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**WENTWORTH  
SELBORNE  
CHAMBERS**

**Dr Radhika Withana**



**Qualifications**

BA (Hons) (Class 1), UNSW  
PhD, UNSW  
LLB (Hons) (Class 1), University of Sydney

**Prior experience**

Before being called to the Bar, Dr Withana was a solicitor for two years at Baker & McKenzie (Sydney) working in dispute resolution (commercial litigation).

She was also an associate to the Hon. Justice Susan Kiefel AC (as her Honour then was) at the High Court of Australia.

**Areas of practice**

Appellate  
Commercial law & equity  
Competition & consumer law

International law & arbitration  
Public law  
Professional discipline  
Regulatory enforcement

A brief summary of her practice, including selected cases is set out below.

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## **Regulatory enforcement**

Dr Withana acts for various regulators and parties in different regulatory contexts.

She has acted for the Australian Competition and Consumer Commission (ACCC) and the Australian Securities and Investment Commission in the context of civil penalty proceedings and in the case of ASIC administrative review proceedings for decisions disqualifying directions. She has also acted for ASIC before the Market Disciplinary Panel.

She has acted for the Environmental Protection Authority on class 1 proceedings and has advised and acted for clients against the EPA in respect of class 4 and class 5 matters.

She has acted for the Australian Energy Market Operator in the enforcement of the National Gas Law including in relation to compulsory examinations of market operators and actors to investigate breaches of the National Gas Law.

She advises private parties in their applications for regulatory licenses for natural resource mining authorisation under the National Gas Law and state law equivalents.

She has advised the Office of the Privacy Commissioner on the construction and operation of Commonwealth Privacy Law.

## **Commercial law & equity**

Dr Withana has acted in general commercial law and equity matters, including advisory matters involving questions relating to the structure and enforcement of charitable and other trust structures, and litigation relating to contract law, breach of tortious and fiduciary duties, partnerships and employment law. She advises and appears in both trial and appellate matters. At the appellate level, a notable case Dr Withana appeared in was:

- *G Operations & Anor v Jamsek & Ors* [2022] HCA 2; (2022) 96 ALJR 144 – counsel for amicus curiae (led) – statutory construction issues pertaining to NSW and Commonwealth laws (*Fair Work Act 2009 (Cth)*, *Superannuation Guarantee (Administration) Act 1992 (Cth)* and *Long Service Leave Act 1955 (NSW)*) and characterisation of the nature of employment relationship.

## **Competition & consumer law**

Dr Withana has acted in regulatory and non-regulatory matters involving competition and consumer law. She was briefed by the ACCC in its consumer law action against Volkswagen AG, Volkswagen Australia, Audi AG and Audi Australia in relation to its cheating of Australian diesel emission standards. That matter ultimately settled with a record civil penalty of \$A125 million.

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She also appeared for the ACCC against Decathlon (Australia) Pty Ltd in civil penalty proceedings for breach of consumer safety standards that resulted in a \$A1.5 million penalty against Decathlon, which was a substantial penalty for a breach of safety standards.

She has also acted for both plaintiffs and respondents in private, non-regulatory matters involving claims of misleading and deceptive conduct.

Selected cases include:

- *ACCC v Decathlon (Australia) Pty Ltd* [2021] FCA 964 – Federal Court of Australia – counsel for the applicant (unled) – consumer law safety standards – misleading and deceptive conduct – civil penalty proceedings under s 106 of the Australian Consumer Law.
- *The Change Group & Anor v City Exchange Mart & Ors* [2013] FCA 1048 – counsel for the respondent (led) –misleading and deceptive conduct under s 52 of the *Trade Practices Act 1974* (Cth), passing off, breach of contractual duty of confidentiality and fiduciary duties.

### **International law & arbitration**

Dr Withana has expertise and experience in both private and public international law.

In private international law she has acted in several anti-suit injunction and *forum non conveniens* matters in the Family Court of Australia and the Supreme Court of NSW. Those matters ultimately settled following the filing of expert foreign law evidence.

Dr Withana also has deep expertise in public international law. She completed her doctoral on international law with a focus in her doctoral thesis on the political use of international law in the context of use of force (which was later published by Martinus Nijhoff Publishers (Leiden/London) as *Power, Politics, Law: International Law and State Behaviour During International Crises* (2008)).

Dr Withana has also used her expertise in domestic law matters, such as in the ACCC v Volkswagen litigation relating to public international law matters arising from Australia's implementation of international emissions standards.

