

CURRICULUM VITAE

KAREN J LE FAUCHEUR
BARRISTER AND MEDIATOR
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PROFESSIONAL EXPERIENCE

Karen was admitted to the legal profession in March 2004.

Karen joined the Bar in May 2011 and practises in commercial litigation, construction, equity and trusts, property, defamation and deceased estates.

In July 2021, she became a Nationally Accredited Mediator (NMAS).

A summary of her general experience as a barrister is set out below:

COMMERCIAL

- ***Mercedes-Benz Australia/Pacific Pty Ltd v Automotive Retail Group Pty Ltd and ors***: Federal Court of Australia - Acted for franchisee of Fuso and Unimog truck dealerships against franchisor claiming alleged breaches of agreements/misleading and deceptive conduct and in defence of alleged trademark breaches (settled during trial 2019). Junior to David Gilbertson QC.
- ***Fulton Hogan Construction Pty Limited v Grenadier Manufacturing Pty Ltd (in liq) & Ors*** [2012] VSC 358: 23 day Supreme Court trial - Acted for head contractor engaged to construct, supply and install footbridge in action against sub-contractor engaged to apply protective coating and coating manufacturer. Claim in negligence for failure of coating. Involved significant technical scientific expert evidence. Damages awarded involving calculation of economic loss and proportionate liability. Junior to Paul Hayes (Now Mr Hayes QC).
- ***Fulton Hogan Construction Pty Limited v (No 2) Grenadier Manufacturing Pty Ltd (in liq) & Ors*** [2012] VSC 569: Application for costs - calderbank offer, bullock/sanderson orders, issue by issue costs and apportionment of costs between concurrent wrongdoers. Appeared unled.

CONSTRUCTION

- ***Melbourne Water Corporation v Aurecon Australia Pty Ltd & Ors***: Supreme Court of Victoria - Acted for subcontractor Structural Systems in defence of third-party claims by Tenix, relating to the construction of the Eastern Treatment Plant (settled 2015). Junior to Toby Schnookal QC and subsequently, Peter Jopling QC.
- ***Miscellaneous***: Settling response to Adjudication Application on behalf of respondent sub-contractor, a provider of services in respect of communication, electricity, water and gas networks, pursuant to *Building and Construction Industry Security of Payment Act 1999 NSW*.

EQUITY/TRUSTS

- ***McFarlane v McFarlane*** [2021] VSC 197: Acted for original registered proprietor in action for setting aside property transfer, order for reinstatement of registered proprietor and equitable compensation on the grounds of undue influence and unconscionability. (Not involved in the trial – on leave from the Victorian Bar)
- ***State Trustees Limited (as executor) v A'Speculo***: Supreme Court – acted for administrator on behalf of deceased estate against previous administrator, for alleged breach of fiduciary duties, seeking declaration of constructive trust and order for payment for alleged misappropriated proceeds of sale of property.

- ***Andonovski v Andonovski*** (in capacity as Administrator): Supreme Court trial - Acted for registered proprietor of land seeking orders for partition of land and equitable estoppel and seeking specific enforcement of alleged agreement (settled during trial 2014). Junior to Carolyn Sparke QC.
- ***Kettering Pty Ltd and ors v Rayner*** - County Court trial: Acted for trustee seeking a constructive trust or equitable compensation based on setting aside a gift on grounds of undue influence and special disadvantage (settled during trial 2013). Junior to Mark Robins QC.
- ***Miscellaneous:***
- Provided advice to appointed administrator of borrower regarding prospects of success of setting aside Bank's judgment enforcing Guarantee on basis of alleged unconscionable conduct contrary to section 12CB, alternatively, section 12CA of the *Australian Securities and Investments Commission Act 2001* and alleged breach of contract on basis of breach of incorporated clauses of the Code of Banking Practice.
- Acted for guarantor in Supreme Court proceeding alleging unconscionable conduct pursuant to section 12CB and 12CC of the ASIC Act and seeking injunction.

DEFAMATION

- ***Nunn v Fullagar and Southern Basketball Association Incorporated:*** Supreme Court – Acted for plaintiff in defamation proceeding (settled 2020). Junior to Paul Hayes (Now Mr Hayes QC).
- ***Le Tete v Menzies and others:*** Supreme Court – Acted for plaintiff in defamation proceeding (settled at mediation). Junior to Paul Hayes (Now Mr Hayes QC).
- ***Miscellaneous:*** Drafting/settling Concerns Notices pursuant to section 14(2) of the *Defamation Act 2005* Vic and drafting form of apologies.

