

## **ELMI CARLEAN**

### **CURRICULUM VITAE**

I am a Barrister at Francis Burt Chambers in Perth, principally practicing in general commercial and civil litigation, and all aspects of employment and family law.

A brief snapshot of sample matters I have been involved in is annexed.

I am an experienced litigation lawyer with some 14 years post admission experience, having practiced in Brisbane between 2004 and 2008 at HWL Ebsworth and Mahoney Lawyers where I was involved in a wide range of general and commercial litigation, insurance claims, in particular aviation, maritime, rail and freight claims; and corporate governance matters. I later worked in a family law practice and as in-house legal counsel in the Public Sector for the Departments of Water, Environment, and Transport. I have a keen interest in maritime and shipping law matters having obtained a Maritime Law LLM from the University of Queensland in 2004.

My practice has been varied, but predominantly involves appearing in contested applications, hearings and full trials in most major courts and tribunals conducting often complex litigation and conducting mediations and commercial negotiations within the context of my areas of practice.

I tutor in taxation law at the University of Western Australia and am an adjunct lecturer for the College of Law. I am active in professional and community affairs, act pro bono on worthy causes, and mentor younger practitioners in particular through my involvement with Mooting competitions for students. I regularly speak at professional development events and have published a number of papers and articles in various publications.

I have particular expertise as an advocate and have a strong interest in mediation and commercial negotiation, having completed additional intensive training both as a mediator and in commercial arbitration. I am available to appear in all Courts or Tribunals across WA, as well as interstate.

#### **Principal areas of practice**

- Administrative law
- Aviation law
- Commercial litigation
- Corporations
- Environmental and Water law
- Employment law and Workers Compensation
- Family & De Facto law, including property and financial matters
- Insolvency
- Insurance
- Mining Law
- Planning and Development
- Shipping Law
- Taxation
- Wills and Estates

## **Professional background**

### **Qualifications:**

- Bachelor of Arts, Rhodes University, 1987
- Bachelor of Laws (Hons) Rhodes University, 1990
- Graduate Diploma (Practical Legal Education and Training), University of Queensland, 2003
- Master of Laws (Maritime), University of Queensland, 2004

### **Admission:**

- Supreme Court of South Africa (Nov 1993)
- Supreme Court of Queensland (Feb 2004)
- High Court of Australia (Feb 2005)

### **Legal Practice:**

- Articles, De Villiers Evans and Pettit (Dbn) – 1991
- Solicitor, Ebsworth and Ebsworth Lawyers (Qld) – 2004
- Solicitor, Mahoney Lawyers (Qld) – 2007
- Solicitor, Sole Practice – Family law; and at Guidice Solicitors (WA) – 2008
- Solicitor, Public Sector (WA) – 2009
- Solicitor, Family law sole practice (WA) – 2014
- Barrister, Francis Burt Chambers (WA) – 2015

### **Professional associations, committees and boards**

- Tutor, Law of Taxation University of Western Australia Law School
- Former Secretary, Women Lawyers of WA (2 years)
- Member, Law Society of WA
- Member CPD Committee, Family Law Practitioners' Association of WA
- Member, Administrative, Constitutional and Migration Law Committee, Law Society of WA

### **Contact details**

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## **Brief Snapshot of Matters**

### **Aviation claims:**

- Successfully representing Etihad Airlines in breach of conditions of carriage litigation involving jurisdictional error by claimant. Application of Article 29 of the Montreal Convention and interface of Articles 33 and 34 with section 28(2) of the *Magistrates Court (Civil Proceedings) Act 2004*.
- Successfully defending Korean Airlines Limited in tri-party litigation resulting from loss arising from cargoes of fresh meat being rejected in the USA due to broken seals on containers and advising on indemnities and contractual conditions governing the relationship between the Airline, Meat Cooperative, and the freight forwarder.
- Acting for Underwriters at risk on strategic positioning in litigation of claims brought under Civil Aviation legislation including Qantas Airways Limited on various public liability claims involving injury on domestic and international flights, non-passenger injuries at terminals; liability due to faulty mechanical lifting equipment; contribution claims against manufacturers, labour hire companies, and other third parties.

### **Taxation law and Insolvency law:**

- Representing the Commissioner of Taxation pertaining to the Commissioner's powers in making a written determination disregarding, or allocating to another financial year, all or part of the taxpayer's non-concessional contributions having regard to the "bring forward" rule and giving consideration to what constitutes "special circumstances" for the exercise of the discretion; whether ill-health and poor financial advice are special circumstances within the objects of Division 292 of the Income Tax Assessment Act 1997.
- Representing the Commissioner of Taxation in s 588FF Corporations Act preferential claim proceedings, pertaining to voidable transactions and enforcing director indemnities in respect of associated losses;
- Representing the Commissioner of Taxation in enforcing liability of directors of various companies for penalties arising from unpaid PAYG withholding and unpaid superannuation guarantee charges and obtaining summary judgement.
- Representing the Commissioner of Taxation in winding up numerous companies.

### **General insurance related commercial litigation:**

- Conducting contested litigation on behalf of Suncorp Metway Insurance Limited, RACQ Insurance and Allianz Australia Insurance Limited in numerous matters involving motor vehicle claims, public and product liability claims.
- Conducting litigation in large multi-party construction claim on behalf of Stuartholme School and negotiating with various stakeholders.
- Representing insurers in large multi-party agricultural contamination claim involving manufacturers and suppliers of contaminated chicken feed.

