

KYLIE DAY

BARRISTER

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EDUCATION

- LLM (Hons I), Trinity College, University of Cambridge, 2000-2001.
- Graduate Diploma in Legal Practice, College of Law, St Leonards, 1998.
- LLB (Hons I), University of Sydney, 1997.
- BA (Hons I) (Psychology), University of Sydney, 1995.

PROFESSIONAL DETAILS

- Recognised as one of Australia's leading litigation lawyers in *Best Lawyers in Australia, 2012 – 2022*.
- Admitted as a barrister – October 2005.
- Senior Associate, Freehills, Commercial Litigation Group, 2003 – 2005.
- Solicitor, Freehills, 1998 – 2005.
- Associate and Research Assistant to Justice KE Lindgren, Federal Court of Australia, 1996 – 1998.
- Lecturer (part-time), University of Sydney, postgraduate course on *Legal Reasoning and the Common Law System*, 2006-2007, and undergraduate courses on *Torts*, 2004-2005.

PRINCIPAL AREAS OF PRACTICE

- Commercial and corporations law; Intellectual property; Regulatory investigations; Equity; Revenue law (including land tax and other duties); Inquests and inquiries; Trade practices and competition.

COURTS AND TRIBUNALS

- Federal Court of Australia; Federal Circuit Court of Australia; NSW Supreme Court (including Court of Appeal); NSW District Court; NSW Coroner's Court; Various tribunals (AAT and NCAT); NSW Local Court.

SENIOR COUNSEL

I have advised and appeared in many matters unled.

However, I have also been led by numerous senior counsel, including the following: Tom Bathurst QC, John Karkar QC (Vic Bar), John Sackar QC, David Catterns QC, John Sheahan SC, Julia Baird SC, Michael Cranitch SC, Steven Finch SC, Howard Insall SC, Fabian Gleeson SC, Dr Andrew Bell SC, John Halley SC, Matthew Connock SC (Vic Bar), James Lockhart SC, Robert Dick SC, Peter Brereton SC and Dr James Renwick SC.

SELECTED CASES

General commercial litigation and corporate regulatory matters

This is my main area of practice. Some of my matters have included the following:

- Briefed to advise and/or appear, unled, in a number of intellectual property matters (principally copyright and trade mark matters).
- Briefed by ASIC to advise on a large investigation into suspected market manipulation.
- Briefed to appear for individuals on s19 examinations by ASIC.
- Briefed (unled) by the NSW Crown Solicitor's Office in numerous commercial and taxation matters, including to appear on hearings.
- Briefed to advise and appear (unled) before David Jackson QC in an international commercial arbitration (a shipping dispute arising out of the floods in the Newcastle area that notoriously beached the 'Pasha Bulka'). I appeared against senior and junior counsel, who both specialise in maritime law and international arbitration (2009 - 2010).
- Briefed to advise and appear for Heathgate Resources Pty Ltd in various proceedings (in the Federal Court of Australia and in the Supreme Court of South Australia), sometimes unled, and sometimes led by John Karkar QC, or Robert Dick SC. The proceedings concerned disputes between joint venture partners in a uranium mining project in the Flinders Ranges (2009 – 2011).
- Briefed to advise and appear for Cadbury Pty Ltd in a dispute concerning a superannuation fund: *Cadbury Pty Ltd v Mercer Investment Nominees Ltd* [2010] NSWSC 385 (appeared for Cadbury, unled); [2011] NSWSC 622 (advised Cadbury, led by Tom Bathurst QC until his appointment as Chief Justice of NSW; led by Peter Brereton SC on the final hearing) (2009 – 2011).
- *Cargill International SA v Peabody Australia Mining Pty Ltd* [2010] NSWSC 887 (application for leave to appeal from arbitrator's decision, led by Fabian Gleeson SC) (2010).
- Briefed to advise and appear for Multiplex in defending a shareholder class action concerning disclosures made to the market about the construction of Wembley Stadium. Sometimes unled, and sometimes led by Fabian Gleeson SC, Dr Andrew Bell SC or Matthew Connock SC. See eg *P Dawson Nominees Pty Ltd v Multiplex Ltd* (2007) 64 ACSR 53; [2007] FCA 1044 (Heerey J) (re application to issue a subpoena to ASIC); and *P Dawson Nominees Pty Ltd v Multiplex Ltd* (2007) 65 ACSR 239;

[2007] FCA 1659 (Goldberg J) (re ASIC's claim for public interest immunity) (2007 – 2008).

- *Leading Edge Events Australia Pty Ltd v Kiri Te Kanawa* (2007) Aust Contract R 90-250; [2007] NSWSC 228 (appeared for Dame Kiri Te Kanawa in a contractual dispute, led by Anthony McGrath).

Trade practices and competition – penalty hearings

- *ACCC v CFMEU & Ors* [2007] FCA 1546, led by Fabian Gleeson SC, advised and appeared for Bovis Lend Lease on penalty proceedings relating to a secondary boycott (2007).
- *ACCC v Fchem (Aust) Ltd* [2008] FCA 344, led by Fabian Gleeson SC, advised and appeared for Osmose Australia Pty Ltd on penalty proceedings relating to price-fixing (2008).

