LIST G
BARRISTERS

Kathleen E Foley SC



Kathleen has a broad practice spanning trial and appellate work in commercial, public law and common law matters.

QUALIFICATIONS

LLM (Harvard)
LLB (Hons)(UWA)
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CORRESPONDENCE

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CHAMBERS

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COMMERCIAL LAW

Appellate | Building & Construction | Class Actions | Contractual Disputes | Corporations & Securities | Insurance | Superannuation

TORT LAW

Appellate | Class Actions | Commissions & Inquiries | Common Law | Inquests | Major Torts | Negligence | Personal Injury | Product Liability | Professional Negligence

PUBLIC LAW

Administrative Law | Appellate | Civil & Human Rights | Commissions & Inquiries | Constitutional Law | Discrimination | Environment | Judicial Review

Since 2016 she has been recognised annually in Doyles “Best Barristers” Guide.

The 2025 Chambers and Partners review for Kathleen states: “Kathleen Foley SC handles both complex commercial and significant public law matters, her experience in the latter sphere including numerous High Court appearances. In the commercial space, she is especially noted for her involvement, on both plaintiff and defendant sides, in cases concerning the conduct of individual executives.” The review also refers to Kathleen’s skills as a “forensic cross-examiner”.

Kathleen also has an active public interest litigation practice.

Prior to coming to the Victorian Bar, Kathleen was employed as an Associate in the litigation group of the New York office of Orrick, Herrington & Sutcliffe LLP. She passed the New York Bar exam in 2006, having completed her Master of Laws at Harvard Law School. From 2004 to 2005, Kathleen was Associate to Justice Hayne of the High Court of Australia.

From November 2020 to February 2026, Kathleen was a part-time commissioner with the Victorian Law Reform Commission. As part of that role, most recently Kathleen worked on a reference concerning the use of AI in Victoria’s courts and tribunals. Kathleen has presented regularly at panel discussions concerning the use of AI in legal practice.

Liability limited by a scheme approved under Professional Standards Legislation

Recent Cases

HIGH COURT OF AUSTRALIA

CZA19 v Commonwealth of Australia; DPD24 v Minister for Immigration, Citizenship and Multicultural Affairs & Anor (heard by the Full Court on 14/11/24, reserved): acted for LPSP, who was granted leave to intervene on the papers (with Min Guo and Minh-Quan Nguyen) in this constitutional case concerning the scope of *NZYQ v Minister for Immigration, Citizenship and Multicultural Affairs* [2023] HCA 37.

Hobart International Airport Pty Ltd v Clarence City Council (2022) 399 ALR 214: acted for the Commonwealth (led by Stephen Donaghue KC, Solicitor-General for the Commonwealth, and Craig Lenehan SC) in this significant constitutional case concerning the standing of the respondent councils to seek declaratory relief in respect of certain leases.

Binsaris v Northern Territory (2020) 380 ALR 1 (and three related appeals): acted for the appellants in these successful appeals from the Northern Territory Court of Appeal. The appellants were minors who were tear-gassed at Don Dale Detention Centre in Darwin and sued for damages, contending (inter alia) that the use of the teargas was unlawful (led by Bret Walker SC, with James McComish).

Connective Services Pty Ltd v Slea Pty Ltd (2019) 267 CLR 461: acted for the respondent in successfully defending the decision of the Victorian Court of Appeal to the effect that certain conduct on the part of the appellants contravened the financial assistance prohibition in s 260A(1) of the *Corporations Act* (led by Justin Gleeson SC, with G Kozminsky).

Clubb v Edwards (2019) 267 CLR 171: acted for the State of Victoria in this constitutional challenge to the State’s legislation creating safe access zones around abortion clinics (led by Kristen Walker QC, Solicitor-General for

Victoria, with Simona Gory).

Federal Commissioner of Taxation v Thomas (2018) 264 CLR 382: acted for the Commonwealth (intervening) in this tax case raising constitutional questions (led by Stephen Donaghue QC, Solicitor-General for the Commonwealth, with R Minson).

