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# Rachael Young

| BARRISTER |

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## ADMISSIONS / APPOINTMENTS

- Supreme Court of Western Australia: 2008
- High Court of Australia: 2008
- Senior Counsel: 2022

## EDUCATION

- LLM in International Law, New York University School of Law, New York: 2012
- LLB (Hons), University of Western Australia: 2006
- BA (Hons), Political Science & International Relations, and Economics, University of Western Australia: 2004

## EXPERIENCE

### *Barrister, Fourth Floor Chambers (August 2017 – present)*

- I appear in all Courts in Western Australia and the High Court, in inquiries, coronials, Tribunals, arbitrations and mediations. I practise predominately in commercial litigation and in administrative law and in Constitutional matters.

### *Assistant State Solicitor, State Solicitor's Office (2007 - 2011; 2012 – August 2017)*

- As an Assistant State Solicitor, I ran a litigation practice, primarily focused on civil litigation, State Agreement arbitrations, administrative law and Constitutional law matters.

### *United Nations Assistance to the Khmer Rouge Trials (May 2012 – November 2012)*

- Funded by the New York University International Law and Human Rights Fellowship, I assisted two Senior Assistant Co-Prosecutors in the prosecution of three former Ministers of the Khmer Rouge for crimes against humanity.

## *Fourth Floor Chambers*

Level 4, 40 St Georges Terrace, Perth WA 6000

## SELECTED APPEARANCES

### COMMERCIAL LITIGATION

- ***Koh v Buckeridge [No 3]*** [2023] WASC 42 (led by B Dharmananda SC and B L Jones SC), in a trial for declaratory relief in respect of a will.
- ***Acciona Industrial Australia Pty Ltd & Ors v Kwinana WTE Project Co Pty Ltd*** [2022] WASC 380 (led by J C Giles SC), in a trial for declaratory relief on force majeure occurrences under an EPC contract.
- ***Kingemel Pty Ltd v Rosa Processing Pty Ltd*** [2022] WASC 7 (unled), in a trial of a shareholder oppression claim.
- ***Moran v Argonaut Equity Partners*** [2021] WASCA 45 (unled), in an appeal on whether a clause was a penalty, in particular whether it was a primary or a collateral stipulation.
- ***Carna Group Pty Ltd (in liq) v The Griffin Coal Mining Company (No 6)*** [2021] FCA 1214; (2021) 157 ACSR 224 (led by S K Dharmananda SC), in a trial in relation to insolvency default breach and misleading or deceptive conduct (the latter aspect settled before trial).
- ***Argonaut Equity Partners Pty Ltd v Moran*** [2020] WASC 24 (led by G R Donaldson SC), in a trial in relation to whether a clause was a penalty, and on claims of breach of duty to exercise reasonable care and skill, and unconscionability claims.
- ***Resolute Corporate Services Pty Ltd (formerly Goudhurst Pty Ltd) v Wearing*** [2020] WADC 132 (unled), in a trial on claims for damages for tortious deceit and equitable compensation.
- ***Structural Monitoring Systems Ltd v Tulip Bay Pty Ltd*** [2019] WASCA 16 (unled), in an appeal on whether an arbitral award should be set aside for alleged misconduct.
- ***TEC Hedland Pty Ltd v The Pilbara Infrastructure Pty Ltd*** (led by B Dharmananda SC) on the validity of the termination of an EPC contract regarding a power station. The matter settled before trial. See related applications on legal professional privilege and waiver in [2018] WASC 300 (unled); [2019] WASC 181 (led by B Dharmananda SC); [2020] WASC 364 (led by B Dharmananda SC).
- ***JMAC Investment Group Pty Ltd v 3.1 Entertainment Pty Ltd*** [2017] WASC 352 (unled), in a trial on enforcement of a guarantee and unconscionability claim.
- ***Mineralogy Pty Ltd v Sino Iron Pty Ltd*** [2017] FCAFC 55 (led by P D Evans), in an appeal on the construction of the State Agreement in a dispute between two mining companies.