Inquiries and Inquests

- Advised and appeared for Credit Suisse Ltd in the *Special Commission of Inquiry into NSW Labor's 2011 Electricity Privatisation*, led by James Lockhart SC (2011).
- Advised and appeared for P&O in the latter stage of the *Inquest into the death of Dianne Brimble*, led by John Sheahan SC (2010).
- Advised and appeared for the Department of Environment and Climate Change (National Parks and Wildlife Service) during part of the *Inquest into the death of David Iredale* (unled) (2009).
- Advised and appeared for the Commonwealth (Department of Defence) in the *Inquest into the death of Private Korvo in Iraq*, led by James Renwick SC (2008).
- As a solicitor, I was involved in acting for Trowbridge Deloitte, a firm of actuaries, in the *Special Commission of Inquiry into the Medical Research and Compensation Foundation* (known as the "James Hardie Inquiry" or the "Jackson Inquiry"). I was also involved in advising on subsequent regulatory and disciplinary investigations. (2004 – 2005)

ACADEMIC AWARDS AND PRIZES

- Lizette Bentwich Prize, Trinity College, University of Cambridge, 2001.
- Senior Scholarship, Trinity College, University of Cambridge, 2001.
- Cambridge Commonwealth Trust Overseas Student Bursary, 2000.
- Trinity College Overseas Fees Bursary, 2000.
- Ausdoc Award for Excellence, awarded to the student first in order of merit in the Graduate Diploma in Legal Practice, College of Law, 1998.
- Butterworths Book Prize for the second most proficient in final year law, University of Sydney, 1996.
- Monahan Prize for Litigation, awarded to the student first in order of merit in Litigation, University of Sydney, 1996.
- Butterworths Book Prize for the third most proficient in second year law, University of Sydney, 1995.
- Roper Memorial Prize II, awarded to the student second in order of merit in Equity and Company Law, University of Sydney, 1995.

- Julius and Rea Stone Award in International Law and Jurisprudence, awarded to the student first in order of merit in Advanced Public International Law, University of Sydney, 1995.

PUBLICATIONS

- *Law Society Journal*, case notes on recent decisions in the NSW Court of Appeal, February and May 2021.
- NSW Bar Association, Bar News (various articles).
- Day, K, "Investor Class Actions: Advising Clients on Becoming Group Members, or on Opting Out" (2009) 47 *Law Society Journal* 53.
- Day, K, "Claims to legal professional privilege – *Seven Network Limited v News Limited* [2005] FCA 142", Law Council of Australia, Federal Litigation Section, Newsletter, April 2005.
- Research assistant to Justice KE Lindgren, on Vermeesch, RB and Lindgren, KE, *Business Law in Australia*, 9th edition, Butterworths, Sydney, 1998.
- Day, K, Howie, P, and Markham, R, "The Role of Similarity in Developmental Differences in Source Monitoring" (1998) 16 *British Journal of Developmental Psychology* 219-232. (This article was based on my Psychology Honours empirical research thesis in the area of children's memory ability, related to testimony.)
- Day, K, "Trial by Voodoo: Is the English Common Law System Interested in the Truth?" (1997) 7(3) *Polemic* 126.
- Day, K, "Medical Negligence – the Duty to Attend Emergencies and the Standard of Care: *Lowns & Anor v Woods & Anor*" (1996) 18 *Sydney Law Review* 386.
- Legal researcher and sub-editor, *The Australian Legal Dictionary*, Butterworths, Sydney, 1995-1996.
- Member and team leader, Student Editorial Committee, *Sydney Law Review*, 1996.

VOLUNTARY PROFESSIONAL ACTIVITIES

As a barrister, these have included –

- Bar Councillor, 2010. Regularly made decisions about professional conduct matters (ie, complaints of unsatisfactory professional conduct or professional misconduct).
- Practice Development Committee, NSW Bar Association, 2010 – 2015.
- Bar News Committee, NSW Bar Association, 2007 – 2014.
- New Barristers' Committee, NSW Bar Association, 2006-2010 (Chair, from 2008 – 2010). In particular, I convened many continuing education seminars for barristers, especially junior barristers.
- Law Council of Australia, Business Law Section, Trade Practices Committee, 2008 onwards.
- Chairing and presenting papers at various conferences and seminars.
- Participation as a mentor in various mentoring programs.

As a solicitor, these have included –

- Law Council of Australia, Federal Litigation Section, Administrative Law Committee, 2002 – 2005.
- Chair, Litigation Forum, Freehills' Commercial Litigation Group, 2005.
- Joint Pro Bono Co-Ordinator, Freehills' Commercial Litigation Group, 2003-2005.
- Work on a proposal for, and implementation of, the Equitable Briefing Policy – Freehills' Commercial Litigation Group, 2004-2005.
- Participation as a mentor in various mentoring programs.
- Volunteer lawyer, Kingsford Legal Centre, 1999.

OTHER PROFESSIONAL MEMBERSHIPS

- NSW Bar Association.
- Society of Women Writers (NSW) Inc, Vice-President, 2019 – 2021; Member of Centenary Committee, 2020 to date; Public Officer, 2021 to date.
- Writing NSW.
- Friend of the NSW State Library.
- Francis Forbes Society.

22 November 2022