

# Zelie C F Heger

Barrister

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## Professional

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I have a public and commercial law practice, including constitutional law, administrative law, environment and planning law, contract, equity, tort and revenue law. I enjoy matters raising difficult questions of statutory construction. I regularly appear unled in final and interlocutory hearings and as junior counsel in more complex and appellate matters.

<b>2013-present</b>	Barrister, Eleven Wentworth
<b>2011-2013</b>	A/Senior Solicitor – NSW Crown Solicitor’s Office (Administrative Law Group; Constitutional and Native Title Law Group)
<b>2012, 2013</b>	Lecturer in Evidence – University of Sydney, University of Technology Sydney
<b>2009-2010</b>	Associate to the Hon. Chief Justice French AC, High Court of Australia
<b>2008-2009</b>	Associate to the Hon. Chief Justice Black AC, Federal Court of Australia

## Education

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<b>2012</b>	<b>Highest Aggregate Mark in June 2012 Bar Exams</b>
<b>2010 – 2011</b>	<b>Master of Law, University of Cambridge</b> <ul style="list-style-type: none"><li>• Studied on a <i>John Monash Scholarship, Cambridge Commonwealth Trust Scholarship</i> and <i>University of Sydney Travelling Scholarship</i></li><li>• First Class grade, Glanville Williams Prize and Sir Peter Gadsden Prize</li><li>• Jesus College Foundation Scholarship</li></ul>
<b>2003 – 2007</b>	<b>Bachelor of Laws, University of Sydney</b> <ul style="list-style-type: none"><li>• University Medal and First Class Honours</li><li>• Prizes for Litigation (Evidence and Procedure), Third Year Law (Federal Constitutional Law; Law Lawyers &amp; Justice) and International Law</li><li>• 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</li><li>• USYD Scholarship for Outstanding Achievement in the HSC</li><li>• Exchange Scholarship to Universiteit Utrecht</li></ul>
<b>2003 – 2005</b>	<b>Bachelor of Arts (Philosophy; Government), University of Sydney</b> <ul style="list-style-type: none"><li>• Emeritus Prof FA Bland Prize, John S D’Arcy Prize for Third Year Govt</li><li>• Tish Proctor Memorial Prize, Turner Prize for First Year Govt</li></ul>

## Selected matters (current to May 2022)

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### Constitutional law

*Minister for Immigration & Anor v Montgomery* (HCA, 2022, reserved) – whether *Love v Commonwealth* [2020] HCA 3 should be re-opened – whether Aboriginal Australians can be “aliens” within s 51(xix) of the *Constitution* – instructed by AGS – led by S Donaghue QC, C Lenehan SC and P Knowles

*Mineralogy Pty Ltd, Clive Palmer v WA* [2021] HCA 31 – whether WA legislation terminating arbitration invalid – appeared for WA, instructed by SSO – led by J Thompson SC, S Free SC and J Shaw

*Chetcuti v Commonwealth* [2020] HCA 42; and on appeal [2021] HCA 25 – whether it is within the legislative competence of Parliament to treat plaintiff as an “alien” within s 51(xix) of the *Constitution* – instructed by AGS – led by S Donaghue QC and C Lenehan SC

*Wilson v Chan & Naylor Parramatta Pty Ltd* [2020] NSWCA 213 – whether matter in NCAT within s 76(ii) *Constitution* and, if so, whether NCAT has power to make costs orders – instructed by NSW Crown Solicitor’s Office – led by M G Sexton SC

*Westpac Banking Corporation v Lenthall & Ors* [2019] HCA 45, 158; [2019] FCAFC 34 – appeal from joint sitting of FCAFC and NSWCA – 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

*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

*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 NSWCSO (unled)

*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 (unled)

*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**

*BRD21 v ABC* (FCAFC, 2022, part heard); and at first instance [2021] FCA 960; [2021] FCA 1347 – *Public Interest Disclosures Act 2013* (Cth) – application to strike out pleadings for breach of parliamentary privilege – instructed by AGS (unled)

