

-

Rachael Young

| BARRISTER |

t | (08) 6217 4709 m | 0478 898 262 e | rachael.young@fourthfloor.com.au ABN 25471802619

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 predominantly in commercial litigation and in administrative law and in Constitutional matters.

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

- *Nutrien AG Solutions Ltd v Kaye Lorraine Andrews and Terry Colin Andrews as trustees for the Andrews Family Trust* [2023] WASC 96 (unled), on injunctive relief in respect of restraint of trade.
- *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 a State Agreement in a dispute between two mining companies.
- ***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 dispute over royalties, and subsequent hearings on State Agreement.

CONSTITUTIONAL LAW

- ***Paspaley Pearling Company Pty Ltd and Delegate of the Chief Executive Officer of the Department of Primary Industries and Regional Development*** [2023] WASAT 116 (unled) on the State Administrative Tribunal's jurisdiction where potential constitutional issue
- ***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
- ***Fabbri v Masters Home Improvement Australia Pty Ltd*** [2023] WADC 97 (unled), on assessment of damages where causation issues
- ***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 five inquests into 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 – SENIOR COUNSEL)

- Recommended Senior Counsel for Administrative & Public Law (2023)
- Recommended Senior Counsel for Insolvency & Restructuring (2023)
- Recommended Senior Counsel for Commercial Litigation and Dispute Resolution (2023)
- Recommended Senior Counsel for Insurance & Personal Injury (2023)
- Recommended Senior Counsel for Planning & Environment (2023)

DOYLE'S GUIDE (WESTERN AUSTRALIA – JUNIOR COUNSEL)

- 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)