

## CURRICULUM VITAE

**Name:** Fiona Jane Alpins

**Qualifications:** B Com, LLB (Hons) (Melb)

**Occupation:** A member of the Victorian Bar.

**Principal areas of practice:** Commercial litigation, taxation litigation (federal and state), regulatory law and public law, at trial and appellate level.

### **Professional background:**

A former Deputy President of the Administrative Appeals Tribunal (part-time appointment; from April 2012 to June 2017). Reviewed decisions concerning taxation, regulation of commercial and professional activities, customs duty, excise duty, industrial law, Australian citizenship, freedom of information, compensation law, social security and veterans' entitlements.

Signed Victorian Bar Roll in May 1996. Practised full-time until July 2014; then practised part-time while engaged at Tribunal on permanent part-time basis. Resumed full-time practice at Bar in July 2017.

Admitted to legal profession in April 1995.

### **Victorian Bar:**

#### ***Current matters include:***

Currently engaged in regulatory law, taxation law, administrative law and commercial law matters – including brief to appear in trials in Supreme Court of Victoria, pre-litigation matters (including conduct of compulsory interviews and related advice) and advising Commonwealth government agency about legislative issues.

### **Administrative Appeals Tribunal:**

#### ***Decisions include:***

*Re Carmody and Secretary, Department of Employment* (2016) 150 ALD 366; [2016] AATA 191 – industrial law – fair entitlements guarantee – amount of advance – redundancy pay entitlement - whether includes amount of accrued personal leave payable on termination of employment under enterprise agreement;

*Re Paraponiaris and Secretary, Department of Employment* (2015) 153 ALD 484; (2015) 68 AAR 143; [2015] AATA 895– practice and procedure – application for summary dismissal – whether application for review has no reasonable prospect of success – general principles – industrial law – fair entitlements guarantee – whether an effective claim;

*Re Jeffers and Australian Securities and Investments Commission* (2015) 67 AAR 50; [2015] AATA 537 – applications for stay and confidentiality – banning order prohibiting provision of financial services - dealing in financial products - derivatives and foreign exchange contracts;

*Re Redden and Repatriation Commission* (2015) 146 ALD 213; [2015] AATA 273 - veteran's entitlement to special rate of pension – medical conditions including post-traumatic stress disorder;

*Re Confidential and Commissioner of Taxation* (2014) 100 ATR 475; [2014] AATA 961 - international taxation – double taxation treaty between Australia and Ireland - whether Irish Pay Related Social Insurance covered;

*Re Mercator Lighting Pty Ltd and Chief Executive Officer of Customs* (2014) 99 ATR 671; [2014] AATA 694 - customs duty – tariff classification of composite goods – determination of essential character;

*Re GC Swinburne & FJ McFarlane and Australian Securities and Investments Commission* (2014) 144 ALD 397; [2014] AATA 602 - registration of business names – review of automated decisions – effect of provision permitting use of computer programs on statutory construction – general principles – whether business names nearly identical;

*Re Australian Style Investments Pty Ltd and Commissioner of Taxation* (2013) 97 ATR 984; [2013] AATA 847 - goods and services tax – major infrastructure project – execution of deed – provision for delivery of irrevocable proxies – whether a financial supply – penalty;

*Re Cooper Bros Holdings Pty Ltd and Commissioner of Taxation* (2013) 59 AAR 165; (2013) 93 ATR 324; [2013] AATA 99 - excise duty – used oil sold as fuel oil – private rulings regime – general principles – consideration of additional information.

***Joint decisions include:***

*Re Chemical Trustee Ltd & Ors and Commissioner of Taxation & Chief Executive Officer, AUSTRAC* (joined party) (2013) 138 ALD 658; (2013) 95 ATR 927; [2013] AATA 623 - freedom of information – exempt documents – whether documents affect international relations of Commonwealth – whether affect enforcement of law – whether secrecy provisions of enactment apply;

*Re Sea Shepherd Australia Ltd and Commissioner of Taxation* (2012) 89 ATR 948; [2012] AATA 520 - international non-profit marine wildlife conservation organisation – whether entitled to endorsement as deductible gift recipient for purposes of *Income Tax Assessment Act 1997*.

***Speeches:***

“The Current State of Statutory Interpretation” (speaker at Leo Cussen Centre for Law in July 2018);

“Where are Reviews Won and Lost?” (speaker at Law Institute of Victoria's Administrative Law Half Day conference in March 2017);

“Recent Lessons from the Federal Courts” (joint speaker at Tribunal's National Conference in May 2016);

“Tax Lawyers & Tax Law As Depicted in Popular Culture” (speech given at Tax Bar Association dinner in honour of The Hon Justice Kerr, *Chev LH* in June 2013).

***Professional associations:***

A member of the International Association of Tax Judges.

