

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 *Kbourny 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

Clubb v Edwards; Preston v Avery [2019] HCA 11 – 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

Plaintiff M47/2018 v Minister for Home Affairs [2019] HCA 17 – 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

Westpac Banking Corporation v Lentball [2019] FCAFC 34 – 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 A Edwards

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

DKP v Children’s Guardian [2019] NSWCATAP 185 – whether proceedings in diversity jurisdiction, *Constitution* s. 75(iv) – whether Appeal Panel exercising judicial power – instructed by NSW CSO

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

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

Mahony v Dental Council of NSW [2019] NSWSC 276 – construction of s 158/158A of Health Practitioner Regulation National Law (NSW) – instructed by NSW CSO

Child Support Registrar v MQMV [2019] FCA 1171 – judicial review of AAT decision confirming jurisdiction to conduct second review under s. 96A of the *AAT Act* – appeared as contradictor appointed by the Court

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 Vandenbergkamp [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

Karimbla Construction Services (NSW) Pty Ltd v Premier of NSW & Ors [2019] NSWLEC 76 – proceedings brought by Meriton group subsidiary seeking mandamus in relation to undetermined planning proposal – application for discovery and for removal of Premier – instructed by NSW CSO – led by J K Kirk SC

Council of the City of Ryde v State of NSW [2019] NSWLEC 47 – validity of State environmental planning policy on low rise medium density housing – instructed by Sparke Helmore – led by J K Kirk SC

Ku-ring-gai Council v Bunnings Properties Pty Ltd [2019] NSWCA 28 – 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 (No 4) [2019] NSWLEC 5 – 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

Darkinjung Local Aboriginal Land Council v Wuyong 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

Lochtenberg v Commissioner of Taxation (2019, FCA, rsvd) – appeal from AAT decision – whether earnings “derived...from foreign service” within the meaning of s 23AG of ITAA 1936 – instructed by Munro Lawyers – led by M Richmond SC

H2O Exchange Pty Ltd v Innovation and Science Australia (2019, AAT, rsvd) – merits review of respondent’s decision that applicant’s activities were not “R&D activities” within the meaning of the *Income Tax Assessment Act 1997* (Cth) – instructed by HWL Ebsworth Lawyers

Al-Jaafaria 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

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

White as administrator of estate of Josephine Agnes Virgona v Attorney General NSW [2019] NSWSC 917 – charitable trusts – application for cy-près scheme – appeared for NSW AG, instructed by NSW CSO

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] NSWSC 556 – 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 bbt 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

R v Alpha Nobis FM Pty Ltd (2019, Local Court, Rsvd) – sentencing hearing for breach of development consent – appeared for the Prosecutor – instructed by City of Sydney Council

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

Environmental Protection Authority v Newcastle Ports Corporation [2019] NSWLEC 92 – application to inspect documents produced under subpoena – whether subject to privilege – instructed by EPA

Randren House Pty Ltd v Water Administration Ministerial Corporation (No 5) [2019] NSWLEC 63 – costs of alleged “public interest” litigation – application for indemnity costs – instructed by NSW CSO

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 Kerwick [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

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