

# Emma Luck

Barrister  
Francis Burt Chambers

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## Experience

Emma has over 18 years experience representing a wide range of commercial clients across a variety of sectors. She is experienced in appearing in the District Court and the Supreme Court of Western Australia, the Federal Courts, as well as in domestic and international arbitrations. She has also appeared in the High Court of England and Wales.

Emma joined Francis Burt Chambers in early 2015. Between 2004 and 2015 Emma worked in Perth as a senior associate at DLA Piper and Clayton Utz. Prior to 2004 Emma worked in London, both in private practice and as in-house counsel at BP Global Exploration & Production.

## Practice Areas

- Construction & major projects
- Commercial litigation
- Insurance & professional indemnity
- Administrative law

## CONSTRUCTION

Emma has represented and advised principals, contractors and subcontractors on construction and engineering disputes involving major energy & resources projects, infrastructure, civil works, and commercial & residential building developments. Emma is experienced in all facets of project disputes and has drafted a number of large value adjudication applications and responses.

- Appearing as junior counsel in the judicial review of five adjudication determinations and associated enforcement proceedings; *Samsung C&T Corporation v Loots* 2016 [WASC] 330.
- Acting as counsel for a sub-subcontractor in District Court litigation relating to works on the Jumblebar mine site.
- Acting as counsel in Supreme Court proceedings for urgent injunctive relief relating to documents and equipment removed from site during a project dispute.
- Acting as counsel in Supreme Court litigation for alleged defective design and construction of an office development.
- Acting for the owner in a number of large-scale disputes over several packages, relating to an international and domestic airport expansion project.
- Acting for the principal on the construction of a magnetite iron ore project at Cape Preston (currently the single largest Chinese investment in Australia and one of the world's largest magnetite projects), including; circa \$350m arbitration regarding the design and construction of a

power station, \$7.5m Supreme Court litigation relating to slurry pipelines, and several high value adjudication responses.

- Representing the contractor in a \$187m+ arbitration and associated payment disputes regarding the design and construction of the pioneer materials offloading facility (PMOF) at Barrow Island (Gorgon).
- Appearing at mediation and advising on jurisdictional disputes relating to the Fremantle Harbour deepening and Rous Head expansion.
- Representing a firm of architects defend an arbitration for other damages totaling over \$13m relating to the architects design, documentation and superintendence of a University's science precinct.
- Acting for the contractor in a Supreme Court litigation relating to the upgrade and extension of a shopping centre.

## INSURANCE

Emma advises Australian insurers and Lloyds syndicates in relation to a range of professional indemnity matters and coverage disputes, including claims by architects, engineers, financial advisors, insurance brokers, real estate agents, and officers under D&O and association policies of insurance.

- Acting as counsel for insurers of an international white goods manufacturer in respect of multiple claims under its product liability insurance.
- Acting as junior counsel for insured engineers defending claims relating to alleged defects on a large commercial building development.
- Appearing for an Aboriginal Association defending a claim for unfair dismissal in the Western Australian Industrial Relations Commission.
- Representing manual handling engineers and insurers in relation to insured and uninsured components of litigation for alleged defective design, manufacture and commissioning of a manual handling plant at the Bluescope Steelworks, Port Kembla.
- Defending a claim against underwriters relating to a coverage dispute on a fire loss at a commercial premises.
- Acting for consultant engineers defending a Supreme Court action by construction contractors for alleged misleading and deceptive conduct relating to the tender process for a sewerage system in the Northern Territory.
- Acting in a number of matters for real estate agents (by subrogation) defending a variety of Supreme Court litigations for alleged misleading and deceptive conduct during the marketing and sale of business and residential properties, commercial developments and investment consortiums.
- Representing various financial advisors in respect of claims made against them arising out of the Westpoint collapse.
- Defending a claim for alleged breach of contract and/or negligence of a superintendent of a

construction project for roads and municipal buildings in a new housing development

- Providing an advice to English underwriters of a Maltese broker's professional indemnity insurance policy, relating to the broker's alleged failure to renew a 50% line of a CAR Policy for a construction project in Libya. (Maltese and Libyan laws applied).
- Representing a consortium of consulting engineers in pre-action negotiations regarding its allegedly defective pavement design on two highway extensions.
- Acting for insured consulting engineers in defending a multi party action in the Supreme Court for alleged defective design and construction of the Goongoongup road and rail bridge.