*Davis v Minister for Health* [2022] NSWCATAP 115; at first instance [2021] NSWCATAD 293; [2021] NSWCATAD 310 – application for review of public health order – instructed by NSW CSO (unled)

*McDonald v Ku-ring-gai Council* [2022] NSWCATAD 17 – application under *Government Information (Public Access) Act 2009* (NSW) re Lindfield Village Hub development – instructed by Sparke Helmore (unled)

*Children's Guardian v DVR* (SCNSW, 2021, reserved) – appeal on question of law from NCAT decision granting a working with children's check – instructed by NSW CSO (unled)

*Angilley v Child Support Registrar* [2021] FedCFamC1A 52 – appeal from order for payment of child support debt to Full Court – briefed by Mills Oakley (unled)

*Bathurst Regional Council v Natural Resources Access Regulator* [2021] NSWLEC 109, and ongoing after transfer to SCNSW – judicial review of caution issued by NRAR for breach of *Water Management Act 2000* – instructed by DPIE – unled, leading A Brown

*EWV20 v Minister for Home Affairs (No 3)* [2021] FCA 866 – judicial review of decision to cancel visa under s 501(3)(b) of *Migration Act 1958* (Cth) – instructed by AGS – led by C Lenehan SC

*Public Service Association and Professional Officers' Association Amalgamated Union of NSW v Industrial Relations Commission of NSW* [2021] NSWCA 64 – judicial review of IRC's decision to refuse 2.5% wage increase for public servants in NSW – instructed by NSW CSO – led by I Taylor SC and M Easton

*JKL v Justice Health and Forensic Mental Health Network* [2021] NSWCA 94 – construction of s 48 of *Mental Health (Forensic Provisions) Act 1990* (NSW) – instructed by NSWCSO (unled)

*GetSwift Limited v Webb* [2021] FCAFC 26 – successful appeal from Lee J's refusal to disqualify himself from hearing GetSwift class action – appeared for GetSwift – led by M Darke SC and A Shearer

*Decision restricted* [2021] NSWCA 63 – successfully sought recusal of District Court judge from hearing criminal proceedings – led by G Bashir SC

*Fain v Ferson* (2021, Ierace J, unreported) – successfully resisted injunction prohibiting NSW Health from disclosing risk of blood borne virus to plaintiff's clients – instructed by NSW CSO (unled)

*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 (unled)

*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 (unled)

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

*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 (unled)

*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 ([unled](#))

*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

## **Environment and planning**

*Ku-ring-gai Council v Buyozo Pty Ltd* [2021] NSWCA 177– scope of modification power under s 4.56 EPA Act – proper construction of “gross floor area” under LEP – led by S Free SC

*Barana Properties (No 7) Pty Ltd v City of Sydney* [2021] NSWLEC 1293 – appeal against conditions of development consent – instructed by City of Sydney ([unled](#))

*Anderson v Minister for Planning* [2020] NSWLEC 138 – application for expedition of challenge to critical State Significant Infrastructure approval for Snowy Hydro 2.0 – instructed by Allens ([unled](#))

*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 ([unled](#))

*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 ([unled](#))

*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

## **Revenue law**

*Lochtenberg v Commissioner of Taxation* [2019] FCA 1167 – 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 and Innovation and Science Australia* [2019] AATA 4195 – whether “R&D activities” under *Income Tax Assessment Act 1997* (Cth) – instructed by HWL Ebsworth Lawyers ([unled](#))

*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 ([unled](#))

*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 ([unled](#))

*Commissioner of Taxation v Primary Health Care* [2017] FCAFC 131, and in the AAT below [2017] AATA 393 – review of Commissioner’s refusal to extend time for objection to NOA under s 14ZX of *Taxation Administration Act 1953* (Cth) – instructed by King & Wood Mallesons – led by M Richmond SC