Wilkie v The Commonwealth (2017) 91 ALJR 1035: acted for the plaintiffs in challenging the marriage law postal survey (led by Ron Merkel QC, with Chris Tran).

Murphy v Electoral Commissioner (M247 of 2015): acted for the Commonwealth in defending a constitutional challenge to the validity of provisions of the *Electoral Act* (led by Justin Gleeson SC, Solicitor-General of the Commonwealth, and Nicholas Owens).

Plaintiff M68/2015 v Minister for Immigration and Border Protection (2016) 327 ALR 369: acted for Transfield Services in defending the plaintiff's challenge to the Commonwealth's regional processing arrangements in Nauru (led by Stephen Donaghue QC, with Chris Tran).

NAAJA v Northern Territory (2015) 326 ALR 16: acted for the plaintiffs in challenging the validity of the Northern Territory's "paperless arrest" laws (led by Mark Moshinsky QC, with Chris Tran).

CEPU v Queensland Rail (B63/2013 – High Court of Australia): acted for the Commonwealth in this constitutional case concerning whether Queensland Rail is a corporation within s.51(xx) of the Commonwealth Constitution (led by Justin Gleeson SC, Solicitor-General of the Commonwealth) (heard in February 2015, decision pending).

Rutledge v Victoria (2013) 304 ALR 315: acted for the State of Victoria in this summary judgment application in which the plaintiff contended that royal assent was not properly given to the Bill for the *Constitution Act 1975* (Vic).

Public Service Association and Professional Officers' Association Amalgamated of NSW v Director of Public Employment (2012) 293 ALR 450: acted for the Attorney-General for the State of Victoria (led by Stephen McLeish SC, Solicitor-General for Victoria) in this challenge to the validity of s.146C of the *Industrial Relations Act 1996* (NSW).

Plaintiff M47/2012 v Director-General of Security (2012) 292 ALR 243: challenge to ASIO security assessments within the context of the *Migration Act* 1958 (Cth), and related issues concerning detention of refugees (briefed by the Australian Human Rights Commission (intervening), led by Debbie Mortimer SC, with Alistair Pound) (June 2012).

Williams v Commonwealth (the "School Chaplains" case) (2012) 248 CLR 156: acted for the Churches' Commission on Education Incorporated (appearing as amicus curiae) in this landmark constitutional case concerning the scope of Commonwealth executive power (led by Peter Quinlan SC).

Plaintiff M168/2010 v Minister for Immigration & Citizenship : application for interlocutory relief, seeking the release from detention of the plaintiffs, who arrived in Australia as unaccompanied minors from Afghanistan (led by Debbie Mortimer SC, with Chris Horan) (January 2011).

Wainohu v The State of New South Wales (2011) 243 CLR 181: constitutional challenge to the validity of NSW "bikie" legislation (intervening on behalf of the Attorney-General for the State of Victoria) (led by Peter Hanks QC) (December 2010).

Plaintiff M61/2010E v The Commonwealth (2010) 243 CLR 319: acted for the plaintiff in a landmark case which successfully challenged aspects of the Commonwealth's scheme for the off-shore processing of refugees (led by

Debbie Mortimer SC, with Richard Niall).

SUPREME COURT OF VICTORIA (TRIAL DIVISION AND COURT OF APPEAL)

Trustee of the Marist Brothers v Barclay (pending, Court of Appeal): acting for the respondent in this appeal concerning a decision to set aside a Deed of Settlement in a historical sexual abuse matter (leading Sheeana Dhanji).

Lew v Blacher [2024] VSCA 304: acted for the applicant in this appeal concerning the proper construction of the *Local Government Act 2020* (Vic) (leading R Walsh).

Shimshon v MLC Nominees Pty Ltd (2021) 66 VR 277: acting for the respondents in this appeal, and in the ongoing class action concerning the duties of superannuation trustees (with Matthew Darke SC and Chris Tran).

Cotterill v Romanes: acted for the plaintiff at trial and in the Court of Appeal in this challenge to COVID-19 restrictions and how those restrictions interact with the implied freedom of political communication (leading Joel Tito and Minh-Quan Nguyen).

