



**DR FIONA
ROUGHLEY**
Barrister

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OVERVIEW OF PRACTICE

I was admitted as a lawyer in 2008 and called to the New South Wales Bar in October 2011.

My practice specialises in commercial and public law litigation, particularly large or complex cases. I act in disputes between private parties, in class actions, as well as for and against emanations of Australian government. I have also acted for a number of foreign States. I am known for my ability to grasp complex questions of law quickly, to think deeply, and for the quality of my advocacy, written work and strategic judgment through the life cycle of a case.

I am commonly briefed in cases raising difficult or novel questions of law, many of which run for several years and to appellate level. I have a large unled practice, and have acted unled against Senior Counsel in a number of cases, including on appeal. I am regularly briefed with a junior, including by large Australian and multinational entities.

My wider service activities include leadership/Board roles in several legal and educational organisations, significant publication outputs, and formal and informal mentoring roles. I completed a PhD whilst practising full time as a barrister (conferred December 2022).

PROFESSIONAL

NSW Bar (since 2011). Ranked in:

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

Doyle's Guide to leading junior counsel in commercial litigation and dispute resolution (2015 - 2023); insolvency and restructuring (2018 - 2023), competition (2018-2019, 2021-2022).

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

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, Australian Institute of Company Directors, Company Directors Course (2018).

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

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

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 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).

RECENT CASES – UNLED

<i>Seed Partnerships Pty Ltd v L1 Capital Pty Ltd</i>	Supreme Court of NSW, Ball J, brief reasons provided (June 2023)	Interlocutory – discovery in contracts case
<i>Hoho Property Pty Ltd & Ors v Bass Finance No 37 Pty Ltd & Anor</i>	Final hearing 5-14-December 2022 (Rees J, reserved) [2023] NSWSC 720 [2023] NSWSC 493 [2022] NSWSC 1062	Final hearing – unconscionable conduct; financial broker services
<i>Double Bay Aged Care Pty Ltd v Aged Care Quality and Safety Commissioner</i>	AAT, February 2023, decision reserved (DP Rayment)	Final hearing – construction and application of statutory provisions pertaining to approved providers of Aged Care. <i>Leading E O’Connor Jardine</i>
<i>Ford Motor Company of Australia Pty Ltd v Capic</i>	Federal Court of Australia, Yates J, brief reasons provided (February 2023)	Interlocutory – suppression order. <i>Leading P Strickland.</i>
<i>Health Management Services Pty Ltd v Transport for NSW</i>	[2023] NSWSC 291 [2022] NSWSC 1516	Interlocutory – application for director to represent the company
<i>CC/Devas (Mauritius) Ltd & Ors v Republic of India</i>	Federal Court of Australia, Stewart J, brief reasons provided (February 2023)	Interlocutory – application for advance ruling on evidence
<i>Novartis Pharmaceuticals Australia Pty Ltd v Minister for Health and Aged Care</i>	Urgent interlocutory relief (resolved shortly before hearing), 20 September 2022 (Thawley J) Final hearing (resolved shortly before hearing), 26 September 2022 (Perry J)	Statutory construction - Pharmaceutical Benefits Scheme
<i>The Children’s Guardian v EQE</i>	[2022] NSWSC 871	Appeal to Supreme Court of NSW on a question of law - <i>Leading M Pulsford</i>
<i>Kearney v Yates Beaggi & Amirbeaggi</i>	[2022] NSWCA 130 [2022] NSWSC 130 [2022] NSWSC 805	Solicitor negligence - <i>Leading M Hamdan in proceedings</i>
<i>Quirk v Suncorp Portfolio Services Limited (as trustee for the Suncorp Master Trust) & Ors</i>	Class action listed for 5 weeks, settled on first day of final hearing (May 2022)	Class action – superannuation - <i>Leading A Hammond</i>

