

Penny Thew

Solicitor 2000

Barrister 2005

(02) 9151 2932

penny.thew@greenway.com.au



Penny has over 21 years experience in advocacy, advising and dispute resolution in all aspects of employment and discrimination law, appellate matters, contractual disputes and restraints of trade. Penny also appears regularly in litigation involving succession law, disposition of assets, possession and commercial law.

Penny regularly appears in the Federal Court of Australia, Federal Circuit and Family Court of Australia, Supreme Court of NSW, District Court, Fair Work Commission, Industrial Relations Commission of NSW and State/Territory tribunals and is admitted to appear in the High Court of Australia.

Penny is known for her responsiveness and strategic, client-focused approach to litigation. She works with a broad range of clients, including multi-national and listed corporate clients, government departments and agencies, partnerships, small businesses and individuals in all aspects of litigation.

This gives her an insight into all sides of a dispute and helps her stay sharply attuned to her clients' interests when it comes to achieving the best possible end goal.

Between 2000 and 2005, Penny practised as a solicitor in the areas of employment, industrial and discrimination law, acting for corporate and government clients, as well as employer associations. She also undertook an internship with the International Labour Office in Geneva, Switzerland. Prior to this, she worked as a policy advisor for the Human Rights and Equal Opportunity Commission (now the Australian Human Rights Commission), during which time she worked on the Report of the National Pregnancy and Work Inquiry 1999 and the NSW Pay Equity Inquiry in 1998.

Penny is a part-time Tribunal Member of the Consumer and Commercial Division of the New South Wales Civil and Administrative Tribunal, and was reappointed for a five year term in 2019. She is also an editorial committee member of Bar News, the journal of the NSW Bar Association.

QUALIFICATIONS

- Bachelor of Arts and Bachelor of Laws (UNSW) 1998
- Masters of Labour Law and Relations (University of Sydney) 2003
- Advanced Advocacy Course at the University of Oxford (Keble College) as a representative of the New South Wales Bar Association 2008
- Member of Chartered Institute of Arbitrators, June 2021

SPECIALISATIONS

- Employment law, including general protections, statutory entitlements and industrial matters under the Fair Work Act 2009 (Cth), as well contractual disputes and restraints of trade
- Discrimination law
- Appellate law
- Commercial law

PROFESSIONAL RECOGNITION

Penny has been ranked by Doyle's Guide as leading employment law junior counsel 2019, 2020, 2021, 2022

PENNY'S PHILOSOPHY

"Having a comprehensive, in-depth understanding of the legal as well as the factual issues is essential not only in obtaining a successful outcome in litigation but can also assist in bringing about an early resolution of the dispute."

WHAT PENNY'S CLIENTS SAY

"Penny is a very helpful and skilled barrister whom I trust instructing in a variety of matters. She is responsive, client focussed and a motivated advocate who works hard and produces good results."

---- Dr Laura Sowden, Special Counsel, large commercial law firm

"I was referred to Penny by an eminent silk. Penny brings the calm command of a master to every matter, quickly nails the crux of a dispute, and sees strategic choices five moves ahead of your opponent. Having briefed her many times, I would not brief anyone else by choice."

---- Solicitor, Aulich Lawyers

CAREER HIGHLIGHTS

- **Fair Work Act interpretation (2020).** Penny appeared for an applicant in Federal Court of Australia Full Court proceedings which distilled the bases upon which applicants can make certain claims under Part 3-1 of the *Fair Work Act 2009* (Cth).
- **Indemnity principle in costs proceedings (2018-2019).** Penny appeared in Federal Court of Australia Full Court and High Court special leave proceedings. These affirmed that the indemnity principle is satisfied, and costs can therefore prima facie be awarded, provided there is a contingent liability to pay costs at the time of making a costs order (led by Dr Birch SC)
- **'Gambling behaviours' not a disability (2018).** Penny appeared in disability discrimination proceedings in which she successfully defended an allegation that an applicant patron's 'gambling behaviours' constituted a 'disability' or associated manifestation within the meaning of the legislation. Penny obtained a similar finding in unrelated proceedings in 2017 in relation to 'gambling addiction'.
- **Best Practice Guidelines (2015).** As a Bar Association committee member, Penny drafted the NSW Bar Association's model Best Practice Guidelines directed at eradicating sexual harassment, discrimination and bullying at the Bar. The model Best Practice Guidelines have since been adopted by more than 50% of the private Bar in NSW.
- **'Unreasonable act or omission' giving rise to costs (2007).** Penny appeared in proceedings establishing that an opposing party's failure to accept a reasonable settlement offer constitutes an unreasonable act or omission justifying a costs order under predecessor provisions to section 570 of the *Fair Work Act 2009* (Cth). The often-cited decision remains a leading authority for the availability of costs under the *Fair Work Act 2009* (Cth).