Republic of Turkey v Mackie Pty Ltd [2021] VSCA 77: acted for the Attorney-General for the State of Victoria in this Court of Appeal matter concerning the meaning of s 75(ii) of the Constitution.

Danbol Pty Ltd v Swiss Re International SE [2020] VSCA 274 (led by Geoff McArthur KC): acted for the respondents in this appeal concerning whether there was a contract of insurance in circumstances where there was no express acceptance of the offer to extend cover.

Fauna And Flora Research Collective Inc vs Secretary to the Department of Environment, Land, Water and Planning & VicForests S CI 2017 04392: acted for the plaintiff in this litigation concerning the Secretary's obligations under statute to protect old growth forest (led by Peter Gray QC at the initial trial, with Rowan Minson; leading Rowan Minson upon the re-opened case and further trial).

WOTCH Inc v VicForests S ECI 2020 00373 : acted for the plaintiff in this litigation concerning VicForests' obligations to protect threatened species after the 2020 bushfires (with Richard Knowles KC, Colette Mintz and Shawn Rajanayagam).

Slea Pty Ltd v Connective Services Pty Ltd (and related proceedings): acted for Slea Pty Ltd in several proceedings in the Supreme Court of Victoria and the Victorian Court of Appeal, including an oppression proceeding and derivative action (led by Michael Hodge QC, with Geoff Kozminsky and Colette Mintz).

YPF v Oswal: acted for the plaintiff in proceedings against Pankaj and Radhika Oswal concerning the alleged misappropriation of company funds (led by Alan Archibald QC, Philip Solomon QC and Penny Neskovcin QC).

East West Link litigation: acted for the State of Victoria in the Supreme Court of Victoria, the Court of Appeal and the High Court of Australia (on the injunction application) in *Murphy v State of Victoria*. This high-stakes proceeding concerned the East West Link project proposal (led by Stephen McLeish SC, then Solicitor-General of Victoria, as well as Mark Moshinsky QC and Michael Wheelahan QC in various stages of the litigation, with Perry Herzfeld).

Mason v TAC (2014) 68 MVR 474; [2014] VSCA 267: acted for the TAC in the Victorian Court of Appeal in successfully defending this appeal against a decision of the County Court dismissing the appellant's application for leave to bring a proceeding for damages pursuant to s.93 of the *Transport Accident Act* 1986 (Vic). Led by Jeremy Ruskin QC.

Christian Youth Camps Ltd v Cobaw Community Health Services Ltd [2014] VSCA 75: appeared on behalf of the first respondent (at trial, and on appeal) in this discrimination case concerning the scope of the religious exemptions in the *Equal Opportunity Act* 1995 (Vic) (led by Debbie Mortimer SC, later Peter Hanks QC, with Jim McKenna, Emrys Nekvapil and Elizabeth Bennett).

Re Gunns Finance Limited (in liq) (recs & mgrs apptd); and Re Gunns Plantations Limited (in liq) (recs & mgrs apptd) (No 2) [2013] VSC 365: acted for the plaintiffs in successfully challenging a proposal to restructure six managed investment schemes (led by Paul Anastassiou QC).

Lord Buddha Pty Ltd v Harpur [2013] VSCA 101: appeared on behalf of the respondent in this appeal concerning whether the appellant had engaged in misleading or deceptive conduct in the context of a land sale, and whether the respondent had relied on misrepresentations made to him in entering into the sale agreement. The appeal was unanimously dismissed. Led by Samantha Marks SC.

Woolworths Ltd v Svajcer [2013] VSCA 123: appeared on behalf of the applicant in this application for leave to appeal against a refusal to permit inspection of subpoenaed documents.

Shepparton Projects Pty Ltd v Cave Investments Pty Ltd [2013] VSCA 152: acted on behalf of the respondent in this appeal concerning a dispute arising from a loan agreement. The Court of Appeal unanimously dismissed the appeal. Led by David Batt SC.

Elias v TAC [2013] VSCA 123: acted for the TAC as respondent to this application for leave to appeal from the trial judge's refusal to grant leave to commence a proceeding under s.93(4) of the *Transport Accident Act* 1986 (Vic). Application dismissed. Led by Jeremy Ruskin QC.

