

BARRISTER

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Gillian regularly appears in all major courts and tribunals and accepts briefs in most areas of civil and commercial law, including employment and industrial matters, insolvency and Corporations Act matters, construction disputes, appeals and regulatory proceedings. Pro bono Briefs are only accepted via referral from JusticeNet SA.

Doyle's Guide lists Gillian as:

- *Preeminent Junior Counsel for Commercial Litigation & Dispute Resolution in South Australia;*
- *Preeminent Junior Counsel for Employment & WHS Law in South Australia and as Recommended Junior Counsel nationally;*
- *Leading Junior Counsel for Insolvency & Restructuring in South Australia;*
- *Recommended Junior Counsel for Construction Law in South Australia*

ACADEMIC QUALIFICATIONS AND ADMISSION TO LEGAL PRACTICE

BA LLB (Hon) – Macquarie University	2000
Admitted to practice	2003
Signed the South Australian Bar Roll	2010
LLM – University of Melbourne	2013

PREVIOUS EMPLOYMENT

Senior Associate, DMAW Lawyers (Adelaide)	2007 – 2010
Lawyer, Minter Ellison Lawyers (Sydney)	2002 – 2007
Tipstaff to the Honourable Paul Stein AM, QC Court of Appeal, Supreme Court of New South Wales	2001

ROLES WITH PROFESSIONAL ASSOCIATIONS

Member of Council of the South Australian Bar Association	2010 to date
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EXAMPLES OF EXPERIENCE

(Appearances were unled unless otherwise noted)

Employment, Industrial and WHS Matters

Appeared for the Fair Work Ombudsman on an appeal by an employer to the Full Federal Court. The employer was wholly unsuccessful on appeal: *Complete Windscreens (SA) Pty Ltd v Fair Work Ombudsman (No 2)* [2017] FCAFC 212.

Appeared as junior counsel for the Mitolo Group and Maranello Trading, the lead applicants in successful applications to retrospectively vary the Horticulture Award 2010. The applications were

heard as part of the in the 4 yearly review of modern awards, and were strongly opposed: *4 yearly review of modern awards - Horticulture Award 2010* [2017] FWCFB 6037.

Appeared for the Fair Work Ombudsman in proceedings against a retirement village operator which underpaid employees more than \$2 million. The employer was ordered to pay a civil penalty of \$196,000: *Fair Work Ombudsman v Lifestyle SA Pty Ltd* [2014] FCA 1151.

Otherwise appears for the Fair Work Ombudsman in various proceedings seeking rectification of underpayments and penalties: see for example *Fair Work Ombudsman v Ecosway Pty Ltd* [2016] FCA 296; *Fair Work Ombudsman v Java Spice Australia Pty Ltd* [2015] FCCA 2930; *Fair Work Ombudsman v Longridge Group Pty Ltd* [2015] FCCA 129; *Fair Work Ombudsman v Melland Pty Ltd & Sitarenos* [2012] FMCA 645.

Appears for employers and employees in unfair dismissal claims: see for example *Bakker v Nick Xenophon & Co Lawyers* [2012] FWA 4982; *Wetton v Woolworths Ltd* [2010] FWA 7538.

Appeared for Comcare in civil penalty proceedings under *Occupational Health and Safety Act 1991* in relation to an industrial accident. The employer was ordered to pay a pecuniary penalty of \$110,000: *Comcare v Transpacific Industries Pty Ltd* [2014] FCA 1420.

Appeared as junior counsel for the defendants in a Safe Work SA prosecution regarding a death during construction of the Adelaide Desalination plant: *Hillman v Ferro Con (SA) Pty Ltd & Anor* [2013] SASIRC 22.

Appeared for Cleanaway Operations Pty Ltd in a criminal prosecution under the *Work Health and Safety Act* (Cth): unreported, District Court of South Australia, 2017.

Corporations Act and Bankruptcy Disputes

Appeared as junior counsel for ASIC in proceedings in which it was found that the companies made and distributed offers for the acquisition of shares without disclosure. Banning orders were obtained against the directors: *ASIC v Astra Resources Plc & Ors* [2015] FAC 759; *ASIC v Astra Resources Ltd (No 2)* [2016] FCA 560.

Appeared for a bankruptcy trustee who successfully defended his rejection of a proof of debt of petitioning creditor: *Martindale ACF Pty Ltd v Johnson* [2013] FMCA 63.

Appeared for liquidators seeking to set aside the directors' personal insolvency agreement and review a rejection of a proof of debt: *Basedow and Prior in their capacity and joint and several liquidators of Ex ASSA Pty Ltd (in liq) v Stephen Duncan & Ors* [2015] FCCA 230.

