



DANIELLE FORRESTER

Barrister

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AREAS OF PRACTICE Competition and Regulatory, Commercial, Public and Administrative, International

PROFESSIONAL EXPERIENCE

Barrister, New South Wales Bar (Since 2014)

Senior Lawyer (2013 – 2014), Dispute Resolution, Australian Government Solicitor (AGS)

Key matters included *Australian Electoral Commission V Johnston* (2014) 251 CLR 463 (**WA Senate Election Case**)

Counsel Assisting the Solicitor-General of the Commonwealth (2011 – 2013)

Working directly with Stephen Gageler SC and then Justin Gleeson SC in the preparation of advice to government at the highest levels and in the conduct of litigation on behalf of the Commonwealth. Appearing as junior counsel in various High Court proceedings. Assisting the Solicitor-General in preparation of significant matters in the High Court and international courts, including *JT International SA v Commonwealth of Australia (Plain Packaging Case)* (2012) 250 CLR 1 and forming part of the Australian delegation to the International Court of Justice in June 2013 in *Australia v Japan; New Zealand intervening (Whaling in the Antarctic Case)*.

Senior Lawyer (2010-2011), Constitutional Litigation Unit, AGS (Canberra)

Senior Legal Officer (2009 – 2010), Office of Constitutional Law, Attorney-General's Department (Canberra)

Lawyer and Senior Lawyer (2005 – 2009), AGS (Adelaide)

EDUCATION

- 2011 **Australian National University**, Master of Laws, 2011
- 2004 **University of Adelaide**, Honours Degree of Bachelor of Laws
- 2001 **University of Adelaide**, Bachelor of Arts (International Studies)

Competition and regulatory proceedings

Epic Games, Inc & Anor v Apple Inc & Anor (NSD1236/2020) – ongoing Federal Court proceedings
Led by N Young QC, Ruth Higgins SC and M Costello for the Applicants
Misuse of market power; unconscionable conduct

Australian Competition and Consumer Commission v Quantum Housing Group Pty Ltd [2021] FCAFC 40
Led by N Sharp SC for the Applicant (instructed by Corrs Chambers Westgarth)
Unconscionable conduct; Scope of s 21 of the Australian Consumer Law (**ACL**) in light of the High Court's decision in *Australian Securities and Investments Commission v Kobelt* [2019] HCA 18; 267 CLR 1

<i>Australian Competition & Consumer Commission v Kimberly-Clark Australia Pty Ltd (No 2)</i> [2021] FCA 102	Led by S White SC (instructed by AGS) False or misleading representations (“Made in Australia”); Penalty proceedings
<i>Australian Competition and Consumer Commission v Employsure Pty Ltd (No 2)</i> [2021] FCA 1488	Led by N Owens SC (instructed by Corrs Chambers Westgarth) Pecuniary penalties
<i>Australian Competition and Consumer Commission v Employsure Pty Ltd (No 2)</i> [2021] FCAFC 142	Led by N Owens SC (instructed by Corrs Chambers Westgarth) Appeal; Pecuniary penalties; Consumer law; false or misleading representations; Google advertising
Appearing for a commercial party in an arbitration under Part 23 of the <i>National Gas Rules</i> in 2020-2021	Led by A McClelland SC (instructed by DLA Piper) National Gas Rules; Arbitration conducted by J Gleeson SC
<i>Australian Competition and Consumer Commission v Pacific National Pty Limited</i> [2020] FCAFC 77; (2020) 277 FCR 49	Led by C Moore SC, D Roche and A d’Arville (instructed by Ashurst) Appeal; whether conduct likely to have the effect of substantially lessening competition in a market; meaning of “likely”; nature of undertaking proffered
<i>Australian Prudential Regulation Authority v IOOF Investment Management Ltd (ACN 006 695 021) & Ors</i> [2019] FCA 1521; 138 ACSR 459	Led by N Hutley SC, N Owens SC and J Redwood and with B Holmes for the First and other Respondents (instructed by KWM) Acting for IOOF in regulatory proceedings concerning disqualification and related relief in relation to alleged breaches of the <i>Superannuation Industry (Supervision) Act 1993</i> (Cth)
<i>Australian Competition and Consumer Commission v Pental Limited</i> [2018] FCA 491	Led by S White SC (instructed by AGS) Consumer law; Contested penalty proceedings
<i>Applications by Public Interest Advocacy Service Ltd and Ausgrid Distribution</i> [2016] ACompT 1	Led by S Lloyd SC, M O’Byrne QC, S Balafoutis, A Mitchelmore, and with J Arnott, T Phillips, and F St John for the Australian Energy Regulator (instructed by Corrs Chambers Westgarth) National Electricity Law; Review of distribution determination by AER
<i>Commonwealth of Australia v Director, Fair Work Building Industry Inspectorate & Ors</i> (2015) 258 CLR 482	Led by C Moore SC for the amici curiae (instructed by AGS) Civil penalty proceedings; Application of <i>Barbaro v The Queen</i> (2014) 253 CLR 58
<i>Application for Authorisation of Acquisition of Macquarie Generation by AGL Energy Limited</i> [2014] ACompT 1	Led by C Scerri QC, N De Young, C Exell (instructed by DLA Piper) Application to the Australian Competition Tribunal for authorisation under s 95AT of the <i>Competition and Consumer Act 2010</i> (Cth) for a proposed acquisition