## COMMERCIAL LITIGATION

Emma has experience in a broad range of complex litigation in the Supreme Court and the District Court of Western Australia.

- Acting as counsel for the defendant in a Supreme Court mortgage repossession action and bringing a counterclaim for breach of contract, misleading and deceptive conduct and unconscionable conduct by the bank in respect of the inception of the loan facilities giving rise to the mortgage.
- Acting as counsel for the plaintiff in a District Court claim for breach of contract and contravention of section 36 of the *Australian Consumer Law* in respect of commercial vehicle upgrade.
- Acting as counsel for a financial advisor defending a District Court action relating to advice given when transferring pensions from overseas to Australia.
- Acting as counsel in a District Court litigation for damages arising out of the conversion by a third party of a large installation at a vineyard, restaurant and cellar door in Margaret River.
- Appearing as counsel in various contested winding up applications in the Federal Court of Australia.
- Representing US group entities seeking emergency relief in respect of a failure to comply with legislative requirements for members' meetings during an attempted takeover of an Australian listed company.
- Acting in a Supreme Court defamation action by an iron ore producer against an Aboriginal Corporation for alleged imputations flowing from statements to the Australian Stock Exchange relating to a Native Title Agreement.
- Defending a US\$50m arbitration and associated proceedings regarding the allegedly unlawful withdrawal of an asset from an exploration permit in Italy prior to acquisition of the asset by the oil company. On successfully opposing litigation and sequestration proceedings in Italy on jurisdictional grounds the arbitration was held in Houston under English Law and in accordance with UNCITRAL Rules.

- Drafting the Notification and submissions to the European Commission for Competition regarding the concentration of assets by sale of an entity's 50% participant interest in each of the In Amenas and In Salah gas field in Algeria, pursuant to the European Union's Merger Regulations.
- Providing an advice on a foreshadowed maritime boundary dispute between two West African nations, involving significant offshore oil operations.
- Advising on a liftings dispute between joint operators, including the state oil company, relating to the berthing, access and crude oil handling facilities at the nation's port.

## ADMINISTRATIVE LAW

Emma has worked with various refugee organisations and community law centres for over 20 years in her pro bono administrative law practice. She accepts referrals through Law Access.

- Appearing as counsel in the judicial review of the Administrative Appeals Tribunal's (AAT) decision to affirm the delegate's rejection of an application for a protection visa based on adverse credibility findings (conceded by the Minister, post-hearing on the basis that there had been an unintentional breach of s.425 of the *Migration Act*).
- Acting as counsel in the judicial review of a decision by the Immigration Assessment Authority (IAA) to affirm the delegate's decision not to grant the referred applicant (who is terminally ill) a protection visa.
- Providing an opinion on the merits of an application to the Federal Circuit Court arising from the refusal of the Assistant Minister not to revoke his delegate's decision to cancel his visa under s.501(3A) of the *Migration Act*.
- Providing an opinion on the merits of an application to the Federal Circuit Court arising from the AAT's application of s.45AA of the *Migration Act* and r.2.08F of the *Migration Regulations* 1994.
- Providing an advice on the merits of an out of time application to the Federal Circuit Court for review of a decision of the IAA.
- Providing an opinion on the validity of the 'natural justice hearing rule' under ss.357A and 422B of the *Migration Act* in respect of proceedings in the AAT.

## Memberships

Western Australian Bar Association

Society of Construction Law

Law Society of England & Wales

Women Lawyers of Western Australia