proceedings – instructed by NSW CSO

Pacific Equity Partners Pty Ltd v Kerrick [2017] NSWSC 1302 – application for preliminary discovery – alleged disclosure of private equity firm’s confidential “track record” – instructed by King & Wood Mallesons – led by J K Kirk SC

Bengalla Mining Company Pty Ltd v MACH Energy Australia Pty Ltd [2017] NSWLEC 121 – motion to set aside subpoenas and notice to produce – instructed by Sparke Helmore

Waldorf Apartments Hotel The Entrance Pty Ltd & Ors v Owners Corporation of SP 71623 (2017, SCNSW, Resvd) – motion for interest on costs under former s 101(4) CPA – instructed by Paul Bard Lawyers

Norris v Routley [2016] NSWSC 147 – costs – validity of offer of compromise (UCPR 42.15) – whether commencement/continuation of proceedings in Supreme Court rather than District Court warranted (UCPR 42.34) – instructed by Avant Law

Privacy and freedom of information

AIN v Medical Council of New South Wales [2017] NSWCATAP 21, 22, 23, 36 – various alleged breaches of the *Privacy and Personal Information Protection Act 1998* (NSW) – instructed by NSW CSO

Eyes v Wyong Shire Council [2015] NSWCATAD 214 – application under *Government Information (Public Access) Act 2009* re Warnervale Education and Business Precinct – instructed by Wyong Shire Council

Office of Finance and Services v APV and APW [2014] NSWCATAP 88 – whether information “personal information” – *Privacy and Personal Information Protection Act 1998* (NSW) – instructed by NSW CSO

Sports law

Complaint by Fiona de Jong under AOC Ethical Behaviour By-Laws (2017) – appeared for Ms de Jong, former CEO of the AOC, before an independent committee constituted to determine her complaint under the AOC Ethical Behaviour By-Law – instructed by Addisons – led by Sandy Dawson SC

Spratt v Greyhound Racing NSW, 15 January 2016 – appeal against Stewards’ finding that greyhound presented with prohibited substance – appeared for and instructed by Greyhound Racing NSW

Hallinan & Ors v Greyhound Racing NSW, 19 March 2015 – appeal by greyhound owners against suspension of greyhounds suspected of being trained with live bait – appeared for Greyhound Racing NSW, instructed by Gadens