Commercial

Australian Securities and Investments Commission v BHF Solutions Pty Ltd [2022] FCAFC 108
 Led by R McHugh SC for the First Respondent (instructed by Piper Alderman)
 Scope of the National Credit Code and exemptions for continuing credit contracts

Epic Games, Inc v Apple Inc [2021] FCAFC 122
 Led by N Young QC, N De Young QC and Professor C Brown for the Applicants (instructed by Clifford Chance)
 Private international law; application for permanent stay of proceedings alleging contraventions of Pt IV of the *Competition and Consumer Act 2010* (Cth) Pt IV and s 21 of the Australian Consumer Law

D H Flinders Pty Ltd v Australian Financial Complaints Authority Limited [2020] NSWSC 1690
 Led by D Sulan SC for the Plaintiff (instructed by Piper Alderman)
 Financial services; scope of the external dispute resolution scheme administered by AFCA, and whether AFCA had authority, jurisdiction or power to determine the complaints and/or whether AFCA had dealt with the complaints in a procedurally fair and impartial manner

Rinehart v Hancock Prospecting Pty Ltd [2019] HCA 13; (2019) 93 ALJR 582 (written submissions on behalf of ACICA as amicus)
 Led by J Gleeson SC and J Redwood for the *amicus curiae* (instructed by Ashurst)
 Interpretation and scope of arbitration agreements

BHP Coal Pty Ltd & Ors v Deputy Premier, Treasurer and Minister for Aboriginal and Torres Strait Islander Partnerships (BS11313/15, BS2371/16) – settled proceedings in the Supreme Court of Queensland
 Led by J Sheahan QC, T Bradley QC and S Cooper for the Applicant (instructed by Herbert Smith Freehills)

Chow v Chow [2016] NSWSC 908
 Led by P Blackburn-Hart SC for the Plaintiffs (instructed by Arnold Bloch Leibler)
 Format of estate accounts for the purpose of passing by a registrar

In the matter of JGS Investment Holdings Pty Ltd [2014] NSWSC 1532
 Unled for the Plaintiff (instructed by Clayton Utz)
 Pleading amendments; joinder

Public and administrative law

Fairbairn v Radecki [2022] HCA 18
 Led by J Gleeson SC for the Respondent
 Statutory construction and legislative history of provisions supported by referrals of State legislative power; Family law

Copyright Agency Limited v Isentia Pty Limited & Ors (NSD1212/2021) – reserved
 Led by Cameron Moore SC and L Thomas for the First Respondent (instructed by Clayton Utz)
 Terms of licences; Judicial review of a decision of the Australian Copyright Tribunal