### **Public liability matters:**

- Representing Sportscover Pty Ltd in personal injuries claim against insured Australian Touch Association and Toowoomba City Council;
- Representing Sportscover Pty Ltd on behalf of Fitness Centre in public liability claim involving injury to member in circumstances involving product liability of supplier and manufacturer of fittings supplied;
- Representing Sportscover Pty Ltd in public liability claim against Australian Gymnastics Association based on vicarious liability for acts and omissions of coaches of elite gymnasts.

- Representing QBE Mercantile Mutual Marine on public liability claim involving injury caused by third party to insured whilst water skiing.

#### **Marine matters:**

- Conducting subrogated action on behalf of QBE Insurance Ltd for recovery of damages arising from damage to the insured vessel following an explosion of the defendant's vessel whilst berthed in Queensland.
- Ports – Advising the States of Western Australia and Queensland pertaining to State owned ports, and advising private port authorities and Marina owners on liability arising from various claims such as third party property claims, damage to infrastructure, damages to vessels, environmental considerations including biosecurity hazards and marine pollution.

#### **Shipping matters:**

- Advising on the rights of creditors, e.g. skippers' maritime liens under the Admiralty Act, potential claims by crew for wages and acting for International ship owners in relation to vessels under arrest in Queensland, representing owners rights against charterers.
- Acting for various off-shore charterers trading with vessel in the Solomon Islands, in relation to disputes with vessel owners involving the arrest of vessels in Queensland and advising on sale of vessels by the Marshal.

#### **Administrative law matters:**

- Representing Maritime Safety Queensland in contentious decisions of public significance pertaining to the statutory interpretation of and compliance with complex Shipping Standards legislation regulating the design and accreditation of Domestic commercial vessels and Regulated Australian Vessels.
- Representing Maritime Safety Queensland as Regulatory Authority in Administrative proceedings concerning the refusal of approval to grant landing rights to a large international vessel with a helipad in circumstances of substandard design and noncompliance with relevant specifications.
- Advising Marine Safety regarding establishing a Roadstead at Western Australian Port extending beyond 12 nautical mile territorial sea limit into the EEZ in accordance with the United Nations Convention on the Law of the Sea; providing advice on limits of territorial sea to be extended by way of proclamation pursuant Seas and Submerged Lands Act, and pre-requisite re-proclamation of Port under the Shipping & Pilotage Act to bring transshipment process within Harbour Master control.

#### **Mining Law and Water Law:**

- Representing the State of Western Australia in implementation of major state-wide initiative pertaining to federally funded Salinity recovery project and legal implications for State Government in entering into an agreement with preferred water service provider for Ord River Irrigation Expansion project under split ownership of asset and water service provision model. Drafting all associated contractual documentation including financial assistance agreements between the State and a Water Cooperative for the Gascoyne Irrigation Pipeline project supported through the State Royalties for Regions fund with an assessed forecast project construction budget in excess of \$20M.
- Advising at Ministerial level on multiparty legal obligations of mining stakeholders under legislation and potential legal liability of the State of Western Australia arising from river water diverted into mining voids of a large mining company. Drafting all associated agreements pertaining to dewatering including treatment and disposal of the water.

**Environmental Law and Regulatory compliance:**

- Acting on behalf of the State of Queensland in litigation arising from construction activities adjacent to Nelly Bay Harbour, impacting adversely on the harbor environment and the Great Barrier Reef Marine Park. Advising on complex interface between areas of State and Federal responsibility, Deeds of Agreement, Marine Parks Permits, Harbour Operational Plans, Zoning Plans, Environmental monitoring Programs under Federal and State Great Barrier Reef legislation.
- Advising the State of Western Australia on the constitutionality of restricting movement of waste into Western Australia under the controlled waste National Environmental Protection Measures Regulations and the legal basis for enforcement arising from the enabling legislation for organochlorin pesticides and management plans for chemicals in WA.

**Contract law (significant projects):**

- Representing the WA Department of Transport, I facilitated the review and implementation of the next generation of service delivery Contracts with Australia Post.
- Representing Queensland Transport and re-drafting next generation General Terms and Conditions of Air Services Contracts, Long Distance Scheduled Passenger Services Contract for bus operators, and Administration of Taxi Services Contracts, including specific operational provisions contained in the numerous Schedules.
- Representing the WA Department of Water and providing legal framework for Minor Works procurement around core business, previously managed externally, through creation and implementation of new Minor Works Contract templates, streamlining process by providing the legal documentary framework for in-house management and adopted for use in procurement of Minor Works contracts and subsequently adopted by other agencies.

**Family Law:**

- Acting on behalf of third party corporate interveners in contested family Court proceedings, including pertaining to constructive trusts over farmland;
- Acting for various litigants in complex child-related disputes, including interstate relocation of children, re-allocation of parental responsibility, contact rights of extended family members; alienation cases.
- Acting on occasion as Independent Children's lawyer;
- Acting for various litigants in complex property settlement disputes, including maintenance orders, constructive trusts, declaration of and alteration of property interests;
- Providing advice on financial agreements;
- Providing advice on rights of de-facto partners.

**Employment Law:**

- Acting in various breach of employment contract claims on behalf of employees;
- Representing employees in various adverse action claims and workers compensation claims.

**Wills and Estate Law:**

- Acting as independent counsel in settlement of contentious probate proceedings involving settlement of claims of persons under a disability;
- Representing parties in various contested wills and family provision claims.