

# Perry Herzfeld SC

## Professional details

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<b>Admitted to practice:</b>	26 April 2006
<b>Bar admission:</b>	19 November 2009 (Vic); 1 July 2013 (NSW)
<b>Appointed Senior Counsel:</b>	30 September 2020
<b>Qualifications:</b>	BSc LLB (Hons) (Melb) LLM (Melb)
<b>Other legal positions:</b>	Editor, <i>New South Wales Law Reports</i> (2022– ) Fellow, Australian Academy of Law (2022– )
<b>Previous legal positions:</b>	Associate to the Hon Justice Susan Crennan AC, High Court of Australia (2008–9) Allens Arthur Robinson, Articled Clerk (2005–6), Lawyer (2006–8) Reporter, <i>Commonwealth Law Reports</i> (2010–16)

## Contact details

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<b>Melbourne clerk:</b>	John Dever (List D) Owen Dixon Chambers 205 William Street MELBOURNE VIC 3000 03 9225 7999

## Education

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**Post-graduate:** LLM (Melb)

**Graduate:** BSc LLB (Hons) (Melb)

Placed second on the Final Law Honours List (Spero Wilson Memorial Scholarship)

Harrison Moore Exhibition for Advanced Constitutional Law (placed first in subject)

Full Faculty Scholarship from the Faculty of Law

## Recent publications

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*Interpretation* (3rd ed, 2024, Thomson Reuters) (with Thomas Prince)

“Injunctions in Public Law” in John Griffiths and James Stellios, *Issues in Australian Constitutional Law: Tributes to Professor Leslie Zines — Volume 2* (2024, Federation Press)

“Statutory Interpretation from *Visy* to Today” in Stephen Puttick and Michael Gvozdenovic (eds), *Current Issues in Competition Law: Volume I* (2021, Federation Press)

*Statutory Interpretation Principles* (2nd ed, 2021, Thomson Reuters) (with Thomas Prince)

“Limitation of Actions and Specific Performance” (2019) 93 ALJ 470

## Recent cases

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### Appellate

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*Boyjonauth v Minister for Immigration and Multicultural Affairs* [2024] FCAFC 130 — judicial review, statutory construction, for the appellant

*Gehlert v Minister for Immigration and Multicultural Affairs* [2024] FCAFC 129 — statutory construction, for the respondent

*Indara Inbuilding Solutions Pty Ltd v Australian Communications and Media Authority* [2024] FCAFC 117 — telecommunications, judicial review, statutory interpretation, for the respondent

*Carbone v Fowler Homes Pty Ltd* [2024] NSWCA 192 — contract, building and construction, for the appellants

*Coca-Cola Europacific Partners API Pty Ltd v Pombinho* [2024] NSWCA 191 — workers' compensation, judicial review, for the appellant

*EMJ18 v Secretary, Department of Home Affairs* (2024) 303 FCR 308; [2024] FCAFC 87 — freedom of information, statutory construction, for the respondent

*Boyle v DPP (Cth)* [2024] SASCA 73 — public interest disclosure, statutory construction, for the Human Rights Law Centre

*Greylag Goose Leasing 1410 Designated Activity Company v PT Garuda Indonesia Ltd* (2024) 98 ALJR 828; [2024] HCA 21 — private international law, foreign state immunity, statutory construction, for the appellant

*CCU21 v Minister for Home Affairs* (2024) 303 FCR 350; [2024] FCAFC 69 — judicial review, migration, peremptory mandamus, for the respondent

*Haddad v GEO Group Australia Pty Ltd* [2024] NSWCA 135 — workers' compensation, statutory construction, for the respondent

*QBT Pty Ltd v Wilson* [2024] NSWCA 114 — contract, construction, implied terms, for the appellant

*Miller v Minister for Immigration, Citizenship and Multicultural Affairs* (2024) 98 ALJR 623; [2024] HCA 13 — judicial review, statutory construction, for the appellant