Appearing for the Deputy Commissioner of Taxation in various enforcement proceedings arising from judgments against the persons involved in the Agape Ministries. See for example, *Deputy Commissioner of Taxation v Joseph Veneziano* (unreported, Registrar Bochner, Federal Circuit Court, 11 December 2014).

Appeared for company in liquidation in proceedings seeking to recover amounts owing by directors, obtained orders striking out the proceedings for procedural irregularities: *Starlink International Services Pty Ltd (in liq) v Albarouki* (unreported, Master Rice, District Court of South Australia, 12 June 2014).

Contractual and Construction Disputes

Appeared as junior counsel for Leighton Contractors in a Construction and Australian Consumer Law dispute in which the client was substantially successfully, and obtained a significant indemnity costs order: *Basetec Services Pty Ltd v Leighton Contractors Pty Ltd (No 6)* [2016] FCA 1534; *Basetec Services Pty Ltd v Leighton Contractors Pty Ltd (No 8)* [2017] FCA 258. Also

obtained an order (unled) that the applicant provide \$300,000 in security for costs: *Basetec Services Pty Ltd v Leighton Contractors Pty Ltd* [2014] FCA 991.

Appeared as junior counsel in *York Civil Pty Ltd v BHP Billiton Mitsui Coal Pty Ltd & Anor.* see for example, interlocutory decision [2014] FCA 1422.

Appeared for the Plaintiff in proceedings associated with the enforcement of a judgment in construction litigation: see for example, *Linke v TT Builders Pty Ltd (No 3)* [2015] FCA 1054.

Appeared on behalf of the defendant in a dispute as to the terms of an oral contract regarding the supply grain to a dairy: *Glenroy Plains Pty Ltd & Ors v Pedra Branca Dairying Pty Ltd & Ors* [2011] SADC 26.

Equitable and Trust Disputes

Appeared as junior counsel for successful appellant in proceedings where the Full Court of South Australia accepted that recent NSW Court of Appeal authority should not be followed in respect of whether occupation rent ought to be awarded where a joint property owner leaves voluntarily: *W v D* [2012] SASCFC 142.

Appeared as junior counsel on behalf of appellant in the Full Court of South Australia and on the High Court special leave application seeking declarations regarding the use of trust property by a local council: *Penola & District Ratepayers' & Residents Assn Inc v Wattle Range Council* [2011] SASCFC 62.

Administrative Law

Appeared in the Full Court of the Supreme Court of South Australia in respect of a claim on the agents indemnity fund under the *Land Agents Act 1999*: *Commissioner for Consumer Affairs v McMurray* [2017] SASCFC 16.

Appeared as junior counsel for the applicant on a successful application to set aside a decision of the Ombudsman on the basis of Wednesbury unreasonableness: *City of Port Adelaide Enfield v Bingham* [2014] SASC 36.

Appears for Comcare in the Federal Court and AAT. See for example: *Corby v Comcare* [2015] FCA 1124; *Carson v Comcare* [2015] FCA 50; *McGree and Comcare* [2014] AATA 613; *Sener and Comcare* [2014] AATA 734; *Gibbs v Comcare* [2015] AATA 72; *Tuck v Comcare* [2013] AATA 206.

Appeared as junior counsel on an application for judicial review brought by neighbours affected by a planning permission: *Holds v The City of Port Adelaide* [2011] SASC 226.

As a solicitor, represented Friendly Society Medical Association Ltd in two separate proceedings before the Administrative Appeals Tribunal and obtained successful reviews of refusals by the Australian Community Pharmacy Authority to a PBS licence to separate pharmacies operated by the Association: *Friendly Society Medical Association Ltd v Australian Community Pharmacy Authority* [2008] AATA 1055.

Defamation, Breach of Confidence and Contempt of Court

Appeared for the plaintiff on a successful application for injunctive orders requiring the defendant to remove certain material from a website, and refrain from further publishing such material: *Stokes v Ragless* [2014] SASC56. Also appeared for the plaintiff at trial, obtaining an order for a permanent injunction and payment of \$90,000 in damages: *Stokes v Ragless* [2017] SASC 159

Appeared as junior counsel in successful application for injunctive orders restraining the director of a party to ongoing proceedings from committing future contempt of court: *Basetec Services Pty Ltd v Leighton Contractors Pty Ltd* [2015] FAC 762.

As a solicitor, represented the plaintiff in matter claiming an abuse of process, breach of confidence and defamation, including successfully obtaining urgent injunctive relief, suppression orders and anonymity orders: *Y & Z v W* [2007] NSWCA 329.