<i>Amir ats Director of Professional Services Review</i> [2022] FCAFC 44	Led by G Kennett SC for the Respondent (instructed by Maddocks) Appeal; Judicial review; Point in time at which an administrative “decision” is made
<i>Australian Competition and Consumer Commission & Commonwealth v Phoenix Institute of Australia Pty Ltd (subject to DOCA) and Anor</i> [2021] FCA 956	Led by N Sharp SC and Robert White for the Applicant (instructed by AGS) Acting for the ACCC in proceedings against registered training organisations involving allegations of unconscionable conduct in respect of the VET FEE-HELP scheme
<i>R v Collaery (No 7)</i> [2020] ACTSC 165; 283 A Crim R 524, 354 FLR 7	Led by J Kirk SC, A Mitchelmore SC and T Begbie QC for the Attorney-General of the Commonwealth (instructed by AGS) National security; application for orders prohibiting disclosure of certain information; nature of task under s 31(7) and (8) of <i>National Security Information (Criminal and Civil Proceedings) Act 2004</i> (Cth)
<i>Hocking v Director-General of the National Archives of Australia</i> (“Palace Letters” case) [2020] HCA 19; 94 ALJR 569, 379 ALR 395	Led by S Donaghue SC (Commonwealth Solicitor-General), T Howe QC and C Lenehan SC (instructed by AGS) Special leave granted from <i>Hocking v Director-General of the National Archives of Australia</i> (2019) 264 FCR 1 Constitutional law – nature of records created by the Governor-General; “Commonwealth records”
<i>Costello v Racing Appeals Tribunal</i> [2019] NSWSC 1808	Led by S Dawson SC (instructed by Racing NSW) Successfully defended a warning off decision in judicial review proceedings
<i>Independent Liquor and Gaming Authority v Auld</i> [2019] NSWCA 88	Led by N Sharp SC for the Applicant (instructed by NSW Crown Solicitor’s Office) Liquor licensing; removal application; statutory construction
<i>Brett Cattle v Minister for Agriculture, Fisheries and Forestry & Anor</i> [2020] FCA 732; 274 FCR 337, 383 ALR 58	Led by N Williams SC and M O’Meara SC (instructed by AGS) Misfeasance in public office – damages
<i>Construction Industry Training Board v Transfield Services</i> [2017] SASFC 103; 128 SASR 475, 323 FLR 166	Led by C Horan QC for the Attorney-General (Cth) intervening (instructed by AGS) Section 52(i) of the Constitution, power over places acquired for public purposes
<i>Ehrenfeld and Australian Securities and Investments Commission</i> [2021] AATA 1406	Led by D Healey for the Respondent (instructed by ASIC) Application for dismissal under s 42A(5) of the <i>Administrative Appeals Tribunal Act 1975</i> (Cth) granted
<i>Steel v Medical Council of New South Wales</i> [2020] NSWCATOD 77	Led by K Richardson SC for the Respondent (instructed by Health Professional Councils Authority) Appeal on points of law; suspension of practitioner’s registration
<i>Holt v Dental Council of New South Wales</i> [2020] NSWCATOD 62	Led by A Horvath for the Respondent (instructed by Health Professional Councils Authority)

	Appeal on points of law; suspension of practitioner's registration
<i>Ehrenfeld and Australian Securities and Investments Commission</i> [2017] AATA 883	Led by D Healey for the Respondent (instructed by ASIC) Merits review – decision to disqualify from managing corporations – recusal application
<i>Assistant Commissioner Michael James Condon v Pompano Pty Ltd</i> (2013) 252 CLR 38	Appeared as junior when counsel assisting the Solicitor-General Constitutional law; Chapter III
<i>Director of Public Prosecutions v Keating</i> (2013) 248 CLR 459	Appeared as junior to the Commonwealth Solicitor-General when counsel assisting the Solicitor-General Constitutional law; Chapter III
<i>Stanford v Stanford</i> (2012) 247 CLR 108	Appeared as junior to the Commonwealth Solicitor-General when counsel assisting the Solicitor-General Constitutional law; family law
<i>Lee v Commonwealth of Australia</i> [2012] HCA 62	Appeared as junior to Mr C Lenehan SC when counsel assisting the Solicitor-General

Public and private international law

International trade law

Chair of the Expert Advisory Committee on Working Group III (Investor-State Dispute Settlement Reform), UNCITRAL National Coordination Committee for Australia (**UNCCA**)

Member of the ACICA Legislative Committee

Private international law: Appeared as junior to N Young QC, N De Young QC and Professor C Brown for the Applicants (instructed by Clifford Chance) in an appeal before the Full Court of the Federal Court of Australia in *Epic Games, Inc v Apple Inc* [2021] FCAFC 122 (and in the proceedings below), which concerned questions of choice of law and choice of forum.

ISDS: Providing advice in 2021, with Justin Gleeson SC, in relation to potential investor-state dispute settlement (**ISDS**) proceedings, including jurisdictional objections (instructed by Norton Rose Fulbright).

ISDS: Advising a large international client in 2019, with Justin Gleeson SC, in relation to possible avenues of challenge concerning government decision-making, including in relation to ISDS provisions (instructed by Jones Day).

ISDS: Advising a multinational client in 2018, with Justin Gleeson SC, in relation to various matters of international trade law, including in relation to ISDS (instructed by Corrs Chambers Westgarth).

International Law (ICJ proceedings): Part of the Australian delegation to the International Court of Justice in June 2013 in *Australia v Japan; New Zealand intervening (Whaling in the Antarctic Case)*.

