



DR FIONA ROUGHLEY SC

Barrister

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OVERVIEW

I was admitted as a lawyer in 2008, called to the New South Wales Bar in October 2011, and appointed Senior Counsel in 2023. I completed a PhD whilst practising full time as a barrister (conferred December 2022).

I specialise in commercial and public law litigation. I am commonly briefed in cases involving significant opportunity or risk for the client – whether of a financial, strategic, political or reputational kind.

My cases include:

- commercial disputes between private parties;
- class actions;
- briefs to act for or advise for multinationals, including in cases involving questions of foreign law or multi-jurisdiction disputes;
- cases for and against emanations of Australian government;
- briefs to act for or advise foreign States and/or state-owned entities;
- litigation raising difficult or novel questions of law, many of which cases run for several years and to appellate level.

I am known for my ability to grasp complex questions of law quickly, to think deeply, and to engage with substantial and difficult areas of expert evidence.

My wider service activities include leadership/Board roles in several legal and educational organisations, significant publication outputs, and formal and informal mentoring roles.

PROFESSIONAL

NSW Bar since October 2011; appointed Senior Counsel in 2023. Ranked in:

Chambers and Partners Dispute Resolution 2024 (New Silks), 2016-2023 (Junior Counsel).

Doyle's Guide to leading junior counsel in commercial litigation and dispute resolution (2015 - 2023); insolvency and restructuring (2018 - 2023), competition (2018-2019, 2021-2023).

Principal Research Officer, Department of the Senate, Parliament of Australia (2010). Select Committee on the NBN; Select Committee on the Reform of the Australian Federation; Standing Committee on Legal and Constitutional Affairs.

Associate to the Hon. Justice Hayne AC, High Court of Australia (2009-2010).

Allens Arthur Robinson. Lawyer (2008 –2009). Competition and Litigation.

North Australian Aboriginal Justice Agency (intern) (Nov 2007 – Feb 2008).

Australian Law Reform Commission (intern) (July – Nov 2006).

Cambridge University Pro-Bono Project (2010-2011).

EDUCATION

Doctor of Philosophy, The Australian National University (2022).

Thesis topic: "Australia's Attorney General: Law, Politics and History". Supervised by Emeritus Professor Peter Cane with Professor Helen Irving and Professor James Stellios.

Australian Postgraduate Research Training Scholarship.

Graduate, AICD, Company Directors Course (2018).

Masters of Law (Hons I), The University of Cambridge (2011).

Gates Cambridge Scholarship, funded by the Bill and Melinda Gates Foundation.

Australian Bicentennial Award for postgraduate study in the UK; Jesus College Foundation Scholarship.

First in Course: History and Philosophy of International Law.

The University of Sydney

Bachelor of Laws, Hons Class I and the University Medal in Law (2008).

Bachelor of Arts, Hons Class I and the University Medal in English (2006).

The University of Sydney Convocation Medal (2006) for exceptional contribution to the University and academic excellence.

Bachelor of Laws prizes

Winner, World 2007 Phillip C Jessup International Law Moot (Washington DC).

RG Henderson Memorial Prize (NSW Bar Association) for graduating first in class; Rose Scott Prize for Proficiency at Graduation by a Woman Candidate; The Joye Prize in Law for first placed student (Graduate and Combined Law); ED Roper Memorial Prize for First in Equity and Corporate Law; Ian Joye Prize in Law for the first placed student in law (penultimate year); George and Matilda Harris Scholarship No 1 for most distinguished student entering final year of a combined law degree; Lexis Nexis Prize No 5 for most proficient student in Combined Law IV; Minter Ellison Scholarship for top student commencing fourth year of the Combined Law Degree; Law Society of NSW Prize for placing first in Law, Lawyers and Justice; Lexis Nexis Prize No 3 for most proficient student in Combined Law III; The Margaret Dalrymple Hay Prize for Law, Lawyers and Justice; The Aaron Levine Prize for Criminal Law; Butterworths Prize for most proficient student in Combined Law I.

Other prizes

University of Sydney Honours Scholarship; Janet Elspeth Crawford Prize for Honours results; Dean's List of Meritorious Students; The Public Service Association of NSW John S. D'Arcy Memorial Prize, Government II; Australian Federation of University Women – NSW Prize – for Proficiency in English II; Walter Reid Memorial Book Fund Grant (2003-2007); University of Sydney Continuing Undergraduate Scholarship (2003); E. Trenchard Miller Scholarship for proficiency in the HSC; Boston Consulting Group Undergraduate Scholarship (2006).

