



E L I Z A M B E R G I N

BARRISTER
MELBOURNE • ADELAIDE

EXECUTIVE SUMMARY

Eliza M Bergin practises in the areas of public and commercial law. Eliza appears in all Federal and State courts, tribunals and royal commissions. Eliza accepts briefs in all areas of public and commercial law in addition to criminal matters relating to white collar crime or regulatory offences.

Prior to coming to the Bar, Eliza practised as a solicitor for 17 years including senior roles as a Principal Solicitor at VGSO (2010-2017) and Senior Associate at King & Wood Mallesons (2004-2010). She was Associate to The Hon Peter RA Gray AM of the Federal Court of Australia (2001-2002).

Public and Administrative Law

Eliza holds a Negative Vetting 2 (Top Secret) security clearance. She accepts briefs in security-related matters, including counter-terrorism. Eliza has considerable experience in inquiries, investigations and royal commissions. Eliza practises in judicial review, FOI, migration law, civil appeals, public law and regulatory prosecutions including ASIC and AHPRA.

Civil and Commercial Litigation

Eliza's experience as an advocate includes building and construction litigation and arbitration, contractual disputes, leasing disputes, commercial disputes, consumer law, trade practices, competition, bankruptcy and insolvency. She accepts briefs in all areas of commercial and civil litigation.

Land Acquisition, Planning and Environment Law

Eliza has particular capabilities in all aspects of public and administrative law. Eliza is a Recommended Junior Counsel - Planning and Environment in *Doyle's Guide* (2018) and (2019). Eliza advises corporations, individuals, government and institutional clients on use and development of land. Developments she has advised on include urban renewal projects, state-significant infrastructure projects, commercial and retail facilities,

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telecommunications facilities, apartment and residential developments, correction facilities, landfills, port expansion, rail and roads.

Eliza has run high profile, long running and often complex cases for clients regarding issues such as environment, planning, water, waste, climate change, ESD, urban renewal, contamination of land, native vegetation, protected species and protected habitat, contaminants such as PFAS, industrial land use, flooding, fires, natural resources, fisheries, mining, lightspill, traffic and noise.

RECENT SIGNIFICANT CASES (2017 – 2019)¹

Public and Administrative Law

1. Appointed counsel to assist the Royal Commission into Aged Care Quality and Safety instructed by the Australian Government Solicitor and the Official Secretary to the Commission established by Letters Patent on 6 December 2018. Led by P Gray QC, T McEvoy QC (until March 2019) and P Rozen QC (from April 2019)
2. An appeal to the Federal Court of Australia heard by Charlesworth J regarding application for review of a decision of the Federal Circuit Court of Australia to affirm refusal of a student visa *Fati v Minister for Immigration and Border Protection* [2018] FCA 52
3. Several appeals to the Federal Circuit Court of Australia regarding refusal of protection visa applications by the Minister for Home Affairs *EOD17 v Minister for Home Affairs* [2018] FCCA 3323 (interlocutory judgment on reinstatement); *BUB17 v Minister for Immigration and Border Protection* [2018] FCCA with E Rutherford (reserved); written submissions in *FCT17 v Minister for Immigration & Anor* [2019] FCCA 1167
4. Freedom of Information (2018) Appearing for and advising a Federal Senator in applications under FOI including an appeal before Kenny J in her capacity as a Presidential Member of the AAT regarding defence of the Commonwealth and

¹ All appearances were unled unless otherwise stated

international relations *Xenophon v Secretary, Department of Defence* [2019] AAT (reserved)

Civil and Commercial Litigation

5. Advising on application of the anti-money laundering provisions of the Commonwealth (2018)
6. Appeal on a *quantum meruit* claim by an unlicensed builder in the Supreme Court (2018, Junior Counsel to D Riggall)
7. A trial regarding a commercial tenancy dispute in the Magistrates Court (2018)
8. Submissions on a claim to legal professional privilege and whether a settlement offer was made in accordance with applicable rules (2018)
9. Advising on a large commercial dispute including claims of oppressive conduct, breach of contracts and misrepresentations in the Supreme Court (2018, Junior Counsel to P O'Sullivan QC (now Judge of the District Court))
10. Appeal against the refusal of a stay application to a Judge of the Supreme Court from an interlocutory decision of a Magistrate (2017) *Aqua Max Water Filtration Solutions v Hurtado* [2017] SASC 165
11. Unfair preference claim in the Magistrates Court and Federal Circuit Court (2017, 2018)
12. Contested estate litigation for claimants under inheritance, wills and probates legislation in Supreme Court (2017 – 2018)
13. Appeal to a Judge of the District Court from orders of summary judgment by a Magistrate in a building and construction dispute (2017, Junior Counsel to D Riggall) *D & C Homes v Yang* [2018] SADC 36
14. Construction arbitration under building industry security of payments legislation (2017 – 2018, Junior Counsel to R Fenwick-Elliott)
15. Defending an application for a freezing order in the Supreme Court (2017)