**Victorian Bar:**

***Cases include:***

*National Mutual Life Association of Australasia Ltd v Commissioner of State Taxation* [2010] SASC 261 (leading counsel for NMLA); on appeal (2011) 110 SASR 536 (sole counsel for NMLA); special leave application *AMP Life Ltd, ANZ Life Assurance Ltd, ING Life Ltd, NMLA v Commissioner of State Taxation* [2013] HCA Trans 074 (junior counsel for applicants) - stamp duty - insurance business - characterisation of premiums and policies;

*Tasman Group Services Pty Ltd v Commissioner of Taxation* [2008] FCA 23 (junior counsel for Tasman); on appeal *FCT v Tasman Group Services Pty Ltd* (2009) 180 FCR 128; special leave application [2010] HCA Trans 107 - commercial debt forgiveness provisions of *Income Tax Assessment Act 1936* - connection of debts held by non-resident corporation with Australia;

*Crown Melbourne Ltd v Commissioner of Taxation* (settled in 2009) (junior counsel for Crown) - deductibility of payments of casino taxes made to State of Victoria - Pt IVA of *Income Tax Assessment Act 1936*;

*Caltex Australia Petroleum Pty Ltd v Commissioner of Taxation* (2008) 173 FCR 359 (junior counsel for Caltex) - excise duty - petroleum products - technical and constitutional aspects;

*Mohandoss v AMP Superannuation Limited* [2007] FCA 497 (sole counsel for AMP) – appeal from Superannuation Complaints Tribunal – trustee’s refusal to reimburse amount transferred to another superannuation fund – powers of Tribunal;

*Auspine Staff Superannuation Pty Ltd v Henderson & AMP Life Limited* [2006] FCA 1281 (sole counsel for AMP) – appeal from Superannuation Complaints Tribunal – total and permanent disablement – relationship between definitions in fund rules and insurance policy;

*Commissioner of State Revenue v Challenger Property Nominees Pty Ltd* [2006] VSC 203 (junior counsel for Challenger) - duty - subscription for and redemption of units in unit trust - exemption for change in trustees - dutiable value of transferred property;

*Barmote Pty Ltd v Commissioner of State Revenue* [2005] VCAT 2209 (sole counsel for applicant) - land tax – exemption - principal place of residence - family trust of leading taxation senior counsel - whether discretionary trust – whether occupants were beneficiaries;

*Commissioner of State Revenue v Uniqema Pty Ltd* (2004) 9 VR 523 (junior counsel for Commissioner) – stamp duty – transfers of real property – sale of business – whether value of goodwill formed part of value of land – whether plant and equipment were fixtures;

*Vopak Terminals Australia Pty Ltd v Commissioner of State Revenue* (2004) 12 VR 351 (junior counsel for Commissioner) – stamp duty – transfer of real property – dutiable value – effect of trade fixtures – effect of agreement to sell fixtures on estate and interest sold;

*The Distribution Group Ltd v Commissioner of Taxation* [2003] FCA 202 (junior counsel for TDGL); on appeal *FCT v TDGL* (2003) 130 FCR 517 – sales tax – exemption – local area network cable – whether ordinarily used in provision of telecommunications services;

*The Muir Electrical Co Pty Ltd & Ors v Commissioner of State Revenue (No 2)* [2002] VSC 224 (junior counsel for Commissioner); on appeal *CSR v The Muir Electrical Co Pty Ltd & Ors* (2003) 8 VR 200 – payroll tax – general exemption – grouping provisions;

Involved in early stages of *ExxonMobil Superannuation Plan Pty Ltd v Esso Australia Pty Ltd & Ors* (2010) 29 VR 356 (proceeding commenced in 2001) (junior counsel for current members) - claim for rectification of trust deed governing superannuation plan.

***Publications include:***

'Hart's Case - What Kind of Hand Has the High Court Dealt?' (2004) 39 *Taxation in Australia* 23, co-written with J W de Wijn QC;

'Part IV A - Twenty-Two Years On .... In a State of Maturity?' (Pt 1) (2003) 38 *Taxation in Australia* 310; (Pt 2) (2004) 38 *Taxation in Australia* 372, co-written with J W de Wijn QC;

'Why the Superannuation Guarantee Scheme is Unconstitutional' (1999) 28 *Australian Tax Review* 13; (2000) 3 *Tax Specialist* 254.

**University lecturing:**

Senior Fellow, Faculty of Law, University of Melbourne (2002, 2004-2005) - lectured in Superannuation Law in Graduate Program;

Lecturer at Central Queensland University (Melbourne International Campus) in commercial law and contract law (1997–2002); also lectured during that period in taxation law, business finance and auditing.

**Previous employment:**

Blake Dawson Waldron:

Articled clerk, then solicitor, in Banking & Finance Group, then Corporate & Commercial Group (1994-1995) – assisted in drafting major bank's standard guarantee in plain English;

Part-time paralegal in government privatisation practice group (1991-1992) - edited publications, drafted letters to government agencies and prepared presentations.

**Tertiary and secondary education:**

University of Melbourne (1988–1993); majored in accounting in commerce degree.

Melbourne Girls Grammar School; attended on full scholarship (1984–1987).

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