

# **Eliza Mary Bergin**

## **BARRISTER**

### **Clerk**

Foley's List  
Owen Dixon Chambers  
205 William Street  
Melbourne VIC 3000  
(03) 9225 7777 (clerk)

### **Chambers**

Level 12  
Isaacs Chambers  
555 Lonsdale Street  
Melbourne VIC 3000  
(03) 9225 7827 (direct)

## **EXECUTIVE SUMMARY**

I practice in public, regulatory and commercial law. I appear in and advise in relation to all proceedings in the Federal and Supreme Court, Tribunals and Royal Commissions.

Since 2017, at the Bar I have developed a fairly specialised practice in planning, environment and valuation disputes. I advise on all aspects of obtaining, granting, challenging and defending approvals for permit applicants, objectors and for decision-makers in planning and environment. I advise on all aspects of valuation and compulsory acquisition disputes including assisting clients to settle matters where appropriate.

In addition, I appear in Royal Commissions and Inquiries. In 2019-2021, I was appointed one of the Counsel Assisting in the Royal Commission into Aged Care Quality and Safety.

I am briefed unled, with a leader or as co-counsel with other junior counsel. I work well in large and small teams. My practice is based in Melbourne, and I have chambers in each of Melbourne (Level 12, Isaacs Chambers) and Adelaide (Anthony Mason Chambers).

Prior to coming to the Bar, I was a solicitor for 17 years. In commercial law, I worked as a Solicitor and Senior Associate at Mallesons Stephen Jaques (now King & Wood Mallesons) (2004- 2010) and was a Solicitor and Articled Clerk at Minter Ellison (1999-2001).

In public sector roles, I was Associate to The Hon Peter RA Gray AM of the Federal Court of Australia (2001-2002). I was a legal officer in Office of Chief Parliamentary Counsel (2002- 2004) and a Principal Solicitor at the Victorian Government Solicitor's Office. I was also volunteer lawyer in East Timor for 6 months (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

## RECENT CASES

### ***Royal Commission***

1. Appointed Counsel to Assist the [Royal Commission into Aged Care Quality and Safety](#) (January 2019 – February 2021). Led by P Gray QC and P Rozen QC (2019-2021). Led evidence from direct experience witnesses, experts, facility managers, aged care workers and volunteers, witnesses living with disability including through Auslan interpreters. Prepared draft written and oral opening and closing submissions for major hearings and specific case studies for Senior Counsel. Prepared final submissions with other members of Counsel Assisting team for Senior Counsel. Assisted Commissioners regarding Interim Report and Final Report. Assisted Senior Counsel in preparation of numerous hearings in Adelaide, Broome, Perth, Mildura, Melbourne, Sydney and Hobart on all issues pertaining to aged care including funding and finance, workforce and volunteers, philosophy of the system, young people, direct and indirect care, rural and remote issues

### ***Land Acquisition, Planning and Environment Law***

#### *Counsel (2017 – present)*

2. Valuation – Ararat Wind Farm – disputed capital improved value for ratings purposes raising issues of the correct approach to occupancy, apportionment across municipalities and whether wind turbines are fixtures or chattels. Trial including valuation and engineering expert evidence and cross-examination of wind farm witness. Acting for Valuer-General Victoria (2019-2021). Co-counsel with D O'Brien in VCAT and Supreme Court of Victoria. Led by A Myers QC in Court of Appeal (until May) and then by T North QC. [Ararat Wind Farm Pty Ltd v Ararat Rural City Council and Valuer-General Victoria](#) [2020] VSC 853 (Richards J)
3. Valuation – Mt Gellibrand Wind Farm – ongoing proceedings in the Supreme Court of Victoria regarding valuation of wind farm for ratings purposes. Acting for Valuer-General Victoria (2020). Co-counsel with D O'Brien in VCAT and Supreme Court of Victoria.