### **Commercial**

*International Minerals Pty Ltd v State of Western Australia* (FCA, 2022, reserved) – acted for WA, the Hon Mark McGowan and the Hon John Quigley – application to impose conditions on leave to discontinue proceedings brought by Mr Clive Palmer’s company, International Minerals, alleging unconscionable conduct and misleading and deceptive conduct – instructed by Clayton Utz – led by J Thompson SC

*ASIC v Westpac Securities Administration Limited* [2021] FCA 1008 – penalty hearing for contravention of s 961K of *Corporations Act 2001* (Cth) – instructed by Allens – led by J Williams SC

*Dispute between two major Australian corporates* (2020) – briefed to advise and prepare pleadings in contractual dispute (settled)

*Ritchie v Advanced Plumbing & Drains Pty Limited* [2019] NSWSC 1028 – application for leave to proceed against insurer under *Civil Liability (Third Party Claims Against Insurers) Act 2017* – proper construction of policy of insurance – instructed by McCabe Curwood – led by P Greenwood SC

*White as administrator of estate of Josephine Agnes Virgona v Attorney General NSW* [2019] NSWSC 917 – application for cy-près scheme – instructed by NSW CSO (unled)

*Morrison-Conway & Anor; Estate of the Late Judith Christine Walsh* [2018] NSWSC 685 – application for judicial advice under s. 63 of *Trustee Act 1925* – instructed by NSW CSO (unled)

*Pacific Equity Partners Pty Ltd v Kernick* [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

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

*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

*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

### **Tort**

*Ritchie v Advanced Plumbing & Drains Pty Limited* [2022] NSWSC 330 – class action relating to bushfire in Carwoola – instructed by McCabe Curwood – led by P Greenwood SC

*Kazal v Independent Commission Against Corruption* [2019] NSWSC 556 – motion for summary dismissal of proceedings claiming misfeasance in public office – for ICAC, instructed by NSW CSO (unled)

*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] HCA51 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

Advised on novel questions of duty of care in various contexts

### **Inquiries / high risk offenders / parole**

*Independent Commission Against Corruption* (2022) – briefed as Counsel Assisting to conduct compulsory examinations and appear at public inquiry (unled)

*Alameddine v State Parole Authority* (SCNSW, 2022, reserved) – judicial review of SPA’s decision to refuse to grant parole in relation to “terrorism related offender” under Div 3A of *Crimes (Administration of Sentences) Act 1999* – instructed by NSW CSO (unled)

*Minister for Home Affairs v Pender* [2021] NSWSC 921; [2021] NSWSC 1644 – application for continuing detention order under *Criminal Code* (Cth) – led by P Herzfeld SC, and leading C Ernst

*State of NSW v Brown* (Garling J; 2020) – preliminary hearing under *Crimes (High Risk Offenders) Act 2006* (NSW) – instructed by NSW CSO (unled)

*Osman v State Parole Authority* [2020] NSWSC 1392 – judicial review of decision of State Parole Authority – instructed by NSW CSO – led by D Kell SC

*Whiteoak v State Parole Authority* [2020] NSWSC 185 – judicial review of decision of State Parole Authority – instructed by NSW CSO – led by D Kell SC

*Tannous v State of NSW* [2020] NSWCA 261 – statutory construction – duration of extended supervision order under *Crimes (High Risk Offenders) Act 2006* (NSW) – instructed by NSW CSO – led by D Kell SC

*State of NSW v JS* [2020] NSWSC 28 – application for extended supervision order under *Crimes (High Risk Offenders) Act 2006* (NSW) – instructed by NSW CSO (unled)

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

### **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 (unled)

*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 (unled)

*Kazal v ICAC* [2018] NSWSC 1370 – motion to set aside notice to produce issued by plaintiff in misfeasance in public office proceedings – instructed by NSW CSO (unled)