



**MEGAN CARISTO**

Barrister

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**ADMISSIONS**

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- 2020** Barrister, New South Wales Bar
- 2011** Solicitor, Supreme Court of New South Wales and High Court of Australia

**EDUCATION**

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- 2014 - 2015** **Master of Laws, Columbia Law School, New York**  
James Kent Scholar (highest academic honours); Lionel Murphy Foundation Scholarship to undertake LLM; Chamberlain Fellow in Legislation – scholarship to undertake LLM awarded by Columbia Law School
- 2003 - 2010** **Bachelor of Laws (Hons I), University of Sydney**  
Nancy Gordon Smith Prize (awarded to top five students at graduation) (2010); University of Sydney Academic Merit Prize (2010); International Exchange Scholarship (2008); Walter Reid Memorial Prize (2007); George and Matilda Harris Scholarship No IIB for Third Year of Combined Law and Lexis Nexis Book Prize No 3 for Most Proficient Student in Combined Law III (2005); Andrew M Clayton Memorial Prize – First Place in Federal Constitutional Law and Law, Lawyers and Justice (2005); Law Society of NSW Prize and Margaret Dalrymple Hay Prize for First Place in Law, Lawyers and Justice (2005)
- Exchange to **Cornell University**, New York (2008): Prize for First Place in the Civil Law Tradition; Prize for First Place in Capital Punishment Law
- 2003 - 2006** **Bachelor of Arts (University Medal and Hons I), University of Sydney**  
Dean of Arts' List of Academic Excellence (2005); Leonie Hayne Prize for First Place in Junior Ancient History (2003); Scholarship for Outstanding Achievement in the HSC (UAI 100, first place in the State in Ancient History and Economics)

## PROFESSIONAL EXPERIENCE

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- Since 2020**     **Barrister**
- 2017 - 2019**     **NSW Crown Solicitor's Office**, Senior Solicitor, Constitutional and Administrative Law
- 2017**             **Clayton Utz**, Litigation, Senior Associate
- 2016**             **Counsel Assisting the Commonwealth Solicitor General, Justin Gleeson SC**
- 2011 - 2015**     **Australian Government Solicitor**, Lawyer and Senior Lawyer
- 2011**             **Legal Aid Commission (NSW)**, Lawyer
- 2009**             **Her Excellency the Honourable Margaret Beazley AC KC**, NSW Court of Appeal, Tipstaff/Researcher
- 2009 - 2019**     **Thomson Reuters**, Reporter for the Australian Criminal Reports, the Administrative Appeals Reports and Author of *Laws of Australia: Privacy*
- Lecturing*
- 2018 - 2022**     **University of Sydney**, Constitutional Law, Administrative Law and Public Law
- 2020**             **University of NSW**, Administrative Law
- 2018**             **University of Technology Sydney**, Foundations of Law and Constitutional Law
- 2012, 2015**     **Australian National University**, Constitutional Law (Tutor)

## RECENT & CURRENT MATTERS

### Commercial law

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#### High Court

*Commonwealth of Australia v Sanofi (formerly Sanofi-Aventis) & Ors* (High Court, S90/2023, ongoing) – special leave application from the decision of the Full Court of the Federal Court in *Commonwealth of Australia v Sanofi (formerly Sanofi-Aventis)* [2023] FCAFC 97 in which the Commonwealth seeks \$325 million in damages on undertakings given by the respondents on the grant of an interlocutory injunction – led by Justin Gleeson SC, Ben Kremer and Fiona Roughley, instructed by Corrs Chambers Westgarth for the Commonwealth

#### Federal Court

*Estate of Ms Wasserberger v Sentinel Wealth Management Pty Ltd* (Federal Court, NSD 104/2022) – proceedings seeking to recover \$4.35M in money allegedly wrongfully transferred by Ms Wasserberger to a former employee of the respondent – led by David Sulan SC and Jerome Entwisle for the respondent, instructed by Morris Mennilli

*Otsuka Pharmaceutical Co Ltd v Generic Health Pty Ltd* (Federal Court, NSD 121/2012 and NSD 837/2015, reserved before the Honourable Thomas Bathurst AC KC) – dispute seeking \$180 million in damages on undertakings given by a pharmaceutical company on the grant of an interlocutory injunction – led by Peter Brereton SC, Patrick Knowles SC and Jane Taylor, instructed by Corrs Chambers Westgarth for the Commonwealth