 COMMUNITY

Vice-President, Artarmon Public School P&C (2023-present).

Council member, Pymble Ladies' College Council (2019 - present).

Council member, Council of Law Reporting for New South Wales (2018-present).

Editorial: *Bar News* editorial committee (2012-2015); *Cambridge Student Law Review* (editor, 2010/11); *The Sydney University Law Review* (student editor, 2007); *Polemic*, the Sydney University Law Society's journal (2007); *Hermes*, the University of Sydney Union's literary journal (2004); *Honi Soit* (2003).

PUBLICATIONS AND PAPERS

Fiona Roughley, "Respondent foreign States and service requirements: Applications for the recognition and/or enforcement of foreign awards or registration of foreign judgments" – NSW Bar Association CPD, 27 March 2024.

Fiona Roughley and Megan Caristo, 'Secret Ministries and the Constitution: an Implied Requirement of Publication?', (2023) 97 *Australian Law Journal* 1.

Fiona Roughley, "Who's In Charge? An Australian Perspective", Presentation for NY Arbitration Week, November 14-18, 2022

Fiona Roughley, "Recent Cases: Chapter III and the Kable Principle; MZAPC and other developments in judicial review", Paper for the 2022 Constitutional Law Conference (Gilbert+Tobin Centre of Public Law)

Fiona Roughley, 'Evaluating evidence in contested merger proceedings' in Stephen Puttick and Michael Gvozdenovic (eds), *Current Issues in Competition Law* (Federation Press, 2021).

Fiona Roughley, 'The Role of the Solicitor-General: Negotiating Law, Politics and the Public Interest [Book Review] (2017) 24 *Australian Journal of Administrative Law* 205.

Fiona Roughley, 'Ian Hancock's *Tom Hughes QC: a Cab on the Rank*' [Book Review] (2016) 102 *Journal of the Royal Australian Historical Society* 244.

Fiona Roughley, 'Royal Commissions and Contempt of Court: The Effect of Curial Proceedings' (2015) 38 *UNSW Law Journal* 1123.

Fiona Roughley, 'Old Law, New Law: A Second Australian Miscellany' [Book review] *Bar News*, Autumn 2015, 59.

Fiona Roughley and Anya Poukchanski, 'Who said you could say "waiver"? Inadvertent disclosure of privileged communications', *Bar News*, Summer 2014, 22-23.

Fiona Roughley, 'The Development of the Conscience in Equity' in JT Gleeson SC, JA Watson, RCA Higgins and E Peden (eds) *Foundations of Australian Legal History* (Federation Press, 2013).

Fiona Roughley, 'The Byers Lectures 2000 – 2012' [Book review] *Bar News*, Autumn 2013.

Sandy Dawson and Fiona Roughley, 'Suppression and Third Party Access: Part II – The How, When and Where of non-Party Access', *Bar News*, Autumn 2013.

Sandy Dawson and Fiona Roughley, 'Suppression and Third-Party Access: Part 1 – Keeping it Quiet', *Bar News*, Summer 2013.

Fiona Roughley, 'Eugenia by Mark Tedeschi QC' [Book review] *Bar News*, Summer 2013.

Fiona Roughley, 'Section 249D and the activist member: *GetUp!* Told to lie down (for a while)' (2012) 16 *Butterworths Corporation Law Bulletin* 6-8.

Fiona Roughley, 'Surveillance and reasonable expectations of privacy: *US v Jones* 564 US _ (2011)', Recent Developments, *Bar News*, Autumn 2012.

Karinne Coombes and Fiona Roughley, 'Thematic Analysis: Human Rights and the 2010/11 UK Supreme Court', (2011) 7(2) *Cambridge Student Law Review* 26-35.

Emily Gladden and Fiona Roughley, 'Let Them Vote', (2011) 8(1) *The Gates Scholar* 14.

Fiona Roughley, 'Revolution behind bars may come at too high a price', (Op Ed), *The Sydney Morning Herald*, 20 November 2010, p.24.

