

## **JANE PHILIPPA MUIR**

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### **Education**

2000 BA (Hons Year) (English Literature) (University of Sydney)  
1998 LLB (Hons) (University of Queensland)  
1996 BA (University of Queensland)

### **Admissions**

2008 Barrister (New South Wales)  
2001 Legal practitioner (New South Wales)  
2000 Solicitor (Queensland)

### **Professional experience**

2006 – 2008 Solicitor, McCann FitzGerald, Dublin (Banking & Finance)  
2004 – 2006 Solicitor, Freshfields Bruckhaus Deringer, London (Financial Institutions Disputes)  
2001 – 2004 Solicitor, Freehills, Sydney (Litigation, Corporate)  
1999 Articled clerk, Allens Arthur Robinson, Brisbane (now Allens) (Litigation)  
1998 Associate to the Honourable Mr Justice JDM Muir, Supreme Court of Queensland

### **Main practice areas**

- Appellate
- Arbitration
- Banking & finance
- Bankruptcy & insolvency
- Building & construction
- Contracts
- Consumer protection
- *Corporations Act*
- Employment, industrial & discrimination
- Equity
- Insurance
- Trade practices

## Selected cases

### Commercial

- *Gispac Pty Limited v Michael Hill Jeweller (Australia) Pty Limited* [2024] NSWSC 18 (leading Antony Newman) – incorporation of terms in written contract, “take or pay” provisions, misleading or deceptive conduct under s. 18 ACL, estoppel
- *Collard, Twin Creek Rural Holdings Pty Ltd & Anor v Dique* (Supreme Court, Qld) – constructive trust and partnership dispute concerning farming property (current)
- *DJHoworth Property Holdings Pty Ltd v Cannonview Developments Pty Ltd* (District Court, Qld) – claim for specific performance where failure to complete contract for sale of land (current)
- *Heffernan v Heffernan & Anor* (Supreme Court, Qld) – application for substitution of trustee (2022) (settled)
- *Chen v Peng, Ye and L&Y Investment Group Pty Ltd* (Supreme Court, Qld) – misappropriation of joint venture funds, breach of fiduciary duty and knowing assistance in breach of duty (2021, 2023) (*ex tempore* judgment)
- Acting for examinees in examinations under section 19 *Australian Securities & Investment Commission Act 2001* (Cth) (2021, 2019)
- *Stocon Pty Ltd & Anor v- AMPE Sarl South Pacific Pty Ltd & Anor* (Supreme Court, NSW) – claims for breach of contract and negligence regarding transport of allegedly contaminated waste (2017/8) (settled)
- *Kingvest Pty Ltd v Apple Pty Ltd* (Supreme Court, NSW) – dispute over market rent review in lease for Apple’s George Street Sydney store (2016/7) (led by Peter Brereton SC, settled)
- *Elanor Funds Management Limited v Mega & Company Pty Ltd* (NCAT Appeal Panel) – option to renew commercial lease (2016) (led by Mark Steele SC, settled)
- *Mega & Co Pty Ltd t/as Oporto Clarence Street v Elanor Funds Management Ltd as Trustee for 193 Clarence Hotel Syndicate* [2016] NSWCATCD 60 - option to renew commercial lease
- *A.J. Lucas Operations Pty Limited v C.P.W. Trailer Sales & Repairs Pty Ltd & Ors* (Supreme Court, NSW) – conversion and detinue of concrete pipes, knowing assistance in breach of fiduciary duty (2015-6) (led by Stuart Donaldson SC, settled)
- *Petronaitis v Petronaitis* [2016] NSWSC 765 – enforcement of settlement reached at mediation
- *Jennings v Jennings* [2015] NSWSC 1826 – enforcement of settlement reached at mediation
- *GrainCorp Oilseeds Pty Ltd v W & M Mahony Pty Ltd* (Supreme Court, NSW) – dispute with silo operator regarding destruction of grain (2014/5) (led by Stuart Donaldson SC, settled)
- *Illawarra Hotel Company Pty Ltd v Walton Construction Pty Ltd (No 3)* [2014] NSWCA 130 – application for leave to re-open after judgment (led by Stuart Donaldson SC)
- *Riverland Oilseeds Pty Ltd v QBE Insurance (Australia) Limited* (Supreme Court, NSW) – dispute regarding application of insurance policy to loss caused by destruction of grain (2014) (led by Stuart Donaldson SC, settled)
- *Sungho Pty Ltd v Pie Face Pty Ltd & Ors* (Federal Court) – franchisee’s claim for misleading and deceptive conduct (2014) (led by Stuart Donaldson SC, settled at mediation)
- *Virginia Nemeth (by her tutor) v Australian Litigation Funders Pty Ltd & Ors* [2013] NSWSC 529 – unconscionable conduct, *Contracts Review Act* (led by C R C Newlinds SC)
- Commercial arbitration between a government timber supplier and a timber purchaser regarding pricing review (2012) (led by Robert Dick SC)
- *Jaksic v Yim* [2011] NSWSC 962 - appeal from Local Court decision