*Keith Kayler-Thomson & anor v Colonial First State Investments Limited & ors* (Federal Court VID1313/2018, ongoing) – representative proceedings concerning the rates of interest paid on a particular category of investments made by Colonial and others as trustees of superannuation funds – led by Sera Mirzabegian SC and Madeleine Ellicott, instructed by Herbert Smith Freehills for the respondents

*Kayler-Thomson v Colonial First State Investments Limited (No 3)* [2023] FCA 606 - application for production of documents for inspection where respondent resists production on basis of claim to legal professional privilege – led by Sera Mirzabegian SC and Madeleine Ellicott, instructed by Herbert Smith Freehills for the respondents

*Treasury Wine Estates Limited v Maurice Blackburn Pty Ltd* [2020] FCAFC 226, 385 ALR 562 – appeal on whether the *Hearne v Street* (2008) 235 CLR 125 obligation not to use documents produced under compulsion for purposes other than the proceeding applies to pleadings – led by John Sheahan KC and Fiona Roughley, instructed by Maurice Blackburn for the first and second respondents

### **NSW Court of Appeal**

*Zurich Insurance v CIMIC Group Limited* (NSW Court of Appeal, 2022/00334409, ongoing) (and related appeals) – appeal from proceedings in which the plaintiff sought indemnity for costs and settlement amounts paid in connection with claims and investigations relating to a file note about contracts made in Iraq – led by Anne Horvath SC, instructed by Moray & Agnew for insurers Arch and Dual

*Brewster v BMW Australia Ltd* [2020] NSWCA 272 – questions referred on the Court’s power under s 173 of the *Civil Procedure Act 2005* (NSW) to make a common fund order – led by Justin Gleeson SC and Elisa Holmes, instructed by Quinn Emanuel Urquhart & Sullivan for the plaintiff

### **NSW Supreme Court**

*Horizon Capital Finance SARL v BCC Trade Credit Pty Ltd* [2023] NSWSC 917 – application for leave to proceed under rule 11.8AA of the UCPR to proceed against foreign corporate defendants in Hong Kong and Singapore that failed to enter an appearance – led by Donald Mitchell, instructed by King & Wood Mallesons for the plaintiffs

*Horizon Capital Finance SARL v BCC Trade Credit Pty Ltd* (NSW Supreme Court, 2023/135821) – dispute concerning the payment of insurance claims pursuant to selective proceeds assignments – led by Donald Mitchell, instructed by Squire Patton Boggs for the plaintiffs

*Qantas Airways Limited v L3 Commercial Training Solutions Pty Ltd* (NSW Supreme Court, 2020/20437, settled week prior to hearing) – contractual dispute in relation to an agreement between the parties to establish and operate

a pilot training academy – led by Robert Dick SC and Fiona Roughley, instructed by Herbert Smith Freehills for the plaintiff

*Horizon Capital Finance SARL v BCC Trade Credit Pty Ltd* (NSW Supreme Court, 2022/384689, ongoing) - dispute concerning the payment of insurance claims pursuant to selective proceeds assignments – led by Donald Mitchell, instructed by King & Wood Mallesons for the plaintiffs

*Horizon Capital Fund SARL v BCC Trade Credit Pty Ltd* (NSW Supreme Court Proceedings, 2023/135821, ongoing) dispute concerning the payment of insurance claims on a policy of trade credit insurance – led by Donald Mitchell, instructed by Squire Patton Boggs (AU) for the plaintiffs

*CIMIC Group Limited v AIG Australia Limited (No 2)* [2023] NSWSC 640 – costs orders following substantive proceedings where insurers rejected insured’s Calderbank offers and Bullock and Sanderson orders were sought – led by Anne Horvath SC, instructed by Moray & Agnew for the ninth and tenth defendants

*CIMIC Group Limited v AIG Group Limited* [2022] NSWSC 999 – proceedings in which the plaintiff sought an indemnity in respect of costs and settlement amounts paid in connection with claims and investigations relating to a file note drafted about contracts made in Iraq – led by Anne Horvath SC, instructed by Moray & Agnew for the ninth and tenth defendants