Fiona Roughley, 'Spatialising experience: Gail Jones' *Black Mirror* and the Contending of Postmodern Space' (2007) 23 *Australian Literary Studies* 58.

Fiona Roughley, 'Textual Legitimacy when thinking global, acting local: The role of international conventions in judicial review of administrative action' (2006) 2 *Polemic* 4.

Participant writer and researcher for ALRC, 'Review of Privacy' (Issues Paper 31) (2006).

SELECT CASES

CLASS ACTIONS

Consumer law; superannuation;
 continuous disclosure;
 insurance; medical devices

Capic v Ford Motor Company of Australia Pty Ltd proceedings (ongoing; acting for the lead Applicant):

- High Court of Australia 2024: appeal and cross-appeal S25/2024 heard 11-12 April 2024 (judgment reserved). Special leave granted: [2024] HCASL 27.
- Full Court of the Federal Court of Australia (liability and quantum): [2023] FCAFC 179.
- Initial trial on common questions and Ms Capic's own claim in the Federal Court of Australia (Perram J): [2021] FCA 715 (primary judgment), [2021] FCA 1320 (common questions) [2021] FCA 1411 (costs).
- Prior decisions on class action practice and procedure: [2020] FCA 486; [2018] FCA 1631; [2018] FCA 982; [2019] FCA 1065; [2019] FCA 1958; 140 ACSR 432; [2020] FCA 884; [2020] FCA 885; [2019] FCA 1065; [2020] FCA 982; [2020] FCA 885; [2020] FCA 884; [2020] FCA 1117; [2018] FCA 771.

Brady v NULIS Nominees (Australia) Limited as trustee for the MLC Super Fund proceedings (ongoing; acting for the Respondent):

- Initial hearing on common questions and the claim of the lead applicant and a sample group member in the Federal Court of Australia (Markovic J, 2023, decision reserved).
- Prior decisions on practice and procedure: [2022] FCA 224; [2021] FCA 999; [2021] FCA 1517.

Lewis v Philips Electronics Australia Ltd trading as Philips Healthcare proceedings (ongoing; acting for the Respondents):

- Practice and procedure: [2023] FCA 1486.

Quirk v Suncorp Portfolio Services Limited (as trustee for the Suncorp Master Trust) & Ors proceedings (for the Third Defendant, a director):

- Initial trial on common questions (May 2022; settled at hearing).
- Practice and procedure: [2022] NSWSC 398.

Parkin v Boral Limited proceedings (for the Respondent):

- Full Court (class closure): [2022] FCAFC 47; 291 FCR 116.
- Other practice and procedure: [2022] FCA 1467; [2021] FCA 350; [2021] FCA 478; [2021] FCA 914; [202] FCA 914.

Asirifi-Otchere v Swann Insurance (Aust) Pty Ltd proceedings (for the Respondent):

- Practice and procedure: [2019] FCA 1500.

Cantor v Audi Australia Pty Ltd proceedings (for the Respondents):

- Practice and procedure (privilege): [2016] FCA 1391.

GENERAL COMMERCIAL LAW

Contracts; financial services;
unconscionable conduct;
corporations and shareholder
rights; equity; real property;
professional services /
negligence

Michael Hill Jeweller (Australia) Pty Ltd v Gispac Pty Ltd: ongoing appeal proceedings to NSWCA concerning contract law dispute.

- Appeal and stay application: pending proceedings
- Interlocutory (stay of return of security): [2024] NSWSC 356

Binqld Finances Pty Ltd (in liq) & Ors v Steven Binetter: ongoing Federal Court proceedings concerning allegations of involvement / knowing assistance in breach of director / fiduciary duties owed to companies.

- Summary judgment of all *Corporations Act* claims: [2024] FCA 361.

Hoho Property Pty Ltd & Ors v Bass Finance No 37 Pty Ltd & Anor:

- First instance: [2023] NSWSC 720; [2023] NSWSC 411; [2023] NSWSC 493; [2022] NSWSC 1062.
- Appellate proceedings: 2024, resolved shortly prior to hearing.

Qantas Airways Limited v L3 Training Solutions Limited – contract law dispute in the Supreme Court of NSW; settled 2023 shortly before hearing.

Seed Partnerships Pty Ltd v L1 Capital Pty Ltd – contract law dispute in the Supreme Court of NSW; settled 2023.