- *Itaoui v Yamaha Motor Finance Australia Pty Ltd* [2009] NSWSC 1363 – appeal from Local Court decision (led by C R C Newlinds SC)

### **Employment, industrial, discrimination**

- *Nicholls v State of Qld* (QIRC) – general protections (current)
- *Hickson-Jamieson v University of the Sunshine Coast* [2023] QCAT 66 - indirect discrimination claim by student who sought to perform her teaching practical experience part time
- *Wright v Gregson & Weight Pty Ltd* (FC&FCoA) – general protections (2022) (settled)
- *McAlister v Yara Australia Pty Ltd* (2021) 307 IR 300 - general protections, reasonable notice, redundancy (leading Ermelinda Kovacs)
- *Willebrand v Tenants Queensland Inc* (FCCA) - general protections (2018) (settled)
- *Obeid v Stryker South Pacific Limited* (FCCA) - general protections (2016/7) (settled)
- *Rossiter v Core Mining Limited & Anor* [2015] NSWSC 360 – judgment in foreign currency
- *Rossiter v Core Mining Limited & Ors* (Supreme Court, NSW) – CFO’s claim for shares, options and unpaid entitlements (2014) (settled at trial, led by Ian Neil SC)
- *Duncan v West Corurgan Irrigation District* (FCCA) – general protections (2014) (settled)
- *Rice v Wedgetail Asset Management Ltd & Ors* (Supreme Court, NSW) – claim for unpaid salary and *quantum meruit* by CIO of funds manager (2013) (settled)

### **Banking, bankruptcy, insolvency, corporations law**

- *Pearson v ING Bank (Australia) Limited* [2023] QSC 86 – security for costs against impecunious individual plaintiff in claim for damages based on bank’s alleged failure to comply with Code of Banking Practice 2004 and *ASIC Act* (leading Marjorie Daley)
- *Low v Barnet (Trustee); In the Matter of Mathai* [2017] FCAFC 60 - creditor’s application for “risk premium” under s. 109(10) *Bankruptcy Act* (led by Bernard Coles QC, Scott Aspinall)
- *RHG Mortgage Corporation Limited v Millard & Anor* (Supreme Court, NSW) – “lo docs” loan, *Contracts Review Act* (2016/7) (settled)
- *Rossiter v Core Mining Limited* (The Eastern Caribbean Supreme Court, High Court of Justice, Virgin Islands, Comm. Div.) – Australian law advice in winding up proceedings and registration of foreign judgment proceedings in the BVI (2015/6)
- *Low v Barnet (Trustee); In the Matter of Mathai* [2015] FCA 1386 – creditor’s application for “risk premium” under s. 109(10) *Bankruptcy Act* and for review of Trustee’s decision (led by Bernard Coles QC, Scott Aspinall)
- *Health Services Union v Jackson (No 3)* [2015] FCA 694 – application for leave to proceed against bankrupt (led by Roger Marshall SC)
- *Low v Barnet (Trustee); In the Matter of Mathai* [2014] FCA 728 – right of discharged bankrupt to be heard in creditor’s application under s. 109(10) *Bankruptcy Act* (led by B Coles QC)
- *Low v Barnet (Trustee); In the Matter of Mathai* [2014] FCA 1187 – right of discharged bankrupt and son to be heard in creditor’s application under s. 178 *Bankruptcy Act* (led by B Coles QC)
- *Pokfulam Investments Pty Ltd & Anor v Wedgetail Asset Management Ltd* (2013) (Supreme Court, NSW Corps List, *ex temp judgment*) – interim injunction to restrain unauthorised selective share buy-back
- *Goodridge v Macquarie Bank Limited & Anor* [2010] FCA 67 – customer’s claim for breach of margin loan agreement (led by John Sheahan KC)

- *Buggy v Victorian Securities Corporation* [2010] FMCA 724 – bankruptcy
- *Permanent Trustee Company Limited v Gillian O'Donnell Permanent Trustee Company Ltd* [2009] NSWSC 902 – “lo docs” loans, *Contracts Review Act* (led by Adam Bell SC, A Abadee)