4. Valuation – Rural property in Lake Eildon – Disputed Site Value of a mixed use property raising issues about value to attribute to improvements, correct AVPCC code and the meaning of larger property. Acting for Valuer-General Victoria (VCAT, 2021). Unled
5. VCAT Planning and Environment List – Conservation Agreement – Disputed removal of a conservation covenant from land under *Conservation Forests and Lands Act 1987*. Acting for Minister for Environment. (VCAT, 2021) Unled
6. Planning Panels Victoria – Urban renewal – Standing Advisory Committee – Objection to grant of permit for a Nightingale development in Moreland called in by the Minister from VCAT. Acting for Current Power Pty Ltd. (PPV, 2021) Unled
7. Supreme Court – Compulsory Acquisition – Northern Connector Freeway– Disputed acquisition by Commissioner for Highways. Acting for several individual claimants (Supreme Court SA, 2020-21). Unled
8. Federal Court of Australia – Environment – civil penalty proceedings regarding unlicensed importation of synthetic greenhouse gas [\*Minister for the Environment v ACN Pty Ltd\*](#) [2020] FCA 1557 (Mortimer J). Acting for the defendant company. Unled
9. Planning Panels Victoria – Advisory Committee – proposed Planning Scheme Amendment GC81 to Melbourne and Port Phillip Planning Schemes including 45 hearing days and 253 submitters raising various issues including social housing, public transport, roads, industrial land use proximate to residential land use. Acting for City of Melbourne with J Forsyth (2018). [\*Fishermans Bend Planning Review Panel\*](#) (AC) [2018] PPV 71
10. VCAT Planning and Environment List – Convenience retail – Appearing for permit applicant regarding proposed convenience store and service station ‘On The Run’ in Horsham including traffic, noise and planning expert evidence. Unled. *OTR 129 Pty Ltd & OTR 130 Pty Ltd v Horsham Rural City Council* [2018] VCAT 1778
11. VCAT Planning and Environment List – Convenience retail – Application for review for permit applicant regarding proposed convenience store and service station ‘On The Run’ in Mildura including traffic, noise and planning expert evidence. Unled. [\*OTR 16 Pty Ltd & OTR 169 Pty Ltd v Mildura Rural City Council\*](#) [2019] VCAT 27
12. VCAT Planning and Environment List – Application for review for objector against extension of dog breeding facility in Gisborne South. Unled. [\*Duval v Macedon Ranges SC\*](#) [2019] VCAT 374

13. VCAT Planning and Environment List – Gaming regulation – proposed expansion of gaming facility - [DSL Securities Pty Ltd v Cardinia Shire Council](#) [2018] VCAT 212
14. VCAT Planning and Environment List – Residential redevelopment – Application for review for objector against residential extension in Fitzroy North. Unled. [Walters v Yarra CC](#) [2018] VCAT 1784
15. VCAT Planning and Environment List – Residential subdivision – Objector appeal against conditions of permit. Unled. *Thuc Tran Mok Lao v Maroondah City Council* [2018] VCAT (13 August 2018)
16. VCAT Planning and Environment List – Application for review of a refusal to extend time in which to commence development and application for declarations regarding commencement of works regarding a proposed gaming venue. Unled. *DSL Securities Pty Ltd v Cardinia Shire Council* [2018] VCAT 212
17. Advice to significant waste management business and industry body regarding environment and planning regulatory requirements and risks (2017, 2018)

*Solicitor*

18. Planning Panels Victoria – Expansion of the Melbourne Regional Landfill in Ravenhall for Corrections Victoria. Solicitor Advocate. *Melton C162* [2017] PPV
19. VCAT Planning and Environment List – Advising on claims for damages arising from water over-flows and risk to land and infrastructure for a range of clients (2012 – 2016)
20. Advising VicRoads on planning and environment issues relating to numerous Level Crossing Removal Projects in Metropolitan Melbourne
21. Planning Panels Victoria – Proposed Bunnings development, including traffic evidence for VicRoads. Solicitor Advocate. *Greater Shepparton C183* [2015] PPV 109
22. Planning Panels Victoria – Proposed height limits regarding VicRoads headquarters in Kew, Solicitor Advocate. *Boroondara C138 & C139* [2014] PPV 65
23. VCAT Planning and Environment List – extension of time and bias application regarding development of Wind Farms for the Minister for Planning. Instructing solicitor. *Woolsthorpe Wind Farm Pty Ltd v Minister for Planning* (2012) VCAT 1634 and *Naroghid Wind Farm Pty Ltd v Minister for Planning* (2013) VCAT 675
24. Federal Court of Australia – Acting in the challenge regarding alpine grazing in the national parks before the Federal Court for the Minister for Environment. Instructing

solicitor. *Minister for the Department of Sustainability and Environment (Vic) v Minister for Sustainability, Environment, Water, Population and Communities (Cth)* [2013] FCA 1