Land Acquisition, Planning and Environment Law

16. Urban renewal - Advisory Committee - Fishermans Bend (2018, Led by J Forsyth, Instructed by City of Melbourne) Advisory Committee into proposed Planning Scheme Amendment GC81 to Melbourne and Port Phillip Planning Schemes including 45 hearing days and 253 submitters Fishermans Bend Planning Review

Panel (AC) [2018] PPV 71

17. Planning - Convenience retail - Appearing for permit applicant before VCAT regarding proposed service station 'On The Run' in Horsham (2018) *OTR 129 Pty Ltd & OTR 130 Pty Ltd v Horsham Rural City Council* [2018] VCAT 177
18. Planning - Convenience retail - Appearing for permit applicant before VCAT regarding proposed service station 'On The Run' in Mildura (2018) *OTR 16 Pty Ltd & OTR 169 Pty Ltd v Mildura Rural City Council* [2019] VCAT 27
19. Planning - Residential subdivision - Objector appeal before VCAT against conditions of permit (2018, unled) *Thuc Tran Mok Lao v Maroondah City Council* [2018] VCAT (13 August 2018)
20. Advising a significant waste management business regarding environment and planning regulatory requirements and risks (2017)
21. Advising a significant waste industry body regarding environment and planning regulatory requirements and risks (2018)
22. Application for review of a refusal to extend of time in which to commence development and application for declarations regarding commencement of works regarding a proposed gaming venue *DSL Securities Pty Ltd v Cardinia Shire Council* [2018] VCAT 212

SOLICITOR (2000 - 2017)

Royal Commissions and Boards of Inquiry

23. Board of Inquiry (2017) Solicitor assisting the *Building Practitioners Board* on secondment for 6 months for VGSO while a Principal Solicitor
24. IBAC (2016) Solicitor acting for the State of Victoria before Independent Broad-based Anti-Corruption Commission in Operation Ord regarding corruption in the education (IT) sector
25. IBAC (2015) Lead Solicitor acting for the State of Victoria before Independent Broad-based Anti-Corruption Commission in Operation Fitzroy regarding corruption in the public transport (bus) sector
26. Inquiry (2014) Solicitor instructing senior and junior counsel before the *Inquiry into the Hazelwood Coal Mine Fire* on behalf of the State of Victoria while a Principal

Solicitor at VGSO

27. Royal Commission (2009) Acting for the Municipal Association of Victoria and 77 Local Councils in the 2009 Bushfires Royal Commission while a Senior Associate at King & Wood Mallesons

Planning and Environment

28. Expansion of the Melbourne Regional Landfill in Ravenhall for Corrections Victoria, *Melton C162* [2017] PPV
29. Advising on claims for damages arising from water over flows and risk to land and infrastructure for a range of clients (2012 – 2016)
30. Proposed Bunnings development, *Greater Shepparton C183* for VicRoads [2015] PPV 109
31. Proposed height limits regarding VicRoads headquarters in Kew, *Boroondara C138 & C139* [2014] PPV 65
32. Representing the State regarding two wind farm developments in *Woolsthorpe Wind Farm Pty Ltd v Minister for Planning* (2012) VCAT 1634 and *Naroghid Wind Farm Pty Ltd v Minister for Planning* for the Minister for Planning (2013) VCAT 675
33. Acting in the challenge regarding alpine grazing in the national parks before the Federal Court for the Minister for Environment in *Minister for the Department of Sustainability and Environment (Vic) v Minister for Sustainability, Environment, Water, Population and Communities (Cth)* [2013] FCA 1
34. Redevelopment of Dimmeys for PTV *Richmond Icon Pty Ltd v Yarra City Council* [2011] VCAT 2175
35. Acting for the State in *Friends of Mallacoota Inc v Minister for Planning & Minister for Environment and Climate Change* [2010] VSC 222
36. Acting for the State regarding Windsor Hotel matters including *National Trust of Victoria v Victorian Civil and Administrative Tribunal & Minister for Planning & Halim Group & Hotel Windsor Holdings Pty Ltd* [2010] VSC 430
37. Major redevelopments and expansion of public, commercial and industrial facilities including the Windsor Hotel redevelopment, GTV 9 Studios in Richmond, Port of Portland, St Kilda Triangle