- ***Mineralogy Pty Ltd v Sino Iron Pty Ltd (No 6)*** [2015] FCA 825; (2016) 329 ALR 1 (led by P D Evans); ***Mineralogy Pty Ltd v Sino Iron Pty Ltd (No 3)*** [2015] FCA 542 (unled), in a trial on the construction of the State Agreement in a dispute between two mining companies in respect of dispute over Cape Preston port.
- ***Mineralogy Pty Ltd v Sino Iron Pty Ltd (No 7)*** [2015] WASC 267 (unled) on an application to intervene in litigation between two mining companies (who were parties to a State Agreement) in respect of dispute over royalties, and subsequent hearings on the construction of the State Agreement.

#### CONSTITUTIONAL LAW

- ***Garlett v The State of Western Australia*** [2022] HCA 30 (led by G R Donaldson SC) on a Ch III challenge to the inclusion of robbery in a post-sentence detention regime.
- ***GS v MS*** [2019] WASC 255; (2019) 344 FLR 386 (unled), on the State Administrative Tribunal's jurisdiction where federal diversity jurisdiction was engaged.
- ***Rizeq v The State of Western Australia*** [2017] HCA 23; (2017) 262 CLR 1 (led by P D Quinlan SC), on the application of State laws in federal diversity jurisdiction.
- ***Santos v Director of Public Prosecutions (WA)*** [2016] WASCA 230; (2016) 316 FLR 94 (led by G R Donaldson SC), on constitutional issues related to prosecutions in a Commonwealth place.
- ***Bell Group NV (in liq) v The State of Western Australia*** [2016] HCA 21; (2016) 260 CLR 500 (led by G R Donaldson SC and A J Sefton), on inconsistency between Commonwealth and State laws, *Corporations Act* issues and Ch III issues.
- ***Santos v State Director of Public Prosecutions*** [2015] WASC 335 (unled), on constitutional issues related to prosecutions in a Commonwealth place.
- ***Duncan v Independent Commission Against Corruption*** [2015] HCA 32; (2015) 256 CLR 83 (led by G R Donaldson SC), on retrospective validating legislation.
- ***Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services of Australia v Queensland Rail*** [2015] HCA 11; (2015) 256 CLR 171 (led by G R Donaldson SC), on the power to legislate in respect of corporations and the meaning of a corporation.

## COMMON LAW

- ***RC v The Salvation Army (Western Australia) Property Trust*** [2023] WASCA 29; ***RC v The Salvation Army (Western Australia) Property Trust*** [2021] WADC 117; (2021) 105 SR (WA) 14 (led by D F Villa SC), in an application for a permanent stay in a historical abuse matter, and appeal against stay and cross-appeal against costs orders
- ***Rayney v The State of Western Australia (No 4)*** [2022] WASCA 44 (led by J A Thomson SC), on economic loss awards, causation and interest calculations in defamation.
- ***Meyer v Solomon*** [2021] WASCA 168 (unled), on the construction of, and discretionary factors to be considered in exercising, the statutory provision allowing an extension of time to commence a defamation action.
- ***Rayney v The State of Western Australia*** [2020] WASCA 206; ***Rayney v The State of Western Australia (No 2)*** [2020] WASCA 207; ***Rayney v The State of Western Australia (No 3)*** [2020] WASCA 209 (unled), on recusal in an appeal.
- ***Rayney v The State of Western Australia*** [2019] WASCA 23 (led by G M Watson SC), on a stay in a defamation appeal.
- ***Rayney v The State of Western Australia (No 9)*** [2017] WASC 367 (led by T K Tobin QC), in a trial of a defamation claim arising from a press conference given by a police officer in the context of a murder investigation.
- ***The State of Western Australia v Collard*** [2015] WASCA 86 (with T C Russell), on an appeal as to costs in the ‘Stolen Generation’ litigation.

## ADMINISTRATIVE LAW AND TRIBUNAL MATTERS

- ***YDXM and Commissioner of Taxation*** [2022] AATA 2382 (unled), defending the Commissioner’s decision not to grant deduction for self-education expenses.
- ***Rao and Medical Board of Australia*** [2022] WASAT 55 (unled), in a hearing on immediate action in respect of a medical practitioner accused of an offence.
- ***Two Rocks Investments Pty Ltd v Western Australian Planning Commission*** [2019] WASAT 59; (2019) 97 SR (WA) 270 (led by S Penglis SC), in a final hearing on structure planning in coastal areas under the new State Planning Policy 2.6.
- ***Humich Nominees Pty Ltd v Metro East Joint Development Assessment Panel*** [2019] WASC 200 (unled), in a judicial review application on the validity and reasonableness of conditions where multiple planning approvals.