NOTABLE CASES

Appellate

- ***PIA Mortgage Services Pty Ltd v King* [2020] FCAFC 15; (2020) 274 FCR 225; (2020) 292 IR 317** (appeals under general protections provisions of *Fair Work Act 2009* (Cth))
- ***El Ali v Royal & Ors; Zreika v Royal & Ors* [2019] HCATrans 227** (led by Dr Birch SC; indemnity principle)
- ***Zreika v Royal* [2019] FCAFC 82; (2019) 271 FCR 65** (led by Dr Birch SC; dispositions of shares and assets); ***Zreika v Royal (No 2)* [2019] FCAFC 237; (2019) 141 ACSR 261** (led by Dr Birch SC; costs and consequential orders)

Employment and discrimination law

- ***King v PIA Mortgage Services Pty Ltd & Ors* [2018] FCCA 3426** (led by Taylor SC; general protections claim under the *Fair Work Act 2009* (Cth) and Australian Consumer Law claim); ***King v PIA Mortgage Services Pty Ltd & Ors (No 2)* [2019] FCCA 1460** (penalties under the *Fair Work Act 2009* (Cth))
- ***Johnston v Ainslie Football Club Limited (Discrimination)* [2018] ACAT 104** (disability discrimination; 'gambling behaviours' alleged as a disability).
- ***Hinder v The Salvation Army (NSW) Property Trust (No 3)* [2017] NSWCATAD 16** (disability discrimination; 'gambling addiction' alleged as a disability).
- ***McDonald v Parnell Laboratories (Aust) Pty Ltd* (2007) 168 IR375** (breach of employment contract and family responsibilities discrimination claim under the Sex Discrimination Act 1984 (Cth) and section 659(2)(f) of the Workplace Relations Act 1996 (Cth)); ***McDonald v Parnell Laboratories (Aust) (No 2)* (2007) 164 FCR 591; 175 IR 251** (costs under the Workplace Relations Act 1996 (Cth))

- **Clarke v Nursing and Midwifery Council of New South Wales & Ors (No.4) [2019] FCCA 3639; Clarke v Nursing and Midwifery Council of New South Wales & Ors (No.3) [2019] FCCA 3159; Clarke v Nursing and Midwifery Council of New South Wales & Ors (No.2) [2019] FCCA 3035** (dismissal of various breach of duty and consumer law applications; costs)
- **Royal v Nazloomian, in the matter of Royal [2019] FCA 555** (bankruptcy notice set aside)
- **Mine Subsidence Board v Kozak [2017] NSWSC 421** (possession)
- **Curry v Curry [2017] NSWSC 461** (possession)
- **Royal v El Ali [2016] FCA 782; Royal v El Ali (No 2) [2016] FCA 1156; Royal v El Ali (No 3) [2016] FCA 1573; Royal v El Ali (No 4) [2017] FCA 299; Royal v El Ali; In the Matter of the Bankrupt Estate of El Ali [2014] FCA 834; Royal v El Ali, in the matter of the bankrupt estate of El Ali [2013] FCA 923; Royal v El Ali [2011] NSWSC 602** (led by Dr Birch SC; dispositions of shares and assets rendered void, consequential and costs orders)
- **Venn v Mine Subsidence Board [2013] NSWLEC 30** (appeal under the Mine Subsidence Compensation Act 1961 (NSW))
- **Neale v Mine Subsidence Board [2013] NSWLEC 34** (appeal under the Mine Subsidence Compensation Act 1961 (NSW))

PUBLICATIONS

- "Addressing inequality: The impetus behind the Sex Discrimination and Fair Work (Respect at Work) Amendment Act 2021 (Cth)" Volume 64, Issue 3 of *Journal of Industrial Relations*.
- Hogan-Doran SC and Thew "New accessory liability for barristers under the Sex Discrimination Act 1984 (Cth) and fresh obligations under Bar Rule 123" [2022]
- Birch SC, Thew and France, "Alienations of property with intent to defraud" [2020] *LSJ* (Issue 63) 88.
- Cheshire SC and Thew, "Meeting the challenges of the modern Bar; A Clerk's View" [2019] *Bar News* (Winter) 52.
- Corsaro SC and Thew, "Obtaining leave to appear - NSW Civil and Administrative Tribunal" [2019] *Bar News* (Winter) 71.
- Thew and Tronson, "What is the economic cost of discrimination?" [2019] (Autumn) *Bar News* 67.
- Thew and Taylor SC, "The Pursuit of Excellence: the Bar Association's Best Practice Guidelines" [2016] (Spring) *Bar News* 51.
- Contributing author to *Australian Master Workplace Relations Guide*, CCH, 1st ed, 2006; 2nd ed, 2007; 3rd ed, 2008; 4th ed, 2009.