

Sheila Kaur-Bains, Barrister



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Specialist Areas

Administrative
Commercial
Equity
Family Provision Act and Estate matters
Income Tax and Indirect Taxes
State Taxes and Duties
Trusts

Admissions

Barrister and Solicitor of the Supreme Court of Western Australia	1991
Barrister and Solicitor of the High Court of Australia	1992
Legal Practitioner of the Supreme Court of New South Wales	1994
Admitted as a Barrister in New South Wales	1996

Qualifications

Bachelor of Laws (Hons), University of Warwick (England)	1988
Graduate Diploma in Taxation, University of Sydney	2014

Professional Experience

Barrister, New South Wales Bar	1996-present
Senior Associate, Litigation, Blake Dawson Waldron, Sydney	1994-1996
Senior Associate, Litigation, Mallesons Stephen Jaques, Perth	1992-1994
Articled Clerk and Solicitor, Dwyer & Thomas, Perth	1989-1992

Table of cases

The following table contains cases in which I have appeared over the last 2 years, except directions hearings. The list does not contain the cases which settled at mediation.

Case	Groote Eylandt Mining Company Pty Ltd v The Secretary of the Northern Territory Mineral Resources
Court	Supreme Court of the Northern Territory
Judicial Officer	Chief Justice Grant
Hearing Date	10 and 11 September 2018
Date of Judgment	Reserved
Other Counsel	
Opposing Counsel	James Hmelnitsky SC and David Hume
Instructing Solicitor	Northern Territory Solicitor
<p>Nature of proceedings: I appeared for the Secretary.</p> <p>The appeal was from a decision of the Secretary refusing deductions under the <i>Mineral Royalty Act</i> (NT). It involved a statutory construction question, which had not previously been the subject of any judicial consideration.</p>	

Case	Sally-Anne Fagin v Australian Leisure and Hospitality Group Pty Ltd
Court	Court of Appeal Supreme Court of New South Wales
Judicial Officer	Meagher JA, McColl JA, Sackville AJA
Hearing Date	11 April 2018
Date of Judgment	Reserved
Other Counsel	Leading: Kate Madgwick
Opposing Counsel	Sandra Duggan S.C and Jacinta Reid
Instructing Solicitor	Acting Pro Bono from a referral from the NSW Bar Association
<p>Nature of proceedings: I appeared for the appellant.</p> <p>The appeal was from an order of Robson J of the Land and Environment Court refusing the appellant's application challenging development undertaken by the respondent.</p>	

Case	Mao v AMP Superannuation Ltd [2018] NSWCA 72
Court	Court of Appeal Supreme Court of New South Wales
Judicial Officer	Basten JA; Leeming JA

Hearing Date	10 April 2018
Other Counsel	Leading: Andrew Smorchevsky
Opposing Counsel	J G Duncan and DF Villa
Instructing Solicitor	Retained as Amici Curiae
<p>Nature of proceedings: I appeared as Amicus Curiae.</p> <p>Application for leave to appeal from an order of Ward J appointing a manager to manage the rights and affairs in relation to proceedings which had been conducted by a litigant in person under s 41 of the <i>NSW Trustee and Guardian Act 2009</i>.</p>	

Case	HRC Hotel Services Pty Ltd v Chief Commissioner of Taxation [2018] NSWSC 820
Court	Supreme Court of New South Wales
Judicial Officer	Ward J (02 9230 8205)
Hearing Dates	28 February 2018; 1-2 March 2018.
Other Counsel	Leading: Adam Gerard (02 9220 9816)
Opposing Counsel	Stefan Balafoutis (02 9232 4609)
Instructing Solicitor	Judith Sutton, Partner, Sutton Douglass Lawyers (02 9152 9152)
<p>Nature of proceedings: I appeared for the applicant taxpayer.</p> <p>The matter involved the application of the employment agency contract provisions under the <i>Payroll Tax Act 2007</i> (NSW) for the provision of housekeeping services to hotels in Sydney.</p>	