- ***Brooks and Commissioner of Taxation*** [2019] AATA 1236; (2019) 110 ATR 105 (unled), defending the Commissioner’s decision to disqualify a person as trustee of a self-managed superannuation fund and to not reduce shortfall interest charges.
- ***D’Alto and Curtin University*** [2019] WASAT 61 (unled), defending an alleged disability discrimination claim in the provision of education.
- ***Goldbreak Holdings Pty Ltd v Lendlease Real Estate Investments Ltd*** [2018] WASAT 51 (unled), in a hearing defending an allegation of misleading or deceptive conduct in connection with a lease under the *Commercial Tenancy (Retail Shops) Agreements Act 1985* (WA).
- ***The Pilbara Infrastructure Pty Ltd v Economic Regulation Authority*** [2014] WASC 346 (led by RM Mitchell SC), in a judicial review application regarding the Authority’s decision on access to FMG’s railway by junior miners.

#### ROYAL COMMISSIONS AND SPECIAL INQUIRIES

- ***Perth Casino Royal Commission*** (2021-2022, led by N Hutley SC and M Cuerden SC), for two companies and an individual.
- ***Inquiry into City of Perth*** (2018-2020, unled), for a former Councillor.

#### CORONIAL INQUESTS

- ***Aishwarya Aswath Chavittupara*** (2022, unled), for a medical practitioner, on death of child at Perth Children’s Hospital.
- ***Graham, C*** (2022, unled), for a private health provider, on death of a prisoner.
- ***Baby H*** (2021, unled), for a medical practitioner, on death of a baby.
- ***Ashley, P*** (2019, unled), for a pharmacist, on death following arrhythmia.
- ***Ullrich, TPC*** (2017, unled), for a health service, on death following chronic hydrocephalus.
- ***Parman, SK*** (2016, unled), for a health service, on death of a child following pneumonia complicating H1N1 infection.
- ***Alma Street Centre series*** (2016, unled), for a health service, on deaths by suicide of five former patients of the Alma Street Centre.
- ***Diamond*** (2014, unled), for a child protection agency, on death by acute cerebral hypoxia following substance abuse.
- ***Gilbert, JT*** (2014, unled), for a health service, on death by haemorrhage following appendectomy.

- *Davies, BJ* (2014, unled), for a health service, on death by multi-organ failure and haemorrhage following cholecystectomy.
- *Ford, VMR* (2013, unled), for a health service, on death following complications following surgery.
- *Squires, JG* (2013, unled), for a health service, on death by pulmonary thromboembolism.
- *Jones, WR* (2013, unled), for a health service, on death by abdominal infection following hernia surgery.

## **PROFESSIONAL RECOGNITION**

### **DOYLE'S GUIDE (AUSTRALIA)**

- Recommended Junior Counsel for Commercial Litigation and Dispute Resolution (2022)

### **DOYLE'S GUIDE (WESTERN AUSTRALIA)**

- Recommended Senior Counsel for Commercial Litigation and Dispute Resolution (2023)
- Recommended Senior Counsel for Planning & Environment (2023)
- Pre-eminent Junior Counsel for Commercial Litigation and Dispute Resolution (2022)
- Leading Junior Counsel for Commercial Litigation and Dispute Resolution (2020, 2021)
- Leading Junior Counsel for Insolvency & Restructuring (2021, 2022)
- Recommended Junior Counsel for Insolvency & Restructuring (2020)
- Recommended Junior Counsel for Planning & Environment (2018, 2020, 2021, 2022)
- Recommended Junior Counsel for Insurance & Personal Injury (2020)

### **THE LEGAL 500 (ASIA PACIFIC)**

- Australian Bar, Commercial Disputes, 2022 Silks (2023)