<i>Enares Pty Limited v Nimble Money Limited</i>	[2022] FCAFC 126 [2021] FCA 1596 [2021] FCA 1616	Section 247A <i>Corporations Act 2001</i> (Cth) application by shareholder for access to books and records – final hearing and appeal - <i>Leading T Rogan</i>
<i>Merck Sharp & Dohme v Sandoz Pty Ltd</i>	[2021] FCA 947; (2021) 162 IPR 409	Final hearing - Statutory construction – extension of term regime
<i>Qantas Airways Limited v L3 Training Solutions Limited</i>	2021, Ball J	Interlocutory - discovery
<i>Ono Pharmaceuticals Co v Commissioner of Patents</i>	[2021] FCA 643; (2021) 165 IPR 1	Final hearing - judicial review – statutory construction
<i>Treasury Wine Estates Limited v Maurice Blackburn Pty Ltd (No 2)</i>	[2021] FCAFC 38	Costs
<i>Energy World Corporation Limited v Standard Chartered Private Equity (Singapore) Pte Ltd</i>	[2020] NSWSC 1348	Final hearing – contract – <i>Leading M Pulsford</i>
<i>Gillings v ANZ</i>	2020, settled shortly before final hearing	Final hearing - financial advice; insurance products
<i>Energy World Corporation Limited v Standard Chartered Private Equity (Singapore) Pte Ltd</i>	[2020] NSWSC 1348	Interlocutory – redactions
<i>Kearney v Amirbeaggi & Anor</i>	[2020] NSWSC 1035	Interlocutory - abuse of process
<i>Poulos v Commonwealth Bank of Australia</i>	[2019] NSWCA 241 [2019] NSWCA 290	Appeal - Leave to appeal summary dismissal
<i>Capic v Ford Motor Company of Australia</i>	[2019] FCA 1065	Interlocutory - Costs forthwith
<i>James and National Disability Insurance Agency</i>	[2019] AATA 136	Final hearing - access to NDIS
<i>New Hope Corporation Ltd v Northern Energy Corporation Ltd (administrators appointed) (No 2)</i>	[2019] NSWSC 952	Costs and form of declaratory relief – <i>Leading G W Keesing</i>
<i>NNXF and National Disability Insurance Scheme</i>	[2019] AATA 5552	Final hearing - statutory construction – National Disability Insurance Scheme – Tribunal jurisdiction
<i>Chandrasekaran v Western Sydney Local Health Division (No 7)</i>	[2019] NSWSC 567	Interlocutory - strike out

<i>Poulos v Elliott</i>	[2019] NSWSC 423	Summary dismissal and indemnity costs – <i>Leading J Entwistle</i>
<i>Aurora Funds Management v Bond Street Custodians & Ors</i>	[2019] NSWSC 304	Summary dismissal and indemnity costs
<i>LTDC Pty Ltd v Cashflow Finance Australia Pty Ltd</i>	[2019] NSWSC 150	Final hearing - real property priorities dispute between lenders
<i>Targus Australia v Targus Group (UK) Limited & Ors</i>	[2018] NSWSC 1322	Interlocutory – injunctions – supply of goods; unconscionable conduct
<i>Targus Group (UK) v Targus Group</i>	[2018] NSWSC 1171	Interlocutory – shareholder dispute
<i>AVID Development Pty Ltd v Defence Housing Australia</i>	2018 NSWSC (Hammerschlag J), settled during closing submissions	Final hearing – contract construction
<i>Westpac Banking Corporation v Southern Environmental Services</i>	[2017] NSWSC 626	Interlocutory – security for costs
<i>Hastie Group Ltd (in liq) v Bourne & Ors</i>	[2017] NSWSC 709	Interlocutory – pleading amendment
<i>Apotex Pty Ltd v AstraZenecaAB</i>	2017 FCA, Jagot J	Interlocutory - discovery
<i>Westpac Banking Corporation v Southern Environmental Services</i>	[2017] NSWSC 330	Interlocutory – contested production
<i>Liquidators of Steel Building Systems Pty Ltd (in liq)</i>	2017 NSWSC	Liquidators’ examination
<i>CML Holdings v Glad Security Pty Ltd</i>	2017 District Court (settled after 3 days)	Final hearing – factoring and contract law
<i>Cape Byron Power I Pty Ltd v Tenova SEMF Pty Limited</i>	2017 District Court	Interlocutory – pleading amendment
<i>CML Holdings Pty Ltd v CBP Contractors Pty Ltd</i>	2017 Local Court	Final hearing – construction - contract