*Dariusz Koper v Zurich Insurance PLC* [2021] NSWSC 1587 – application to grant leave to the plaintiff to commence representative proceedings against the defendant under the *Civil Liability (Third Party Claims Against Insurers) Act 2017* (NSW) – led by Peter Braham SC, instructed by Piper Alderman for the plaintiff

*Louise Haselhurst v Toyota Motor Corporation Australia Limited trading as Toyota Australia* [2020] NSWSC 1607 – application by the defendant for security for costs in a class action – led by Elisa Holmes, instructed by Quinn Emanuel Urquhart & Sullivan for the plaintiff

## **Competition & Regulation**

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### **High Court**

*Qantas Airways Limited v Transport Workers Union* (High Court, S153/2022, judgment reserved) – construction of ss 340(1)(b) and 569 of the *Fair Work Act 2009* (Cth) in the context of a decision by Qantas to outsource its baggage handling services – led by Justin Gleeson SC, Tom Prince and Naomi Oreb, instructed by Herbert Smith Freehills for the appellants

*ACCC v Pacific National Pty Limited & Ors* [2020] HCATrans 213 – application for special leave to appeal from *ACCC v Pacific National Pty Ltd* [2020] FCAFC 77 on whether a proposed acquisition was likely to have the effect of substantially lessening competition – led by Justin Gleeson SC and Christopher Tran, instructed by DLA Piper for the ACCC

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## **Federal Court**

*ACCC v Delta Building Automation Pty Ltd & Anor* [2023] FCA 880 – proceedings in relation to alleged cartel conduct contrary to s 45AJ of the *Competition and Consumer Act 2010* (Cth) – led by Robert Yezerski, instructed by Webb Henderson for the ACCC

*ASIC v Select AFSL Pty Ltd & Ors (No 2)* [2022] FCA 786 – civil penalty proceedings for unconscionable conduct and misleading and deceptive conduct contrary to the *Australian Securities and Investments Commission Act 2001* (Cth) and other conduct contrary to the *Corporations Act 2001* (Cth) – led by Naomi Sharp SC, Gillian Walker, Penelope Abdiel and Katarina Grenfell, instructed by ASIC

## **Committees**

*Health Care Complaints Commission v Professor Charlie Teo* (Professional Standards Committee, judgment delivered on 12 July 2023) – disciplinary proceedings in relation to Professor Charlie Teo’s care of two patients – led by Kate Richardson SC, instructed by the Health Care Complaints Commission

## **Investigations & examinations**

ACCC merger authorisation relating to sale of Suncorp Bank to ANZ – led by John Sheahan KC and Robert Yezerski, instructed by AGS for the ACCC

ACCC investigation into the alleged conduct of a company contrary to provisions of the Australian Consumer Law in Schedule 2 of the *Competition and Consumer Act 2010* (Cth) – led by Ruth Higgins SC, instructed by DLA Piper for the ACCC

ACCC investigation into the alleged conduct of a company contrary to provisions of Part IV of the *Competition and Consumer Act 2010* (Cth) – led by Michael Borsky QC and Caryn Van Proctor, instructed by DLA Piper for the ACCC

ACCC investigation into the alleged conduct of an industry group and Australian retailer contrary to provisions of Part IV of the *Competition and Consumer Act 2010* (Cth) – led by Ruth Higgins SC and Robert Yezerski, instructed by DLA Piper

Various compulsory examinations for the ACCC (led and unled) in relation to various matters under the *Competition and Consumer Act 2010* (Cth), instructed by DLA Piper and AGS

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## **Public Law**

### **High Court – Full Bench**

*Qantas Airways Limited v Transport Workers Union* (High Court, S153/2022, reserved) – construction of

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ss 340(1)(b) and 569 of the *Fair Work Act 2009* (Cth) in the context of a decision by Qantas to outsource its baggage handling services – led by Justin Gleeson SC, Tom Prince and Naomi Oreb, instructed by Herbert Smith Freehills for the appellants

*Zurich Insurance PLC v Dariusz Koper* [2023] HCA 25 – challenge to the constitutional validity of Part II of the *Trans-Tasman Proceedings Act 2010* (Cth) in light of Ch III of the *Constitution* in proceedings commenced under s 4 of the *Civil Liability (Third Party Claims Against Insurers) Act 2017* (NSW) – led by Noel Hutley SC, instructed by Piper Alderman for the first respondent

