



MEGAN CARISTO

Barrister

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ADMISSIONS

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

EDUCATION

- 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)
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PROFESSIONAL EXPERIENCE

- 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

UNLED

I regularly appear in contested directions hearings in the Commercial List of the NSW Supreme Court, in contested interlocutory matters in Tribunals and in contested notices of motion (including against senior counsel)

High Court

Asaad v Secretary, Department of Home Affairs (High Court, S83/2022, consent orders made discontinuing the proceedings) – 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, instructed by AGS for the defendant

Federal Courts

CEW22 v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Federal Court, VID364/2022) – judicial review of the 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

The Environment Centre NT Inc v Minister for Resources and Water [2021] FCA 1121 – case management hearing – unled, 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, applicant discontinued) – judicial review of a decision by an AAT member for apprehended bias – unled, instructed by HWL Ebsworth for the Minister

Local Courts and Tribunals

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

YYJL v Director-General of Security (AAT, 2022/0209, applicant discontinued after close of evidence) – 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

Examinations

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

COMMERCIAL & INSURANCE LAW

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 damages on undertakings given by the respondents on the grant of an interlocutory injunction – led by Justin Gleeson SC, Ben Kremer SC and Fiona Roughley SC, instructed by Corrs Chambers Westgarth

Zurich Insurance PLC v Dariusz Koper [2023] HCA 25 – challenge to the validity of Part II of the *Trans-Tasman Proceedings Act 2010* (Cth) 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

Zurich Insurance PLC v Dariusz Koper (High Court, special leave application, application granted on the papers) – challenge to the validity of Part II of the *Trans-Tasman Proceedings Act 2010* (Cth) 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

Federal Court

Estate of Ms Wasserberger v Sentinel Wealth Management Pty Ltd (Federal Court, NSD 104/2022, ongoing) – proceedings seeking to recover – 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 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

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, reserved) (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

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

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

Munich Reinsurance Company of Australasia Limited v AMP Limited (NSW Supreme Court, 2022/00313610, ongoing) – claim by the plaintiff for damages relating to allegedly misleading and deceptive representations or omissions made by the defendants prior to entry into a reinsurance treaty – led by Vanessa Whittaker SC, instructed by King & Wood Mallesons for the first defendant and third to sixth defendants

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 against foreign corporate defendants in Hong Kong and Singapore – led by Donald Mitchell, instructed by King & Wood Mallesons for the plaintiffs

Qantas Airways Limited v L3 Commercial Training Solutions Pty Ltd (NSW Supreme Court, 2020/20437, settled) – 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 and with Bronte Lambourne, 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 claims pursuant to assignments and a trade credit insurance policy – 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, 2023/135821, ongoing) – dispute concerning the payment of claims pursuant to an assignment and a trade credit insurance policy – 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 the insured sought Bullock and Sanderson orders – 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

High Court

Qantas Airways Limited v Transport Workers Union [2023] HCA 27 – 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

Federal Court

ACCC v Delta Building Automation Pty Ltd & Anor (ACD 32/2021, ongoing) – imposition of penalty following finding of an attempt to engage in 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

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

Competition Tribunal

Applications by Australia and New Zealand Banking Group Limited and Suncorp Group Limited for review of ACCC Merger Authorisation Determination MA1000023 (ACT 1 of 2023) – led by Garry Rich SC, Robert Yezerski and Chris Tran and with Erin O'Connor Jardine, instructed by AGS, for the ACCC

Professional Disciplinary 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 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 major Australian 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 for the ACCC

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

CONSTITUTIONAL & ADMINISTRATIVE LAW

High Court – Full Bench

NZYQ v Minister for Immigration, Citizenship and Multicultural Affairs (High Court, S28/2023, ongoing) – whether the Court should overrule or distinguish *Al-Kateb v Godwin* (2004) 219 CLR 562 – led by Patrick Knowles SC for the Australian Human Rights Commission seeking leave to intervene

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 Daniel Reynolds with Samuel Hoare for the plaintiff, instructed by Fisher Dore Lawyers (drafted pleadings and written submissions but unable to appear at the hearing given a trial commitment)

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

High Court – special leave applications

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

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

Federal Court

Axicom Inbuilding Solutions Pty Ltd v Australian Communications and Media [2023] FCA 1069 – judicial review of a 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

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

NT Supreme Court

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

CRIMINAL LAW

Full Court of the NT Supreme Court

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

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

NSW Supreme Court Tipstaves Conference (Banco Court) – Panellist on “Coming to the Bar”, August 2023
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-February 2020)
Redfern Legal Centre (August 2019-February 2020, 2005-2006)
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)