Seven Fields Property Pty Ltd v Murray Valley Citrus Board [2013] VSC 423: acted for the first defendant in this constitutional case concerning the validity of a charge imposed by the first defendant on certain producers of citrus fruit.

Wodonga Regional Health Service v Hopgood [2012] VSCA 326: acted for the appellant in this appeal concerning a jury verdict in favour of the plaintiff (a nurse) who sued her employer (a hospital) for damages for negligence and/or breach of statutory duty (led by Jack Rush QC).

Secretary to the Department of Human Services v Rushton: acted for the appellant in this successful appeal from an order of the Children's Court (23 May 2013).

Barber v State of Victoria [2012] VSC 554: acted for the plaintiff in this proceeding concerning the Executive Government of Victoria's refusal to produce a document to the Legislative Council of the Parliament of Victoria (led by Debbie Mortimer SC).

KFT Investments Pty Ltd v Bullard [2012] VSC 307: acted for the plaintiff in successfully opposing the defendant's application to transfer the proceeding to the Supreme Court of New South Wales.

BOSI Security Services Limited v ANZ Group Limited & Ors [2011] VSC 255: acted for the plaintiff in Commercial Court litigation concerning the rights of investors in the failed Timbercorp "almond" managed investment schemes (led by Paul Anastassiou SC, with Rob Craig).

Thales Australia Ltd v Coroners Court (Vic) [2011] VSC 133: led by Kerri Judd SC, appeared for the Attorney-General (Vic) as intervener in this matter in which Thales sought to challenge findings of a coroner.

DPP v Ali: appeared on behalf of the Attorney-General of Victoria, as intervener, in relation to *Charter* issues arising

in an application under the *Confiscation Act* 1997 (Vic) (led by Mark Moshinsky SC) (August 2010).

Thoroughvision Pty Ltd v Sky Channel Pty Ltd [2010] VSC 139: Appeal from the award of an arbitrator (led by Neil Young QC, with Philip Solomon).

Five D Holdings v Australian Postal Corporation : Commercial Court litigation involving TPA and contract-based claims (led by John Digby QC, with Nick Hopkins) (2009).

Wangaratta Greyhound Racing Club Inc v Greyhound Racing Victoria Board : administrative law, application for order for review (led by Stewart Anderson SC) (July 2009).

FEDERAL COURT OF AUSTRALIA

NDIA v Sutherland: acting for Ms Sutherland, the respondent to an appeal brought by the NDIA in a matter concerning the provisions governing access to the NDIS (heard in December 2024, decision reserved) (with Glyn Ayres).

Aveo class action: acted for the respondent, Aveo, in this class action alleging misleading and deceptive conduct and unconscionable conduct in the retirement village context (with Philip Crutchfield KC, Banjo McLachlan and Lara O'Rorke). Case settled shortly after the commencement of trial in 2023.

Mercedes class action: acted for Mercedes Australia in 2022 in this class action brought by Mercedes dealers in relation to a change of business model (with Robert Craig KC, Andrew McRobert, Tamasin Jonker, Conor O'Bryan and (in relation to interlocutory matters) with Melissa Marcus and Sophie Kearney).

O'Donnell v Commonwealth: acted for the Commonwealth defendants in litigation concerning disclosure of climate change risks (led by Michael Hodge QC).

Davaria Pty Limited v 7-Eleven Stores Pty Ltd: acted for 7-Eleven in this class action brought on behalf of franchisees against their franchisor (led by Neil Young QC and Robert Craig QC, with F Shand and A McRobert).

OZ Minerals class action: currently acting for three former directors of Zinifex in the class action and related proceedings ongoing in the Federal Court of Australia concerning the merger of Zinifex and Oxiana (led by Jim Peters QC).

Asahi Holdings (Australia) Pty Ltd v PEP Pty Ltd : acted for two insurers in this Federal Court litigation involving allegations of misleading and deceptive conduct in the $NZ1.5 billion sale of an alcoholic beverage business (settled in late 2014) (led by Jim Delany QC, with Christopher Archibald).