*Minister for Immigration, Citizenship and Multicultural Affairs v McQueen* (2024) 98 ALJR 594; [2024] HCA 11 — judicial review, migration, for the applicant

*Brotherhood of St Laurence v Sarina Investments Pty Ltd* [2024] VSCA 46 — contract, lease, construction, repudiation, for the appellant

*Secretary, Department of Communities and Justice v Stewart* [2024] NSWCA 59 — workers' compensation, statutory construction, for the appellant

*Minister for Immigration, Citizenship and Multicultural Affairs v MZAPC* (2024) 302 FCR 159; [2024] FCAFC 34 — judicial review, migration, injunctions, for the appellant

*Minister for Home Affairs v BRO18* (2024) 302 FCR 259; [2024] FCAFC 27 — judicial review, migration, for the appellant

*Fisher v Nonconformist Pty Ltd* [2024] NSWCA 32 — workers' compensation, causation, for the respondent

*CEU22 v Minister for Home Affairs* (2024) 301 FCR 578; [2024] FCAFC 11 — constitutional law, judicial review, migration, for the respondent

*Collaery v The Queen (No 4)* [2023] ACTCA 47 — national security, for the Attorney-General (Cth)

*Commissioner of Police v Ritson* [2023] NSWCA 30 — privacy, statutory construction, for the applicant

*Hartley v Commissioner of the Australian Federal Police* [2023] FCAFC 197 — search warrants, for the respondent

*NZYQ v Minister for Immigration, Citizenship and Multicultural Affairs* (2023) 97 ALJR 1005; 415 ALR 254; [2023] HCA 37 — constitutional law, for the defendants (with Stephen Donaghue KC)

*GLJ v The Trustees of the Roman Catholic Church for the Diocese of Lismore* (2023) 97 ALJR 857; 414 ALR 635; [2023] HCA 32 — torts, historic child sexual abuse, permanent stay, for the appellant

*Bogan v Estate of Smedley (deceased)* (2023) 72 VR 394; [2023] VSCA 256 — class actions, cross-vesting, group costs orders, for KPMG

*Vanderstock v Victoria* (2023) 98 ALJR 208; [2023] HCA 30 — constitutional law, for the Australian Trucking Association as *amicus curiae*

*Care A2 Plus Pty Ltd v Gensco Laboratories, LLC* [2023] FCA 1246 — private international law, anti-suit injunctions, leave to appeal, for the applicant

*Independent Liquor and Gaming Authority v Whitebull HTL Pty Ltd* [2023] NSWCA 224 — judicial review, statutory construction, gambling, for the appellant

*Aerotropolis Pty Ltd v Secretary, Department of Planning and Environment* (2023) 256 LGERA 69; [2023] NSWCCA 195 — environmental prosecution, limitation period, statutory construction, for the appellant

*Moore v Commonwealth Director of Public Prosecutions* (2023) 378 FLR 391; [2023] NSWCA 153 — crime, jurisdiction, statutory construction, for the respondent

*R v AB* [2023] NSWCCA 168 — crime, foreign bribery, statutory construction, for the applicant

*CCU21 v Minister for Home Affairs* (2023) 297 FCR 503; [2023] FCAFC 87 — judicial review, migration, for the respondent

*Minister for Immigration, Citizenship and Multicultural Affairs v SZRWS* (2023) 297 FCR 589; [2023] FCAFC 83 — statutory construction, migration, for the appellant

*Chief Commissioner of State Revenue v Shell Energy Operations No 2 Pty Ltd* (2023) 116 ATR 337; [2023] NSWCA 113 — taxation, duties, for the respondent

*DFO19 v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* (2023) 296 FCR 204; [2023] FCAFC 38 — judicial review, migration, for the respondent

*Director-General of Security v Plaintiff S111A/2018* (2023) 296 FCR 639; [2023] FCAFC 33 — judicial review, national security, for the appellant