25. VCAT Planning and Environment List – Redevelopment of Dimmeys for PTV. Solicitor Advocate. *Richmond Icon Pty Ltd v Yarra City Council* [2011] VCAT 2175
26. Heritage – Supreme Court of Victoria – Acting for the State. Instructing solicitor. *Friends of Mallacoota Inc v Minister for Planning & Minister for Environment and Climate Change* [2010] VSC 222
27. Heritage – Acting for the State regarding Windsor Hotel matters. Instructing solicitor. *National Trust of Victoria v Victorian Civil and Administrative Tribunal & Minister for Planning & Halim Group & Hotel Windsor Holdings Pty Ltd* [2010] VSC 430
28. 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
29. Major environmental litigation regarding claims for damages for contamination of land in various matters. Instructing solicitor. *Winky Pop and Or v Mobil Australia Ltd* (2009-2010); *Spotless Group Ltd v Premier Building and Consulting Pty Ltd* (2006)
30. High volume planning advices for Telstra Ltd particularly about the low impact facility determination and planning approval (2004-2010)
31. VCAT Planning and Environment List – Numerous applications for review for Woolworths Ltd regarding the roll-out of Petrol Plus facilities across Victoria including Mornington Peninsula, Torquay, Wodonga, Frankston
32. VCAT Planning and Environment List and Planning Panels Victoria – Numerous applications for review and one major panel hearing for Woolworths Ltd regarding new proposed supermarkets across Victoria including Bright, Mt Evelyn, Geelong West
33. VCAT and Supreme Court of Victoria – Enforcement proceedings for Woolworths Ltd against The Warehouse Group regarding planning controls in then bulky goods zone (Business 4 Zone)

## **Public and Administrative Law**

### *Counsel*

34. Migration appeals to the Federal Court of Australia, Federal Circuit Court of Australia such as [EOD17 v Minister for Home Affairs](#) [2018] FCCA 3323 (interlocutory judgment on reinstatement. Unled)
35. [BUB17 v Minister for Immigration and Border Protection](#) [2020] FCCA 204 (with E Rutherford. Unled)
36. [FCT17 v Minister for Immigration & Anor](#) [2019] FCCA 1167 (Written submissions)
37. [Fati v Minister for Immigration and Border Protection](#) [2018] FCA 52 (Unled)
38. Freedom of Information appeal regarding defence of the Commonwealth and international relations relating to proposed future submarine project for Senator Rex Patrick (Unled) [Xenophon v Secretary, Department of Defence](#) [2019] AAT 3667 (Kenny J)

## **Royal Commissions and Inquiries**

### *Solicitor*

39. Solicitor assisting the *Building Practitioners Board* (2017)
40. Solicitor instructing senior and junior counsel on behalf of the State of Victoria regarding planning and environment issues before the *Inquiry into the Hazelwood Coal Mine Fire* (2014)
41. IBAC investigation – Solicitor acting for the State of Victoria before Independent Broad-based Anti-Corruption Commission in Operation Ord (2016)
42. IBAC investigation – Lead Solicitor acting for the State of Victoria before Independent Broad-based Anti-Corruption Commission in Operation Fitzroy (2015)
43. 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

## **PROFESSIONAL MEMBERSHIPS**

- Judge, Sir Harry Gibbs Constitutional Law Moot, Melbourne University Law Students Society (2019)
- 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

## PAPERS AND PUBLISHED WORKS

Eliza regularly delivers papers and publishes articles:

- Peter Gray QC and Eliza Bergin, Australian Institute of Administrative Law, 'Compulsory notices in Royal Commissions and other statutory Inquiries: Justice with efficiency or mission creep?' (19 August 2021)
- Victorian Planning and Environment Law Association, Red Dot Decisions (2 June 2021)
- Book Review 'Contract and the Australian Consumer Law' by JW Carter and L Chan (2019) *Law Institute Journal* (February 2020)
- 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 and Adelaide, 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)
- Eliza Bergin, 'Powering ahead? The future for wind farms' (2014) *Law Institute Journal* 55
- VGSO Seminar (2014) 'Environment and Planning Trends' with Ed Small
- VGSO Seminar (2010) 'Good Decision-making' with Jonathan Smithers
- Eliza Bergin and Isabelle Border, 'Energy Efficiency – More than a trend' (2007) *CO Magazine*
- Property Council of Australia, Sustainability – Green Buildings and Green Leases (Melbourne and Hobart, 2007)