Kearney v Amirbeaggi & Anor (ongoing):

- Practice and procedure: [2022] NSWSC 805; [2020] NSWSC 1035; [2020] NSWSC 853.
- Appellate proceedings: [2022] NSWCA 130.

Enares Pty Limited v Nimble Money Limited:

- First instance: [2021] FCA 1596; [2021] FCA 1616.
- Appellate proceedings: [2022] FCAFC 126.

Energy World Corporation Limited v Standard Chartered Private Equity (Singapore) Pte Ltd [2020] NSWSC 1348; [2021] NSWSC 8.

Beta ACT Pty Ltd as trustee for the Brendas Family Trust v FTI Consulting Pty Ltd [2021] ACTSC 293.

Kossaifi v ACN 111 804 383 Pty Ltd [2020] NSWSC 853; 147 ACSR 143.

Poulos v Commonwealth Bank of Australia proceedings:

- NSW Court of Appeal: [2020] NSWCA 72; [2019] NSWCA 241; [2019] NSWCA 290.
- First instance: *Poulos v Elliott* [2019] NSWSC 423.

New Hope & Ors v Northern Energy Corporation Limited (administrators appointed) & Ors proceedings:

- First instance: [2019] NSWSC 879; [2019] NSWSC 952.
- Intermediate appellate proceedings: [2019] NSWCA 316.
- High Court special leave application: [2020] HCATrans 86.

Targus Australia v Targus Group (UK) Limited & Ors proceedings: [2018] NSWSC 1322; [2018] NSWSC 1171; [2018] NSWSC 1761; [2019] NSWCA 9.

Aurora Funds Management v Bond Street Custodians [2019] NSWSC 304.

LTDC Pty Ltd v Cashflow Finance Australia Pty Lt [2019] NSWSC 150.

Northern Beaches Council v Built Development (Manly) Pty Ltd [2018] NSWCA 193 (appeal); [2018] NSWSC 750 (first instance).

AVID Development Pty Ltd v Defence Housing Australia (2018, NSWSC (Hammerschlag J)), settled during closing submissions).

Hastie Group Ltd (in liq) v Bourne & Ors [2017] NSWSC 709.

Westpac Banking Corporation v Southern Environmental Services [2017] NSWSC 626; [2017] NSWSC 330.

FOREIGN STATES AND FOREIGN LAW

Enforcement of foreign arbitral awards; foreign state immunity; foreign merger law; claims against Australia by foreign state-owned entities

Davis & Bell v Archbishop Peter Comensoli & His Holiness, Pope Francis I in his capacity as the Supreme Pontiff of the Roman Catholic Church and as Representing his predecessor Popes, including Pope Benedict XVI and the Holy See: ongoing, Victorian Supreme Court proceedings concerning the status of the Holy See and Vatican City as foreign States and the immunity of Pope Francis I as Head of State under the *Foreign States Immunities Act 1985* (Cth). Acting for Pope Francis I.

CC/Devas (Mauritius) Ltd & Ors v Republic of India (ongoing; acting for India):

- Appeal (foreign state immunity): appeal pending (hearing listed for May 2024 before the Full Court of the Federal Court of Australia).
- First instance (foreign state immunity): [2023] FCA 1266.
- Practice and procedure: [2023] FCA 1400.

Tethyan Copper Company Pty Ltd v Islamic Republic of Pakistan – application for recognition and enforcement of foreign arbitral award in the Federal Court of Australia (acting for Pakistan) - proceedings settled, 2022.

Naval Group v Commonwealth of Australia – acted for Naval group (wholly owned company of France) over dispute with the Commonwealth for cancellation of a multi-billion dollar submarine contract (settled 2022).

La Mancha Group International B.V. v Commissioner of Taxation [2020] FCA 1799; 112 ATR 660.

REGULATORY PROCEEDINGS AND ROYAL COMMISSIONS

Competition; superannuation; corporations; trade unions

ACCC & Anor v Meta Platforms, Inc (formerly Facebook, Inc.) & Anor (ongoing; acting for Meta):

- Application to strike out the Applicants' pleading: [2024] FCA (judgment reserved, Yates J).
- Stay application: [2023] FCA 1234.
- Non-publication orders: [2022] FCA 1062.