*DMH20 v Minister for Home Affairs* (2023) 296 FCR 256; [2023] FCAFC 31 — constitutional law, migration, for the respondent

*Attorney General (NSW) v FJG* (2023) 111 NSWLR 105; [2023] NSWCA 34 — statutory construction, constitutional law, for the plaintiff

*Galati v Deans* [2023] NSWCA 13 — equity, resulting trust, common intention constructive trust, for the appellant

*Hays & Department of Communities and Justice* [2023] FedCFamC1A 3 — international child abduction, for the Independent Children's Lawyer

*Darkinjung Local Aboriginal Land Council v Minister Administering the Crown Land Management Act* (2022) 110 NSWLR 535; [2022] NSWCA 275 — Aboriginal land rights, for the appellant

*Secretary, Department of Communities and Justice v KH* (2022) 110 NSWLR 57; [2022] NSWCA 221 — judicial review, child welfare, for the plaintiff

*Australia Capital Financial Management Pty Ltd v Australian Financial Complaints Authority Ltd* (2022) 164 ACSR 215; [2022] NSWCA 204 — corporations, external dispute resolution scheme, for the first respondent

*Attorney-General v Lambourne* [2022] KICA 9 (Kiribati Court of Appeal) — constitutional law, judicial independence, appeals, for the respondent

*Hancock v Hancock Prospecting Ltd* (2022) 409 ALR 638; [2022] NSWCA 152 — arbitration, for the ninth and tenth respondents

*Alexander v Minister for Home Affairs* (2022) 276 CLR 336; [2022] HCA 19 — constitutional law, citizenship, judicial power, for the defendants (with Stephen Donaghue KC)

*Bowers v Judicial Commission of New South Wales* [2022] NSWCA 69 — appeal competency, for the respondent

*LCA Marrickville Pty Limited v Swiss Re International SE* (2022) 290 FCR 435; [2022] FCAFC 17 — insurance, business interruption, for Insurance Australia Ltd (with Ian Jackman SC)

*XJLR v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* (2022) 289 FCR 256; [2022] FCAFC 6 — judicial review, migration, for the respondent

*Fairfax Media Publications Pty Ltd v Voller* (2021) 273 CLR 346; [2021] HCA 27 — defamation, for the appellants (with Neil Young KC)

*Harris v New South Wales* [2021] NSWCA 208 — torts, arrest, for the respondent

*FFM20 v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* (2021) 286 FCR 405; [2021] FCAFC 156 — judicial review, migration, for the respondent

*GR v Secretary, Department of Communities and Justice* [2021] NSWCA 157 — child welfare, statutory construction, for the Legal Aid Commission of NSW as *amicus curiae*

*Zhang v Commissioner of Police* (2021) 273 CLR 216; [2021] HCA 16 — torts, constitutional law, search warrants, for the first defendant and Attorney-General of the Commonwealth (with Stephen Donaghue KC)

*Ozcan v Macarthur Disability Services Ltd* (2021) 306 IR 52; [2021] NSWCA 56 — workers' compensation, for the respondent

*SDCV v Director-General of Security* (2021) 284 FCR 357; [2021] FCAFC 51 — constitutional law, judicial review, national security, for the respondent

### **First instance**

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*AIX20 v Director-General of Security (No 2)* [2024] FCA 1130 — public interest immunity, for the respondents

*Spall v Minister for Home Affairs* [2024] FCA 849 — statutory construction, citizenship, for the respondent

*Maules Creek Community Council Inc v Environment Protection Authority* [2024] NSWLEC 71 — judicial review, environmental law, for Maules Creek Coal Pty Ltd

*Capral Ltd v Insurance Australia Ltd t/as CGU Insurance* [2024] FCA 775 — insurance, property damage, for the respondent

*New South Wales Nurses and Midwives' Association v New South Wales* [2024] NSWSC 636 — industrial law, award construction, for the defendant