38. Advising on the preparation and conduct of environmental litigation including *Winky Pop and Or v Mobil Australia Ltd* (2009-2010) and *Spotless Group Ltd v Premier Building and Consulting Pty Ltd* (2006) while at King & Wood Mallesons
39. Advising on the rollout of petroleum facilities including Applications for Review before VCAT for Woolworths Ltd (2005-2010) while at King & Wood Mallesons
40. Planning advice and applications for review before VCAT and the Supreme Court for Telstra Ltd (2004-2010) while at King & Wood Mallesons

PROFESSIONAL EXPERIENCE

Professional roles

- Barrister, 2017 – Present
- Principal Solicitor at the Victorian Government Solicitor's Office, 2010 – 2017
- Solicitor and Senior Associate at King & Wood Mallesons, 2004 – 2010
- Legal Officer at the Office of Chief Parliamentary Counsel, 2002 – 2004
- Judge's Associate at the Federal Court of Australia to the Honourable Peter RA Gray AM, 2001 – 2002
- Solicitor at Minter Ellison, 1999 – 2001

Qualifications

- Master of Laws (Environmental Law) (2016) – Australian National University
- Bachelor of Laws (Hons) (2000) – University of Melbourne
- Bachelor of Science (1995) – Monash University

Professional Memberships

- Chair Planning and Local Government Committee, Planning and Environment Law Section, Law Institute of Victoria (2016-2017)
- Member, Victorian Planning and Environment Law Association
- Observer, Conference of Parties 20, United Nations Framework Convention on Climate Change (Peru, 2014)

- Member, Australian Institute of Administrative Law
- Member, Australian Association of Constitutional Law
- Advocacy coach, GDLP University of Adelaide / Law Society of South Australia (2018, 2019)

PAPERS AND PUBLISHED WORKS

Eliza regularly delivers papers and publishes articles:

- Administrative law: The implications of *Burns v Corbett* in tribunal proceedings against interstate residents (October 2018) *Bulletin (Law Society of South Australia)* 40(9), 36
- Book Review 'Pizer's Annotated VCAT Act by E Nekvapil' *Law Institute Journal* (May 2018) p 59
- Presentation 'National Trends in Planning and Environment Law' for Legalwise Melbourne (13 March 2018)
- Presentation 'National Trends in Planning and Environment Law' for Legalwise Adelaide 'Planning, Development and Infrastructure Law in SA: A Brave New World' (7 March 2018)
- Presentation to the Law Institute of Victoria Government Lawyers Conference – Public Interest Disclosure, Confidentiality and Privilege (October 2017)
- Presentation to the Law Institute of Victoria Government Lawyers Conference – Information Sharing in Government (November 2016)
- 'Book review: Australian Environmental Law: Norms, Principles and Rules' *Law Institute Journal* (September 2016)
- Presentation to the Law Institute of Victoria Property Law Update – 'What's new in Planning Law?' (March 2016)
- Presentation to the Clean Energy Council, Wind Industry Forum on 'Wind Farms and Applicable Laws with a focus on Planning' (March 2015)
- Guest Lecturer, Masters of law subject: Climate Law, University of Melbourne on Wind Energy (May 2015)

- Victorian Planning and Environment Law Association, Young Professional Group, 'Key Principles of Wind Farm and Bushfire Management' (November 2014)
- VGSO Seminar (2014) 'Environment and Planning Trends' with Ed Small
- VGSO Seminar (2010) 'Good Decision-making' with Jonathan Smithers
- Eliza Bergin, 'Powering ahead? The future for wind farms' (2014) *Law Institute Journal* 55
- Eliza Bergin & Isabelle Border, 'Energy Efficiency – More than a trend' (2007) *CO Magazine*
- Property Council of Australia, Sustainability – Green Buildings and Green Leases Melbourne June 2007, Hobart July 2007