She also has expertise and experience in maritime boundary issues.

Dr Withana has also acted in arbitrations, which eventually settled, involving disputes pertaining to natural resources that involved (among other things) analysis of public international law matters.

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## Public law

Dr Withana has wide experience acting in matters relating to constitutional and administrative law. She has represented numerous parties including state governments, regulatory agencies and private parties in the context of such matters. Selected cases include, among others:

- *Amirbeaggi v New South Wales Legal Services Commissioner* [2023] NSWSC 555 – counsel for the respondent (unled) – NSW Supreme Court (2023) – judicial review proceedings challenging the decision of the Commissioner in respect of a consumer and disciplinary complaint.
- *Hastwell v Legal Services Commissioner* [2021] NSWCA 20 – counsel for the respondent (unled) – administrative law – application for leave to appeal from judgment in court below made in Court’s supervisory jurisdiction.
- *Mendonca v Legal Services Commissioner* [2020] NSWCA 84 – counsel for respondent (unled) – application for leave to appeal and appeal – appeal from order dismissing summons for judicial review.
- *Hastwell v Legal Services Commissioner* [2020] NSWSC 1008 – counsel for the respondent (unled) – administrative law – judicial review.
- *Mendonca v Legal Services Commissioner* [2019] NSWSC 409 – counsel for the respondent (unled) – administrative law – judicial review.
- *Stenner v Crime and Conduct Commission (Qld) v Crime and Corruption Commission & Ors* [2019] QSC 202 – counsel for the respondent (led) – Queensland Supreme Court – judicial review of decision of Commission under s 176 of the *Crime and Conduct Act 2001* (Q).
- *Munkara and Ors v Attorney-General for the Northern Territory* [2018] NTCA 4 – Northern Territory Court of Appeal – counsel for the respondent (led) – appeal from conviction – constitutional law (s 109 inconsistency and chapter III invalidity) – administrative law.
- *The Council of the Law Society of the Australian Capital Territory v LP 12* [2018] ACTCA 60 – counsel for the appellant (led) – administrative law – appeal.

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## Professional discipline

Dr Withana has extensive experience and expertise in representing both regulators and respondents in the context of professional discipline. In that regard she has acted for the Law Society of NSW, the Law Society of the ACT, the NSW Legal Services Commissioner, and the Medical Board of Australia. She has acted for various professionals in the context of professional disciplinary proceedings including solicitors and barristers, doctors, vets, and pharmacists. Selected cases include:

- *Bar Association v Charles Christian Waterstreet* – NSW Civil and Administrative Tribunal (2023) – counsel for the respondent (led) – disciplinary proceedings (barrister) – liability (stage 1) hearing – Council of the New South Wales Bar Association v Waterstreet [\[2024\] NSWCATOD 4](#).
- *Health Care Complaints Commission v Kaye (No 2)* [\[2022\] NSWCATOD 79](#) and *Health Care Complaints Commission v Kaye* [\[2022\] NSWCATOD 24](#) – counsel for the respondent (led) – disciplinary proceedings (pharmacist).
- *Council of the Law Society of New South Wales v Clifton* [\[2021\] NSWCATOD 101](#) – counsel for the respondent (unled) – legal professional disciplinary proceedings (unled).
- *Health Care Complaints Commission v Negus* [\[2021\] NSWCATOD 50](#) – counsel for the respondent (unled) – professional registration and discipline (pharmacist).
- *Council of the Law Society of NSW v Orford* [\[2016\] NSWCATOD 22](#) (liability) and *Council of the Law Society of NSW v Orford (No 2)* [\[2017\] NSWCATOD 10](#) (penalty) – counsel for the respondent (led) – professional discipline – legal practitioners – false certification of instrument of transfer – professional misconduct – reprimand, fine and conditions.
- *Medical Board of Australia v Hocking; Hocking v Medical Board of Australia (Occupational Discipline)* [\[2015\] ACAT 44](#) – counsel for the applicant (led) – professional discipline – medical practitioners – unsatisfactory professional performance, professional misconduct, unprofessional conduct.
- *Kumar v Legal Services Commissioner* [\[2015\] NSWCA 161](#) – counsel for the respondent (led) – appeal – professional discipline – legal practitioners - solicitor removed from Roll for dishonest misappropriation of client's money and obstructing Legal Services Commissioner - finding of deliberate dishonesty and removal from Roll.