Case	Federal Commissioner of Taxation v Tina Bazzo
Court	Supreme Court of Western Australia
Judicial Officer	Master Sanderson (08 9421 5348)
Hearing Date	31 January 2018
Other Counsel	Leading: Michael Robson (08 9226 3531)
Opposing Counsel	Claire Thompson (08 9220 0444)
Instructing Solicitor	Robson Legal (08 9226 3531)
<p>Nature of proceedings: Stay of proceedings and summary judgment.</p>	

Case	Federal Commissioner of Taxation v Allen Caratti
Court	Supreme Court of Western Australia
Judicial Officer	Master Sanderson (08 9421 5348)
Hearing Date	1 February 2018
Other Counsel	Leading: Michael Robson (08 9226 3531)
Opposing Counsel	Claire Thompson (08 9220 0444)
Instructing Solicitor	Robson Legal (08 9226 3531)
Nature of proceedings: Stay of proceedings and summary judgment.	

Case	David Sharpe v CNH Capital Australia Pty Ltd [2018] FCA 49
Court	Federal Court of Australia
Judicial Officer	Lee J
Hearing Date	28 September 2017
Other Counsel	Leading: Tom Bagley (02 8915 2142)
Opposing Counsel	S Golledge and J Foley
Instructing Solicitor	Pro bono from the Federal Court
Nature of proceedings: I appeared for the appellant. The appellant appealed a decision of the Federal Circuit Court ordering a sequestration order. The appeal involved a consideration of whether the primary judge erred in making the orders based on a judgment of the District Court.	

Case	XGLF v Federal Commissioner of Taxation
Court	Administrative Appeals Tribunal
Judicial Officer	Deputy President Cowdroy
Date	18 to 22 September 2017
Other Counsel	Led by: David McGovern QC (02 8226 2326) Leading: Lucy McGovern (02 9235 1155)
Opposing Counsel	Elizabeth Collins SC (9223 8541) leading Tony O'Brien (02 9224 5609)
Instructing Solicitor	Amanda Banton, Partner, Squire Patton Boggs (8248 7850)
Nature of proceedings: I appeared for the plaintiff taxpayer. The Commissioner issued default assessments for the years ending 30 June 2004 to 30 June 2013. Issues involved s 167 of the <i>Income Tax Assessment Act 1936</i> (Cth), Fringe Benefits, application of the PSI regime, loans, gifts, reimbursement of expenses, and allegations of sham.	

Case	Leon Carr v Federal Commissioner of Taxation [2017] FCA 1486
Court	Federal Court of Australia
Judicial Officer	Bromwich J (02 9230 8567)
Date	6 September 2017
Other Counsel	Leading: Lucy McGovern (02 9235 1155)
Opposing Counsel	Greg O'Mahoney (02 9151 2059)
Instructing Solicitor	Mark Douglass, Partner, Sutton Douglass Lawyers (02 9152 9152)
Nature of proceedings: I appeared for the appellant taxpayer. The appellant appealed on a question of law from a decision of the AAT in a tax matter. The appellant claimed he was denied procedural fairness such as to warrant the decision of the AAT being quashed and the matter being remitted to the Tribunal to be determined in accordance with law.	

Case	Alan Wozniak v Minister for Immigration and Border Protection [2017] FCAFC 148
Court	Full Federal Court
Judicial Officer	Kenny, Griffiths and Bromwich JJ
Date	17 August 2017
Other Counsel	Leading: Scott Richardson (02 9230 3249)
Opposing Counsel	Rachel Francois (02 9151 2211)
Instructing Solicitor	Pro Bono for the NSW Bar Association Legal Assistance
Nature of proceedings: I appeared for the appellant at the hearing for an extension of time in which to appeal. The court determined the adequacy of explanation for the delay and the merits of the appeal grounds.	

Case	Chief Commissioner of Taxation v Smeaton Grange Holdings Pty Ltd [2017] NSWCA 184
Court	New South Wales Court of Appeal
Judicial Officer	Gleeson JA (9230 8223) , Leeming JA (9230 8790), Sackville AJA (9230 8744)
Date	22 June 2017
Other Counsel	Led by: Jane Needham SC (02 9335 3044)
Opposing Counsel	Ian Young (9220 9882) leading Kirralee Young
Instructing Solicitor	Peter McKee, Senior Solicitor for Crown Solicitor (9224 5137)
Nature of proceedings: I appeared for the appellant led by Ms Needham.	