*Minister for Immigration, Citizenship and Multicultural Affairs v Pulini* [2024] FCA 541 — judicial review, citizenship, for the appellant

*Hassan (formerly described under the pseudonym AFX21) v Minister for Home Affairs* [2024] FCA 527 — negligence, migration, for the respondent

*Tigers Realm Coal Ltd v The Commonwealth* (2024) 302 FCR 567; [2024] FCA 340 — sanctions, statutory construction, for the respondent

*Deripaska v Minister for Foreign Affairs* [2024] FCA 62 — constitutional law, judicial review, sanctions, for the respondent

*AIX20 v Director-General of Security* [2023] FCA 1344 — torts, judicial review, national security, summary dismissal, for the respondent

*ARUI7 v Minister for Immigration, Citizenship and Multicultural Affairs* [2023] FCA 1275 — judicial review, migration, joinder, interrogatories, for the respondent

*Abramov v Minister for Foreign Affairs (No 2)* [2023] FCA 1099 — judicial review, sanctions, for the respondent

*Stradford (a pseudonym) v Judge Vasta* [2023] FCA 1020 — torts, false imprisonment, judicial immunity, liability of police, for the applicant

*Racing New South Wales v Racing Victoria Limited (No 2)* [2023] NSWSC 576 — preliminary discovery, for Racing Queensland Board

*Tabcorp Holdings Ltd v Entain Group Pty Ltd* [2023] NSWSC 220 — preliminary discovery, for the first defendant

*In the matter of Vinidici Rushcutters Bay Pty Ltd – Vinidici Rushcutters Bay Pty Ltd v Zhang* [2023] NSWSC 151 — deceit, misleading conduct, for the plaintiff

*Attorney-General (Cth) v Pender (Final)* (2022) 374 FLR 212; [2022] NSWSC 1773 — terrorism, extended supervision order, for the plaintiff

*Rookwood General Cemeteries Reserve Land Manager v Attorney General (NSW)* [2022] NSWSC 1763 — charitable trusts, for the defendant

*Australian Securities and Investment Commission v A&M Group Pty Ltd t/as Debt Negotiators* [2022] FCA 1534 — corporations, civil penalties, for the applicant

*Sami v Minister for Home Affairs* [2022] FCA 1513 — constitutional law, migration, for the respondent

*Hancock v Rinehart* [2022] NSWSC 1025 — suppression orders, for the first defendant/cross-claimant

*Commissioner of Police v Attorney General (NSW)* [2022] NSWSC 595 — judicial review, coronial inquiry, public interest immunity, for the defendant

*Aversa v Transport for New South Wales* [2022] NSWSC 277 — public interest immunity, for Transport for New South Wales and the Secretary of the New South Wales Treasury



*The Environment Centre NT Inc v Minister for Resources and Water (No 2)* (2021) 399 ALR 68; 253 LGERA 114; [2021] FCA 1635 — judicial review, environment, for the applicant

*Minister for Home Affairs v Pender* (2021) 363 FLR 309; [2021] NSWSC 1644 — terrorism, continuing detention order, for the plaintiff

*EPUI9 v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (No 2)* [2021] FCA 1536 — judicial review, migration, for the respondent

*Australian Aged Dental Care Pty Ltd v Australian Dental Association (New South Wales Branch) Ltd* [2021] FCA 1514 — misleading or deceptive conduct, stay of proceedings, for the respondent

*KDSP v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* (2021) 95 ALJR 666; 392 ALR 186; [2021] HCA 24 — judicial review, migration, for the defendant

*AGH21 v Minister for Home Affairs* [2021] FCA 452 — judicial review, migration, for the respondent

*AGP21 v Minister for Home Affairs* [2021] FCA 281 — judicial review, migration, for the respondent

*Abela v Minister for Home Affairs* [2021] FCA 96 — summary dismissal, migration, for the respondent