RECENT CASES – LED BY SENIOR COUNSEL

<i>Commonwealth v Sanofi</i>	[2023] FCAFC 97	Appeal – undertaking as to damages – <i>Led by JT Gleeson SC</i>
<i>Ford Motor Company of Australia Pty Ltd v Capic</i>	Full Federal Court, 2023, decision reserved	Appeal – liability and damages in class action proceedings – <i>Led by JT Gleeson SC</i> and with P Strickland

<i>ACCC & Anor v Meta Platforms, Inc (formerly Facebook, Inc.) & Anor</i>	[2022] FCA 1092 (2022, Cheeseman J, decision reserved)	Misleading and deceptive conduct proceedings. Interlocutory proceedings for NPO orders and stay of proceedings – <i>Led by K Stern SC and with J Roy and K Sharma</i>
<i>Commissioner of Patents v Ono Pharmaceuticals Co, Ltd</i>	[2022] FCAFC 39	Statutory construction, <i>Patents Act</i> – <i>Led by CA Moore SC</i>
<i>Merck Sharp & Dohme Corp v Sandoz Pty Ltd</i>	[2022] FCAFC 40	Statutory construction, <i>Patents Act</i> – <i>Led by CA Moore SC</i>
<i>CC/Devas (Mauritius) Ltd & Ors v The Republic of India</i>	Ongoing, Federal Court of Australia (Stewart J)	Foreign State immunity; recognition and enforcement of foreign arbitral award – <i>Led by JT Gleeson SC</i>
<i>Brady v NULIS Nominees (Australia) Limited as trustee for the MLC Super Fund</i>	[2022] FCA 224 [2021] FCA 999 [2021] FCA 1517	Class action – superannuation – <i>Led by D Thomas SC and with C Winnett</i>
<i>Parkin v Boral Limited; CJMcG Pty Ltd atf the CJMcG Superannuation Fund v Boral Limited (No 2)</i>	[2022] FCAFC 47 [2022] FCA 1467 [2021] FCA 478 [2021] FCA 914]	Class action – continuous disclosure obligations – various interlocutory hearings - <i>Led by CA Moore SC and with G Keesing</i>
<i>Tethyan Copper Company Pty Ltd v Islamic Republic of Pakistan</i>	Federal Court of Australia, Stewart J (proceedings settled, December 2022)	Foreign State immunity; recognition and enforcement of foreign arbitral award – <i>Led by JT Gleeson SC</i>
<i>Capic v Ford Motor Company of Australia</i>	[2021] FCA 715 (primary judgment) [2021] FCA 1320 (common questions) [2021] FCA 1411 (costs) [2020] FCA 486 (COVID adjournment refused) [2018] FCA 1631 [2018] FCA 982 [2019] FCA 1065 [2019] FCA 1958; 140 ACSR 432 [2020] FCA 884 [2020] FCA 885	Class action final hearing (6 weeks) – defective goods – <i>Led by I Pike SC and with P Strickland</i>
<i>La Mancha Group International B.V. v Commissioner of Taxation</i>	[2020] FCA 1799	Final hearing – construction and application of Cth tax acts; choice of