La Trobe Capital & Mortgage Corporation Ltd v Hay Property Consultants Pty Ltd (2011) 190 FCR 299 *:* appeal before the Full Federal Court involving, among other things, the evidence required to establish a loss of opportunity claim in the context of a negligent valuation of property (led by Michael Wyles SC).

Cubic Solutions Pty Ltd v EcoAID Pty Ltd v Anor : appeared on behalf of the plaintiff in the trial of this proceeding involving claims under s.52 of the *Trade Practices Act* and a claim of injurious falsehood (February 2011).

COUNTY COURT OF VICTORIA

Morcom v Tander Pty Ltd [2013] VCC 177: acted for the defendant in this negligence case which was tried before a

jury (led by James Gorton SC).

Boss Partners Estate Agents Pty Ltd v Rivacourt Pty Ltd [2012] VCC 1884: acted for the defendant in this 3 day commercial trial concerning a claim for commissions said to be owing under several sale authorities (December 2012).

God v Gray: 16 day trial involving allegations of false imprisonment, battery and negligence against members of the Victorian Police (led by Dr J Wilson SC) (May 2011).

Moloney v Attorney-General (Vic): 2 day hearing concerning, inter alia, the impact of the *Charter* on the *Confiscation Act* 1997 (Vic) (led by Mark Moshinsky SC) (April 2010).

Cave Investments Pty Ltd v Coadys (A Firm) : litigation involving a claim of solicitor's negligence (led by Peter Tree SC) (2009/2010).

Abdalla v Al Ashi: Magistrates' Court appeal (briefed by VGSO) (November 2009).

Chapman v Plenty Views: 6 day trial, nuisance action (led by Dr J Wilson SC) (June 2009). Magistrates Court of Victoria

Teska Carson v Cameron: 2 day civil trial (August 2012).

Australian Finance & Leasing Ltd v Jays & Anor : 3 day civil trial (March 2010).

Millenium Support Computer Solutions v Axsiom Australia Pty Ltd & Anor : 2 day civil trial (March 2010).

MAGISTRATES COURT OF VICTORIA

Teska Carson v Cameron: 2 day civil trial (August 2012).

Australian Finance & Leasing Ltd v Jays & Anor : 3 day civil trial (March 2010).

Millenium Support Computer Solutions v Axsiom Australia Pty Ltd & Anor : 2 day civil trial (March 2010).

OTHER MATTERS

Historical sexual abuse matters – has acted in various matters involving historical sexual abuse in institutional settings (in each case, the matter has resolved without the need for litigation).

Disability Act matters – has acted for the Department of Health and Human Services in applications before VCAT under the *Disability Act* 2006 (Vic).

NDIS matters – has acted in various matters in the AAT relating to the *National Disability Insurance Scheme Act 2013* (Cth).

Cobaw Community Health Service Inc v Christian Youth Camps Ltd & Anor [2010] VCAT 1613*:* 15 day trial concerning the scope of the religious exemptions in the *Equal Opportunity Act* 1995 (Vic) (led by Debbie Mortimer SC, with Jim McKenna and Emrys Nekvapil) (July 2010).

Coronial Inquest into Level Crossing Deaths (matter of Stanley) : led by Richard Niall SC, acted for V/Line in this coronial inquest (June 2012).

PRO BONO WORK

Kathleen has developed an active pro bono practice since being called to the Victorian Bar, including various matters for the Flemington & Kensington Community Legal Center, the Human Rights Law Centre, the North Australian Aboriginal Justice Agency (NAAJA) and Environmental Justice Australia.

Prior to her admission in 2004, Kathleen worked as a volunteer/intern in a number of human rights organizations, including in New Delhi, India.

Memberships

Kathleen has served as a member of the Bar Council of the Victorian Bar for three terms. During her time on Bar Council, she was a member of the Diversity and Inclusion Working Group and the Readers Course Committee.

Kathleen has also served as a member of the executive of the Commercial Bar Association of Victoria and as a committee member of the Women Barristers Association.