*Jones v Commonwealth of Australia* (High Court, B47/2022, reserved) – challenge to the constitutional validity of s 34(2)(b)(ii) of the *Australian Citizenship Act 2007* (Cth) – led by Sebastian Harford-Davis and leading Samuel Hoare for the plaintiff, instructed by Fisher Dore Lawyers

*Davis v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2023] HCA 10 – whether a decision made in the exercise of non-statutory executive power is amenable to judicial review on the grounds of unreasonableness – led by the Commonwealth Solicitor-General and Nick Wood SC, instructed by AGS for the respondents

*SDCV v Director-General of Security & Anor* [2022] HCA 32– challenge to the constitutional validity of s 46(2) of the *Administrative Appeals Tribunal Act 1975* (Cth) in light of Ch III – led by the Commonwealth Solicitor-General and Matthew Varley, instructed by AGS for the respondents

### **High Court – single judge**

*Government of the Russian Federation v The Commonwealth* [2023] HCA 20 – application for interlocutory injunction to restrain enforcement of the *Home Affairs Act 2023* (Cth) – led by Elliot Hyde, instructed by Adero Law for the plaintiff

*Asaad v Secretary, Department of Home Affairs* (High Court, S83/2022, discontinued by plaintiff) – challenge to a submission prepared by the Department to the Minister on the possible consideration of ministerial intervention under s 197AB of the *Migration Act 1958* (Cth) – unled against silk, instructed by AGS for the defendants

### **High Court – special leave applications**

*Zurich Insurance PLC v Dariusz Koper* (High Court, special leave application, application granted on the papers) – challenge to the constitutional validity of Part II of the *Trans-Tasman Proceedings Act 2010* (Cth) in light of Ch III – led by Noel Hutley SC, instructed by Piper Alderman for the first respondent

*SDCV v Director-General of Security & Anor* [2022] HCATrans 20 (21 February 2022) (application granted) – application for special leave to appeal from a judgment of the Full Federal Court upholding the constitutional

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validity of s 46(2) of the *Administrative Appeals Tribunal Act 1975* (Cth) – led by Perry Herzfeld SC and Matthew Varley, instructed by AGS for the respondents

*Davis v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* (High Court, M9/2022, application granted on the papers) and *DCM20 v Secretary of the Department of Home Affairs* (High Court, S13/2022, application allowed on the papers) – applications for special leave to appeal from a judgment of the Full Federal Court allowing judicial review of a decision made in the exercise of executive power – led by the Commonwealth Solicitor-General and Nick Wood SC, instructed by AGS for the respondents

### **NSW Court of Appeal**

*Zurich Insurance PLC v Dariusz Koper* [2022] NSWCA 128 – challenge to the constitutional validity of Part II of the *Trans-Tasman Proceedings Act 2010* (Cth) in light of Ch III and the *Melbourne Corporation* principle – led by Noel Hutley SC, instructed by Piper Alderman for the first respondent

### **Federal Courts**

*CEW22 v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* (Federal Court, VID364/2022, application conceded by Commonwealth) – judicial review of Department’s decision not to refer a request to the Minister to exercise personal, non-delegable power under s 46A(2) of the *Migration Act 1958* (Cth) – unled, instructed by AGS for the Minister

*Axicom Inbuilding Solutions Pty Ltd v Australian Communications and Media Authority* (Federal Court, NSD 1171/2021, judgment reserved) – judicial review of decision by the ACMA under the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (Cth) – led by Anna Mitchelmore SC and later by Perry Herzfeld SC following her Honour’s appointment, instructed by AGS for the respondent

*BQC21 v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs & Anor* (Federal Circuit and Family Court, SYG1072/2021, discontinued by the applicant) – judicial review of a decision by an AAT member for apprehended bias – unled, instructed by HWL Ebsworth for the Minister

*Mosaic Brands Ltd v Australian Communications and Media Authority* [2022] FCAFC 79 – judicial review of a notice issued under the *Telecommunications Act 1997* (Cth) – led by Tom Brennan SC, instructed by Uther, Webster & Evans for the appellant