ACCC v HealthEngine Pty Ltd [2020] FCA 1203.

ACCC v Cascade Coal Pty Ltd (No 3) [2018] FCA 1019; 12 ARLR 1.

ACCC v Prysmian Cavi E Sistemi S.R.L. [2017] FCA 851.

APRA v Kelaher & Ors [2019] FCA 1521; 138 ACSR 459.

ASIC v Westpac Banking Corporation [2018] FCA 1733; 132 ACSR 230.

Counsel assisting, Royal Commission into Trade Union Governance and Corruption (2014).

PUBLIC LAW

Administrative law;
constitutional law; judicial
power; parliamentary
procedure; claims by the
Commonwealth on
undertakings as to damages;
health law; statutory
construction; patents

Commonwealth of Australia v Sanofi (formerly Sanofi-Aventis) & Ors (ongoing; acting for the Commonwealth):

- High Court: appeal (S169/2023) pending to the High Court. Special leave granted: [2023] HCATrans 184.
- Full Court of the Federal Court: [2023] FCAFC 97; 411 ALR 315.
- Full Court of the Federal Court (stated case): [2015] FCAFC 172; 237 FCR 483.
- Other decisions: [2017] FCA 382; [2015] FCA 384; 325 ALR 528; [2015] FCA 1457; 352 ALR 146.

Double Bay Aged Care Pty Ltd v Aged Care Quality and Safety Commissioner [2023] AATA 2673.

Novartis Pharmaceuticals Australia Pty Ltd v Minister for Health and Aged Care - urgent proceedings concerning the Pharmaceutical Benefits Scheme:

- Interlocutory application – 2022, resolved at hearing.
- Final hearing – 2022, resolved shortly before hearing.

Health Management Services Pty Ltd v Transport for NSW [2023] NSWSC 291 [2022] NSWSC 1516.

The Children’s Guardian v EQE [2022] NSWSC 871.

Ono Pharmaceuticals Co v Commissioner of Patents proceedings:

- Full Court: [2022] FCAFC 39; 291 FCR 1.
- First instance: [2021] FCA 643; (2021) 165 IPR 1.

Merck Sharp & Dohme Corp v Sandoz Pty Ltd proceedings:

- Full Court: [2022] FCAFC 40; 291 FCR 26.
- First instance: [2021] FCA 947; (2021) 162 IPR 409.

La Mancha Group International B.V. v Commissioner of Taxation [2020] FCA 1799; 112 ATR 660.

Palmer Leisure Coolum Pty Limited v Magistrates Court of Queensland [2020] HCASL 157; [2020] HCASL 156.

NDIA v WRMF [2020] FCAFC 79; 276 FCR 415.

Treasury Wine Estates v Maurice Blackburn & Ors: [2020] FCAFC 226; 282 FCR 95; (No 2) [2021] FCAFC 38; 388 ALR 540.

Otsuka Pharmaceutical Co Ltd v Generic Health Pty Ltd [2019] FCA 230; 140 IPR 109.

James and National Disability Insurance Agency [2019] AATA 136.

NNXF and National Disability Insurance Scheme [2019] AATA 5552.

Chandrasekaran v Western Sydney Local Health Division (No 7) [2019] NSWSC 567.

ASIC v Westpac Banking Corporation [2018] FCA 1733.

H Lundbeck A/S v Commissioner of Patents [2017] FCA 56; 249 FCR 41.

Walker v Secretary, Department of Health and Ageing [2016] FCA 233; 244 FCR 113.

Sanofi-Aventis v Apotex Pty Ltd [2015] HCATrans 300.

AstraZeneca AB v Apotex Pty Ltd [2015] HCA 30; 257 CLR 356.

Maloney v The Queen [2013] HCA 28; 252 CLR 168.

Rinehart v Welker [2012] HCATrans 57; [2012] HCATrans 7.

**COMPULSORY LICENCES FOR
INTELLECTUAL PROPERTY**

In the matter of FreeTV Australia Ltd and Phonographic Performance Company of Australia Ltd – ongoing proceedings (CT, No 2 of 2022).

In the matter of Phonographic Performance Company of Australia Limited:

- Full Court: [2019] FCAFC 95; 270 FCR 645; [2019] FCAFC 192.
- Copyright Tribunal: [2017] ACopyT 1; 125 IPR 1.