### **Building & construction**

- *Queensland Motorways Limited v CBP Contractors Pty Limited (formerly Leighton Contractors Pty Ltd) & Anor* (Supreme Court, Qld) – dispute over liability for alleged defects in the Gateway Motorway Upgrade works, including “downstream” claims against consultants and sub-consultants
- International arbitration for port owner’s claim against contractor for breach of fitness for purpose obligation under D & C contract in respect of a container Terminal in Papua New Guinea; costs (2021/2) (led by L Kelly KC, then M Stewart KC)
- *John Holland Pty Ltd v Adani Abbot Point Terminal Pty Ltd* – domestic arbitration of parties’ claims under marine works and ship loader contracts for construction at Adani’s Abbot Point terminal (2014-5, 2017) (led by R Holt KC, then M Stewart KC)
- *Kountouris v Kountouris* (District Court, NSW) – claim for breach of contract and *quantum meruit* regarding construction work done on domestic dwellings (2013) (settled at trial)
- *The Owners Strata Plan No. 64622 v Australand Constructions Pty Limited* [2009] NSWSC 948, [2009] NSWSC 1083 - review of referee’s decision (led by S Kerr SC)

### **Administrative law and public law**

- *Steptoe & Anor v State of Qld* (Supreme Court, Qld) - injunction – Scenic Rim landowners seeking to restrain the State from baiting their properties for fire ants (*ex tempore* reasons, undertakings)
- Application for declaration of validity of the enduring power of attorney of Melissa Louise Caddick (Adult), client number G43991 (2020) (QCAT) (*ex tempore* reasons)
- *Versic v Chartered Accountants Australia and New Zealand* (Supreme Court, NSW) – judicial review of professional body’s appeal panel decision (2019) (settled)
- *Hoxton Park Residents Action Group Inc. v Liverpool City Council & Ors* [2017] HCASL 60 - constitutional law (led by B Katekar)
- *Hoxton Park Residents Action Group Inc. v Liverpool City Council & Ors* [2016] NSWCA 157 – constitutional law (led by B Katekar)
- Acting for a retired bishop in the Royal Commission into Institutional Responses into Child Sexual Abuse – Case Study 42 (Newcastle Anglican Diocese) (2016)

### **Crime**

- *R v Neal* (Yarrabah Magistrates Court, Qld) – defence to charge of breach of *Liquor Act* restrictions for carriage and possession of alcohol in Aboriginal community on grounds that the laws contravene the *Racial Discrimination Act* (Cth) (led by Simeon Beckett SC) (current)
- *R v Anderson* (2012) (District Court, NSW) – sentence for aggravated enter dwelling with intent to commit a serious indictable offence and assault in company (*pro bono*)
- *R v Trudgett* (2012) (District Court, NSW) – appeal against severity of sentence for offence under s. 8(3) *Summary Offences Act* (*pro bono*)
- *R v Ji* (2011) (Local Court, NSW) – hearing, accused charged with reckless wounding (*pro bono*)

## Opinions

I have given opinions on issues including:

- whether *ex gratia* settlement payment received from insurer must be brought to account in assessing damages in separate proceedings
- whether on the proper construction of the *Australian Citizenship Act 1948* (Cth) and the *Migration Act 1958* (Cth), an individual born before Independence in Port Moresby, Papua New Guinea, is an Australian citizen
- whether special resolution to buy back shares contravenes the *Corporations Act*
- employment law, including restraints of trade, termination of employment, redundancy
- lease disputes, including validity of notices and the exercise of options to renew
- partnership law, including a partner's right of indemnity against other partners
- a liquidator's ability to assign causes of action in debt and *quantum meruit* to a third party
- ability to enforce an Australian judgment, and obtain world-wide freezing orders, against a British Virgin Islands registered defendant (joint opinion)
- a purchaser's prospects in a claim for misleading or deceptive conduct against the vendor of a New Zealand iron sands mine (joint opinion)
- whether a binding agreement for exclusive distributorship existed where long-term commercial relationship
- whether an accountant's conduct in relation to an insolvent group of companies constituted knowing assistance under the second limb in *Barnes v Addy* (joint opinion)
- rights available to majority shareholders of a private company and whether oppression may be effected by the minority (joint opinion)
- the construction of corporate documents, including shareholders' agreements, share purchase agreements, guarantees and indemnities
- ability to bring claim for breach of s. 52 *Trade Practices Act* and breach of contract in New South Wales while related proceedings were on foot in New York
- whether a litigation funding agreement is a "*managed investment scheme*" under section 9 *Corporations Act* (joint opinion)
- a borrower's rights against the bank in relation to a co-borrower's unauthorised drawdown
- operation of exclusion clauses in insurance policies