*The Environment Centre NT Inc v Minister for Resources and Water (No 2)* [2021] FCA 1635 – judicial review of decisions by the respondent relating to the Beetaloo Cooperative Drilling Program – led by Anna Mitchelmore SC and later by Tom Howe QC and Christopher Tran, instructed by AGS for the respondents

*National Home Doctor Service Pty Ltd v Director of Professional Services Review* [2020] FCA 1016 – judicial review of a decision to resume a review under the *Health Insurance Act 1973* (Cth) and issues relating to *Anshun* estoppel and abuse of process – led by Jeremy Kirk SC, instructed by Gilbert + Tobin for the applicant

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## Other courts

*Daniel v Capon and Attorney General of NSW*, (Local Court, 2021/63738) – challenge to the validity of ss 83(1) and 84(3) of the *Residential Tenancies Act 2010* (NSW) in light of Ch III of the *Constitution* – unled, instructed by the Crown Solicitor’s Office for the Attorney General of NSW

*Law Society (NT) v Legal Practitioners Disciplinary Tribunal (NT) & Anor* [2020] NTSC 79 – the applicability of parliamentary privilege to a legal practitioner’s advice to a member of the NT Parliament – led by Jeremy Kirk SC, instructed by Squire Patton Boggs for the second defendant

## Tribunals

*YYJL v Director-General of Security* (AAT, 2022/0209, discontinued by applicant after evidence closed) – challenge to decisions made by the Director-General of Security under the *Australian Security Intelligence Organisation Act 1979* (Cth) – unled, instructed by AGS for the respondent

## Criminal law

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*The Queen v Rolfe (No 5)* [2021] NTSCFC 6 – questions stated on the scope of a police officer’s criminal immunity under s 148B of the *Police Administration Act* (NT) on a charge against a police officer for murder – led by Phillip Strickland SC and Sophie Callan SC, instructed by the Crown

## PUBLICATIONS & PAPERS

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Fiona Roughley and Megan Caristo, *Secret Ministries and the Constitution: An Implied Requirement of Publication?* (2023) 97 *Australian Law Journal* 128

“A Reader’s Reflection”, *Bar News*, Winter 2020

Organiser and chair of the CPD “What solicitors look for when briefing junior barristers” for the NSW Bar Association, November 2021

“*The Great Gatsby*”: update on state tribunals following *Attorney General (NSW) v Gatsby* [2018] NSWCA 254, Crown Solicitor’s Office Government Law Conference (2018)

*Administrative Law Update*, Crown Solicitor’s Office Administrative Law Conference (2018)

*Reasonableness in Administrative Law*, Clayton Utz Government Law CLE (2017)

*Can state tribunal orders bind the Commonwealth?* AGS Constitutional Law Forum (2015)

“*R v Woods* [2010] NTSC 69” (2011) 14(2) *Australian Indigenous Law Review* 134

“*Secretary of State for the Home Department v AF: Lessons for Australia*” (2010) 33 *Sydney Law Review* 693



## COMMUNITY ENGAGEMENT

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Australian Bar Association, Diversity Podcast – Caring for our Carers, February 2023  
NSW Bar Association New Barristers’ Committee member (2020, 2021, 2022 and 2023)  
Sydney University Law Society Women’s Committee Mentor (2020 and 2021)  
Refugee Advice and Casework Service (September 2019 to February 2020)  
Redfern Legal Centre (August 2019-February 2020)  
NSW Law Society Graduate Student Mentor Program, Mentor (2018)  
ANU, Melbourne Law School and UTS, Moot Court Judge (2015, 2018)  
Harlem Tutorial Project (New York), Homework tutor to primary school children (2014)  
Australian Association of Constitutional Law, ACT Branch Co-ordinator (2014)  
NSW Young Lawyers, Mental Health Working Group Coordinator (2011)  
UNSW Indigenous Law Centre, Student Volunteer (January-February 2011)  
North Australian Aboriginal Justice Agency (Darwin), Criminal Law, Paralegal (2010)  
NSW Law Reform Commission, Student Volunteer, Privacy Inquiry (2010)  
Refugee Advice and Casework Service, Student Volunteer (2010)  
Refugee Council of Australia, Student Volunteer (2008)  
Australian Law Reform Commission, Student Volunteer, Privacy Inquiry (2007)  
Redfern Legal Centre (including the Women’s Domestic Violence Court Assistance Scheme), Student Volunteer (2005-2006)