As a solicitor, represented The Age, Business Review Weekly and private clients in defamation matters (see for example *The Age Corporation Ltd v Beran* [2005] NSWCA 289).

Appeared for the plaintiff on successful application for a defendant to be charged with contempt for failing to comply with orders: *Strata Corporations 8103 Inv v Blanch* (unreported, Magistrates Court of South Australia, 26 February 2013)

Taxation Disputes

Appeared as junior counsel on behalf of the successful Commissioner of State Taxation in the Supreme Court of South Australia. The focus of the proceedings was the proper meaning of 'life insurance' within the context of the *Stamp Duties Act 1912*: *National Mutual Life Association of Australia Ltd & Ors V Commissioner of State Taxation* [2010] SASC 261.

Appears regularly in the AAT, and State courts and on appeals for the Commissioner of Taxation and Deputy Commissioner of Taxation. See for example, *Trustee for the Grewal Property Trust v Commissioner of Taxation* [2013] AATA 788; *Enviro Systems Renewable Resources Ltd v Deputy Commission of Taxation* (unreported, Supreme Court of SA Judge Withers 27.02.15); *Breakwell v Commissioner of Taxation* [2015] AATA 628; *CZRS v Commissioner of Taxation* [2015] AATA 40; *Breakwell v Commissioner of Taxation* [2015] FCA 1471.

Tortious and Civil Liability Disputes

Appeared as junior counsel on behalf of a valuer in relation to a negligent valuation of a property. Successfully obtained an order on appeal that the damages award be reduced by 50% for the lender's contributory negligence: *Valcorp Australia v Angas Securities* [2011] FCA 190; *Valcorp Australia v Angas Securities* [2012] FCAFC 22.

As a solicitor, represented Wyong Shire Council in its successful appeal to the High Court in relation to a claim for compensation for catastrophic injuries suffered when the plaintiff dove off rocks near a public, patrolled beach: *Vairy v Wyong Shire Council* (2005) 223 CLR 422.

As a solicitor, represented an insurer in proceedings where an exclusion clause in its broad form public liability policy was tested: *Forbes Shire Council v AG Australia Holdings Ltd* [2007] NSWSC 847.

Disciplinary proceedings

Appeared as junior counsel for the Legal Practitioners Conduct Board at first instance, on appeal and in the High Court in proceedings which resulted in the striking off of a practitioner stralia: *Viscariello v Legal Practitioners Conduct Board* [2012] SASC 92; *Viscariello v Legal Practitioners Conduct Board* [2012] SASCFC 147; *Viscariello v Legal Practitioners Conduct Board (No 2)* [2013] SASCFC 27; *Viscariello v Legal Practitioners Conduct Board* [2013] SASCFC 37; *Viscariello v Legal Practitioners Conduct Board* [2013] HCATrans 149.

Appears in various disciplinary matters in the Legal Practitioners Disciplinary Tribunal. See for example, the matter of Kruse dated 27 August 2014; the matter of Hill dated 8 August 2013; the matter of A and M dated 1 October 2015.

Appears in various matters in the South Australian Health Practitioners Tribunal. See *Chiropractic Board of Australia v Shanahan* [2017] SAHPT 9; *Physiotherapy Board of Australia v Adey* [2017] SAHPT 3.

Competition Law

Appeared as junior counsel for the ACCC on appeal regarding attempted cartel conduct: *ACCC v Australian Egg Corporation Limited* [2016] FCA 447; *ACCC v Australian Egg Corporation Limited* [2017] FCAFC 152.

As a solicitor, represented Harris Scarfe Pty Ltd in proceedings commenced by the ACCC alleging that the retailer's television and catalogue advertising is in breach of section 52 of the *Trade Practices Act 1979*: *ACCC v Harris Scarfe Pty Ltd* [2009] FCA 54.

Other Disputes

Appeared for the Respondent in the Full Court of South Australia in a dispute under the *De Facto Relationships Act 1996* (SA): *N, A-B v V, AM* [2017] SASCFC 147.

Appeared as junior counsel in the matter of *Adelaide City Council v Minister for Sustainability, Environment and Conservation*, relating to the compulsory acquisition of a large and complicated parcel of land at Wingfield (commonly known as the Gilman Land).

Appeared for disability support services provider seeking an injunction under the Australian Human Rights Commission Act (proceedings resolved while decision reserved).

Prosecuted a café operator for breaches of the *Food Act 2001*: *City of Port Adelaide Enfield v Raschella* (unreported, Magistrates Court of South Australia, 14 August 2014)

Appeared for the Australian Crime Commission in a public interest immunity application: *R v Condo* [2011] SADC 173.