The appeal involved a question of whether a discretionary object could avoid the operation of s 72(6) of the *Payroll Tax Act 2007* (NSW) by a discretionary object, upon becoming aware that he was an object, communicating his dissent to being an object such that the dissent was effective ab initio. The determination of that issue has not been the subject of judicial consideration (except of course by the primary judge) and has significant implications for various state taxes.

I argued a preliminary point before the Court of Appeal and presented the oral argument in reply for the Chief Commissioner.

Case	Peter Sleiman v Federal Commissioner of Taxation
Court	Administrative Appeals Tribunal
Judicial Officer	Deputy President Frost (0413 133 446)
Date	17 February 2017, 31 April 2017, 9 May 2017
Opposing Counsel	Ram Pandey ATO in-house
Instructing Solicitor	Fred David, David Legal (02 9728 5678)
Nature of proceedings:	
I appeared for the applicant taxpayer on an application for an extension of time in which to bring proceedings in the AAT to challenge assessments issued by the Federal Commissioner of Taxation. On the application, the taxpayer had to lead evidence and had the onus of explaining the delay and the merits of the substantive cases.	
The hearing went for 3 days because the Federal Commissioner challenged:	
<ol style="list-style-type: none"> 1. the veracity of the taxpayer's evidence and his explanation for delay, such that I was required to subpoena and treat as hostile the taxpayers previous solicitor and cross-examine her for half a day to ensure that the taxpayers version of events was accepted; 2. the merits of the substantive case, such that I was required to in essence run the merits of the substantive case. 	

Case	Chief Commissioner of Taxation v Smeaton Grange Holdings
Court	New South Wales Court of Appeal
Judicial Officer	Emmett JA (02 9230 8409)
Date	24 April 2017
Opposing Counsel	Ian Young (02 9220 9882)
Instructing Solicitor	Ewa Pardey, Senior Solicitor at Crown Solicitors Office (02 8224 5465)
Nature of proceedings:	
I appeared for the Chief Commissioner of Taxation. The taxpayer was seeking an order in the nature of mandamus against the Chief Commissioner. After oral argument, the taxpayer consented to an order dismissing the claim for mandamus and, therefore, Emmett JA did not deliver a judgment.	

Case	Territory Resources Ltd v Secretary of the Northern Territory [2018] NTSC 12
Court	Northern Territory Supreme Court
Judicial Officer	Grant CJ
Date	6 March 2017
Other Counsel	Led by: David McGovern SC (02 8226 2326)
Opposing Counsel	Greg Lynham
Instructing Solicitor	Ingrid Meier, Senior Lawyer at the Solicitor for the Northern Territory (08 8935 7841)
<p>Nature of proceedings: I appeared for the Secretary of the Northern Territory in relation to assessments issued to the appellant for mineral royalties under the <i>Mineral Royalty Act 1982</i> (NT). The appeal concerned difficult issues of statutory construction under the <i>Mineral Royalty Act</i>, which had not been the subject of judicial determinations and the determination of which had wider ramifications for the Northern Territory.</p> <p>Senior Counsel was brought in late into these proceedings for the hearing because of wider ramifications for the client.</p>	

Case	Novus v Chief Commissioner of Taxation [2018] NSWCATAD 72
Court	Civil Administrative Tribunal
Judicial Officer	Senior Member Isenberg
Date	7 to 15 December 2016
Other Counsel	Led by: Max Kimber SC (02 9223 1522) Leading: Tim Russell (02 9230 3226)
Opposing Counsel	Pouyan Afshar
Instructing Solicitor	Nadya Haddad, Senior Solicitor at Crown Solicitors Office (02 8224 5415)
<p>Nature of proceedings: I appeared for the Chief Commissioner of Revenue, who had issued assessments against Novus for payroll tax. The matter concerned whether the financial services industry is caught as a deemed employer in respect of its activities. The case is significant in that it has implications for the financial services industry and revenue. It raises legal issues as to the application of s 32(2)(c) of the <i>Payroll Tax Act 2007</i> (NSW) which have not been fully the subject of judicial determination.</p>	