International arbitration: Appeared as junior to the Commonwealth Solicitor-General when counsel assisting the Solicitor-General in *TCL Air Conditioner Co Ltd v The Judges of the Federal Court of Australia* (2013) 251 CLR 533, which concerned the validity of s 16(1) of the *International Arbitration Act 1974* (Cth) in giving force to the UNCITRAL Model Law on International Commercial Arbitration.

Unled appearances (selected cases)

<i>CAP21 v Administrative Appeals Tribunal</i> [2022] FCA 729	Unled for the Applicant (instructed by Maddocks), and appearing with N Maddocks Whether the Administrative Appeals Tribunal failed to afford procedural fairness to an applicant seeking a non-publication order pursuant to s 35 of the <i>Administrative Appeals Tribunal Act 1975</i> (Cth)
<i>CAP21 v Administrative Appeals Tribunal</i> [2021] FCA 1146	Unled for the Applicant (instructed by Maddocks) Interlocutory decision; access to documents
<i>Fiddletown Investments Limited v Department of Premier and Cabinet; Fiddletown Investments Limited v NSW Treasury</i> [2021] NSWCATAD 17	Unled for the Applicant (instructed by Clayton Utz) Applications under the <i>Government Information (Public Access) Act 2009</i> (NSW) – whether overriding public interest against disclosure
<i>Various mediations conducted by the New South Wales Civil and Administrative Tribunal (NCAT) in 2020 and 2021</i>	Unled for the NSW Government Respondent (instructed by McCullough Robertson)
<i>Segal v Medical Council of New South Wales (No 2)</i> [2020] NSWCATOD 114	Unled for the Respondent (instructed by Health Professional Councils Authority) Disciplinary and professional registration; Appeal on a point of law; suspension of practitioner’s registration in light of complaints
<i>Segal v Medical Council of New South Wales</i> [2020] NSWCATOD 113	Unled for the Respondent (instructed by Health Professional Councils Authority) Disciplinary and professional registration; Imposition of conditions on practitioner’s registration
<i>Segal v Medical Council of New South Wales</i> [2020] NSWCATOD 86	Unled for the Respondent (instructed by Health Professional Councils Authority) Disciplinary and professional registration; Successfully resisting an application for a stay of suspension pending appeal
<i>Turner and Harness Racing New South Wales</i> (Racing Appeals Tribunal; 25 November 2020)	Unled for the Respondent (instructed by Cockburn & Co Solicitors) Racing rules; Successfully defended the decision under review maintaining the disqualification period
<i>Baverstock and Harness Racing New South Wales</i> (Racing Appeals Tribunal; 13 November 2019)	Unled for the Respondent (instructed by Cockburn & Co Solicitors) Racing rules; Successfully defended the decision under review as to breach
<i>Ibrahim v Minister for Home Affairs</i> [2019] FCAFC 89; 270 FCR 12	Unled before the Full Court for the Respondent (instructed by AGS) Judicial review; Cancellation of partner visa on character grounds; Jurisdictional error
<i>Independent Liquor and Gaming Authority v Auld</i> [2018] NSWCATAP 68	Unled for the Respondent (instructed by NSW Crown Solicitor’s Office) Referral application

<i>Carter and Tax Practitioners Board (Taxation)</i> [2017] AATA 528; (2017) 2017 ATC 10-454	Unled for the Respondent (instructed by the Tax Practitioners Board) Merits review; Decision to terminate tax agent registration; Code of Professional Conduct
<i>Oliver and Comcare (Compensation)</i> [2017] AATA 252	Unled for the Respondent (instructed by Sparke Helmore) Commonwealth workers' compensation; Ongoing entitlement to treatment
<i>CLS15 v Minister for Immigration & Anor</i> [2016] FCCA 2164	Unled for the Respondents (instructed by AGS) Judicial review; Protection visa
<i>Yeap v Minister for Immigration and Border Protection & Anor</i> [2016] FCCA 1173	Unled for the Respondents (instructed by AGS) Judicial review; Employer nomination visa decision
<i>Wang & Ors v Minister for Immigration</i> [2016] FCCA 1033	Unled for the Applicant (instructed by W & H Lawyers) Judicial review; Visa cancellation decision; Extension of time
<i>Paxton & Child Support Registrar and Anor</i> [2016] FamCAFC 116	Unled before the Full Court of the Family Court for the First Respondent (instructed by AGS) Leave to appeal; Extension of time; SSAT decision endorsing determination to register overseas maintenance liability under <i>Child Support (Registration and Collection) Act 1988</i> (Cth)