DECEASED ESTATES

- ***Faragher v Faragher:*** Supreme Court; no published judgment – acted for party to Deed of Family Arrangement in application for orders to transfer real property.
- ***Mokbel v Mokbel:*** County Court; settled at trial – acted for plaintiff in proceeding brought pursuant to Part IV of the *Administration and Probate Act (Vic) 1958 (APA)*.
- ***Miscellaneous:***
- Appearing on behalf of parties in proceedings brought pursuant to Part IV of the APA including at mediations.
- Acting in applications for approval of compromise in Supreme Court pursuant to Rule 15.08(1) of the *Supreme Court Civil Procedure Rules (Vic) 2015*.
- Appearing in estate disputes involving multiple proceedings in the Supreme Court and enforcement of Deed of Family Arrangement in Family Court.
- Appearing in applications to remove trustees/executors in Supreme Court.
- Provision of written advice to clients regarding merits and prospects of claims pursuant to Part IV of the APA, winding up testamentary trusts, removal of executor pursuant to section 34 APA, settlements involving establishment of special disability trust, construction of Will involving nature of life interest (portability, income, termination and severance) and advice on proceeding concerning grant of probate based on admission of informal will pursuant to section 9 of the APA (written Will with handwritten amendments).

PROPERTY

- ***Harrison v Harrison and ors*** - Supreme Court: Acted for registered proprietor of farming property seeking orders pursuant to section 228 of the *Property Law Act (Vic) 1958 (PLA)* for the physical division of co-owned land and section 230 of the PLA for the payment of compensation.

Solicitor, Dispute Resolution

At Mallesons, Karen worked on general commercial litigation matters including large and complex construction and contract disputes, including:

- acted for an international provider of operations, maintenance and asset and project management services. Litigation involved breach of contract and trade practices claims against the designer and builder of a hydro-power station in the Philippines (Turnkey contract US\$98 million). Involved conferring with technical engineering expert witnesses.
- acted for company which owned and maintained gas transmission pipelines. The multi-party litigation involved the construction of the 442 km gas pipeline from Port Hedland to the Telfer Gold Copper mine in Western Australia. The proceeding was brought by the construction contractor claiming compensation for delay.
- acted for a financial services company against the company who manufactured and installed lifts in a commercial building.
- achieved a favourable judgement in the Supreme Court of NSW in a breach of contract proceeding involving the transportation (including land and marine aspects) of a 270 tonne butadiene sphere.

Mallesons, Climate Change and Carbon

At Mallesons, Karen also developed expertise in the emerging area of climate change law and assisted with the development of Mallesons' National Sustainable Enterprises practice. She advised companies in the mining, banking, gas supply, telecommunications and financial services industries on emissions trading and greenhouse and energy reporting, specifically with respect to the *National Greenhouse and Energy Reporting Act*, the *Energy Efficiency Opportunities Act* and the impact of the Federal Government's proposed emissions trading scheme (Carbon Pollution Reduction Scheme (CPRS)).

RUSSELL KENNEDY, Melbourne**February 2003 – May 2007**

Solicitor (*Commercial Litigation*) (from date of admission, 29 March 2004)

Articled Clerk (February 2003 – March 2004)

At Russell Kennedy, Karen worked on a variety of matters, including banking and finance, contract disputes, defamation, sports disputes (Court of Arbitration for Sport), torts and trade practices.

KPMG, MELBOURNE**2002****Graduate - Taxation**

At KPMG, Karen advised corporate clients in the Consumer and Industrial markets sector on the taxation and business implications of various transactions including mergers, take-overs and share-buybacks.

EDUCATION

1997 – 2001: University of Melbourne - Bachelor of Laws (Hons)/Commerce

2000: University of British Columbia (Vancouver, Canada) - International Exchange

COMMITTEES

ADR Committee member (Victorian Bar) 2022 and Publicity, Marketing and Communication Subcommittee

MEMBERSHIPS

Women Barristers Association

Building Disputes Practitioners' Society 2022