Case	Grain Growers Ltd v Chief Commissioner of State Revenue (NSW) [2016] NSWCA 359
Court	New South Wales Supreme Court of Appeal

Judicial Officer	Bathurst CJ (02 9230 8218) Beazley P (02 9230 8519) Leeming JA (02 9230 8790)
Date	15 December 2016
Other Counsel	Led by: Rashelle Seiden SC (02 9230 3220)
Opposing Counsel	Jennifer Batrouney QC (03 9225 8528) Jill Gatland (02 8226 2338)
Instructing Solicitor	Crown Solicitor's Office
Nature of proceedings: I appeared for the appellant, the Chief Commissioner of Taxation led by Ms Seiden. The appeal concerned the construction of s 48 of the <i>Payroll Tax Act 2007</i> (NSW). The Chief Commissioner's arguments on appeal were accepted.	

Case	Oswal v Federal Commissioner of Taxation [2016] FCA 2016
Court	Federal Court of Australia
Judicial Officer	Pagone J (03 8600 3333)
Date	13 December 2016
Opposing Counsel	Christopher Catt (02 9231 6386)
Instructing Solicitor	Rebekah Giles, Partner Kennedys (0413 583 316)
Nature of proceedings: I appeared for the respondent. The applicant was seeking a freezing order and costs of a subpoena. The respondent successfully resisted the freezing order.	

Case	Smeaton Grange Holdings Pty Ltd v Chief Commissioner of State Revenue [2016] NSWSC 1594
Court	Supreme Court of New South Wales
Judicial Officer	White J (02 9230 8209)
Date	15 November 2016
Other Counsel	Led by: Jane Needham SC (02 9335 3044)
Opposing Counsel	I Young
Instructing Solicitor	Crown Solicitors Office
Nature of proceedings: I appeared for the respondent, Chief Commissioner. The proceedings concerned the effect of disclaimers by an object of a discretionary trust on the operation of the grouping provisions. The proceedings involved a consideration of trust law and equitable principles. The case raised important issues.	

Case	National Institute of Dramatic Art v Chief Commissioner of State Revenue (NSW) [2016] NSWSC 1471
Court	Supreme Court of New South Wales
Judicial Officer	White J (02 9230 8209)
Date	17 October 2016
Other Counsel	Leading: Tiffany Davy
Opposing Counsel	Mark Robertson QC (9230 3216) Matthew Sealey (02 9230 3297)
Instructing Solicitor	Kim McKee, Senior Solicitor Crown Solicitors Office
Nature of proceedings: I appeared for the Chief Commissioner. NIDA contended that it was not liable for payroll tax as it was exempt, being a non-profit organisation, under the <i>Payroll Tax Act 2007</i> (NSW). The case involved complex statutory construction questions. The Chief Commissioner was successful with all his arguments.	

Case	Awabakal Local Aboriginal Land Council v Minister for Aboriginal Affairs
Court	Land and Environmental Court
Judicial Officer	Preston CJ
Date	8 Aug 2016
Other Counsel	Leading: Surya Palaniappan
Opposing Counsel	Michael Wright (02 9229 7333) Joanna Davidson (02 8915 2625)
Instructing Solicitor	Peter Jackson, Jackson Smith solicitors
Nature of proceedings: I appeared for the Awabakal Local Aboriginal Land Council on an application for an injunction to restrain the Minister from appointing an administrator over the affairs of the Land Council. During the hearing the Minister gave undertakings not to appoint an administrator.	

Case	Awabakal Local Aboriginal Land Council v Minister for Aboriginal Affairs
Court	Land and Environment Court
Judicial Officer	Preston CJ
Date	27 June 2016
Other Counsel	Leading: Surya Palaniappan
Opposing Counsel	Michael Wright (02 9229 7333)
Instructing Solicitor	Peter Jackson, Jackson Smith Solicitors

Nature of proceedings:

I appeared before for the Awabakal Local Aboriginal Land Council on an application for an order that the Registrar provide a returning officer for the election of members to the land council. During the hearing the Registrar agreed that the Court make the orders sought by my client.