law; foreign mergers – *Led by JT Gleeson SC*

<i>Treasury Wine Estates v Maurice Blackburn & Ors</i>	[2020] FCAFC 226	Appeal – <i>Hearne v Street</i> obligations – <i>Led by J Sheahan QC; with M Caristo</i>
<i>Wiggins Island Coal Export Terminal v New Hope</i>	[2020] HCATrans 86	Contract – <i>Led by NC Hutley SC</i>
<i>Kossaiji v Amribeaggi</i>	[2020] NSWSC 853	Professional negligence – <i>Led by I Pike SC</i>
<i>Asirifi-Otchere v Swann Insurance (Aust) Pty Ltd</i>	Settled 2020, shortly before hearing	Insurance; consumer class action alleging misleading and deceptive conduct – <i>Led by JK Kirk SC; with P Holmes</i>
<i>NDIA v WRMF</i>	[2020] FCAFC 79	Appeal – NDIS Act – judicial review – <i>Led by TM Howe QC</i>
<i>ACCC v HealthEngine Pty Ltd</i>	[2020] FCA 1203	Penalty hearing – <i>Led by NJ Owens SC</i>
<i>Capic v Ford Motor Company of Australia</i>	[2020] FCA 982; [2020] FCA 885; [2020] FCA 884; [2020] FCA 1117	Various interlocutory matters – suppression; adjournment; common questions; late evidence – <i>Led by I Pike SC</i>
<i>Palmer Leisure Coolum Pty Limited v Magistrates Court of Queensland</i>	[2020] HCASL 157; [2020] HCASL 156	Abuse of process / procedural fairness – <i>Led by T Begbie</i>
<i>Asirifi-Otchere v Swann Insurance (Aust) Pty Ltd</i>	[2019] FCA 1500	Common fund order – <i>Led by JK Kirk SC</i>
<i>APRA v Kelaher & Ors</i>	[2019] FCA 1521	Superannuation – duties of superannuation entity licensees and their directors – <i>Led by R Dick SC, and with J Entwisle</i>
<i>Wiggins Island Coal Export Terminal Pty Ltd v New Hope Corporation Ltd</i>	[2019] NSWCA 316	Contract – <i>Led by NC Hutley SC</i>
<i>New Hope & Ors v Northern Energy Corporation Limited (administrators appointed) & Ors</i>	[2019] NSWSC 879	Contract construction – <i>Led by NC Hutley SC (for this part of case); JC Giles with G Keesing also appearing for same clients in respect of rectification</i>
<i>In the matter of Phonographic Performance Company of Australia Limited</i>	[2019] FCAFC 95	Judicial review of decision of Copyright Tribunal – <i>Led by C Dimitriadis SC and S Free</i>

<i>Otsuka Pharmaceutical Co Ltd v Generic Health Pty Ltd</i>	[2019] FCA 230	Interlocutory – pleadings – <i>Led by PJ Brereton SC and P Knowles</i>
<i>ASIC v Westpac Banking Corporation</i>	[2018] FCA 1733	Proposed declaration and penalty by consent – <i>appeared as amicus curiae with JT Gleeson SC</i>
<i>Capic v Ford Motor Company (No 3)</i>	[2018] FCA 771	Interlocutory – group member communications; pleadings – <i>Led by I Pike SC</i>
<i>Northern Beaches Council v Built Development (Manly) Pty Ltd</i>	[2018] NSWCA 193	Interlocutory – strike out – <i>Led by C H Withers</i>
<i>Built Development (Manly) Pty Ltd v Northern Beaches Council</i>	[2018] NSWSC 750	
<i>ACCC v Cascade Coal Pty Ltd (No 3)</i>	[2018] FCA 1019	Final hearing – cartel conduct – <i>Led by CRC Newlinds SC</i>
<i>Commonwealth of Australia v Sanofi</i>	[2017] FCA 382	Interlocutory – unenforceable terms of settlement deed – <i>Led by T M Howe QC</i>
<i>H Lundbeck A/S v Commissioner of Patents</i>	[2017] FCA 56	Judicial review - <i>Led by C Dimitriadis SC and N Murray</i>
<i>ACCC v Prysmian Cavi E Sistemi S.R.L.</i>	[2017] FCA 851	Penalty hearing – <i>Led by CA Moore SC</i>

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