



## **CAROLYN MOSS**

Francis Burt Chambers  
Level 15, Allendale Square  
77 St Georges Terrace  
PERTH WA 6000  
T +61 (08) 9220 0411  
M +61 409 080 713  
E [cmoss@francisburt.com.au](mailto:cmoss@francisburt.com.au)

### **Areas of practice**

#### *Civil Practice*

- Commercial and Civil Litigation
- Professional liability
- Insurance
- Negligence
- Professional Negligence
- Contractual disputes
- Construction disputes
- Competition
- Consumer protection law
- Corporations law
- Equity
- Appeals
- Confiscations (proceeds of crime)

#### *Criminal Law*

- Crimes against the person
- Drug crime
- White collar and corporate crime
- Federal crime
- Regulatory prosecutions

### **Overview**

Carolyn's background provides a strong foundation in advocacy and trial experience, combined with years of practice in both criminal law and commercial litigation.

Carolyn started practice as a State Prosecutor with the Office of the Director of Public Prosecutions (ODPP) (2005 – 2009) before working in the Market Integrity team within ASIC.

Carolyn moved to civil practice in 2009, working as a Senior Associate with Jackson McDonald (2015 – 2018) and MDS Legal (formerly McCallum Donovan Sweeney) (2009 – 2015) prior to her election to the Bar.

Carolyn practises in both commercial litigation and criminal law and applies the skills honed in each separate area to her practice generally.

In commercial litigation matters, Carolyn has advised and represented clients on matters involving contract law, torts, alleged breaches of the *Competition and Consumer Act 2010* (Cth) and *Corporations Act 2001* (Cth), alleged breaches of fiduciary duty and unconscionable conduct.

Carolyn has significant experience in insurance litigation, acting on professional indemnity claims against lawyers, accountants, mortgage brokers, local government councillors and directors and officers of listed companies. She has also worked on matters involving Public and Product Liability and Business Interruption insurance policies.

In her criminal law practice, Carolyn is an experienced trial and appellate advocate and has represented both the State and Commonwealth DPPs at all Court levels and acted as defence counsel on summary and indictable matters.

Carolyn's commercial litigation experience ties in with her criminal law experience in matters involving white collar and corporate crime and she has acted on, and advised clients on, ASIC and ATO prosecutions.

## **Experience**

Carolyn has advised and represented a wide range of clients, from Western Australian, national and international insurers, to regulatory bodies, to private clients.

Examples of matters in which Carolyn has acted include:

### *Commercial Litigation*

- Counsel on breach of contract trial involving estoppel argument and expert evidence as to cause of mechanical failure.
- Counsel on subrogated recovery action involving alleged negligence and breaches of the *Competition and Consumer Act 2010*.
- Counsel on *Building Services (Complaint Resolution and Administration) Act 2011* (WA) matters in the State Administrative Tribunal: See, for example, *Hand v Arasi Constructions Pty Ltd* [2002] WASAT 154
- Appearing as junior counsel for the defendant in a Supreme Court product liability trial in which causation was critical to the defence of the action: *Morton Seed & Grain Pty Ltd v Phillbourne Manufacturing Pty Ltd* [2018] WASC 386.
- Appearing as junior counsel on Application to Wind up company on fair and equitable ground/ insolvency in Federal Court: *Hooke v Bux Global Ltd (No 6)* [2018] FCA 1545.
- Acting for and appearing as junior counsel at trial for an insurer and its insured firm of lawyers, defending a claim alleging negligence, breach of contract and breach of fiduciary duty in the District Court of WA. The claim was complicated by notoriously litigious plaintiffs who were self-represented for the majority of the action and an allegation of fraud against the Insured so required sensitive handling on behalf of the Insured. The claim was dismissed following trial on both liability and causation.

- Counsel on numerous interlocutory applications including applications for summary judgment, interlocutory injunctions, security for costs, setting aside subpoenas, staying an action, the trial of a preliminary issue and strike out applications. See, for example, *Cristovao v Geoffrey Dutton t/as Dutton Legal* [No 3] [2017] WADC 140, *Cristovao v Geoffrey Dutton T/as Dutton Legal* [No 2] [2016] WADC 66, *Cristovao (sic) v Geoffrey Dutton t/as Dutton Legal* [2016] WADC 25, *Deturt v Arasi* [2022] WADC 16
- Acting on a long-running, multi-defendant claim in the Supreme Court of WA in which the initial claim for loss exceeded \$116M. The claim alleged negligent advice, breaches of the *Trade Practices Act 1974* and breach of contract and involved contribution proceedings between the defendants, a failure of top-up cover and interlocutory proceedings disputing claims of legal professional privilege during discovery.
- Acting on numerous claims against professionals in different jurisdictions, including the District, Supreme and Federal Courts, ranging from low value claims requiring rapid resolution to more complex higher value claims involving issues ranging from directors' duties, to abuse of process arguments and advocate's immunity issues.
- Advising and appearing on liquidators' examinations.
- Advising on a wide variety of civil claims, including contractual disputes, breaches of the *Australian Consumer Law* and *Corporations Act 2001* matters.

#### *Criminal/ Regulatory*

- Counsel on numerous jury trials, including high weight drug matters, domestic violence-based assaults and burglaries.
- Counsel on a wide range of sentencing matters, including murder, possession of child exploitation material and historical sexual offences.
- Appellate counsel on Crown sentencing appeals: See, for example, *Soerensen v R* [2020] WASCA 114, *Oliviera v R* [2020] WASCA 32
- Appearing as junior counsel on numerous jury trials, including multiple complainant historical sexual offence cases and multiple accused armed robberies.
- Advising and appearing on numerous *Restraining Orders Act 1997* matters.
- Acting on *Legal Profession Act 2008* (WA) disciplinary and *Real Estate and Business Agents Act 1978* (WA) code of conduct matters. See, for example, *Young v Legal Profession Complaints Committee* [2022] WASCA 52, *Khosa v Legal Profession Complaints Committee* [2021] WASCA 64, *Legal Profession Complaints Committee v Khosa* [2021] WASAT 64, *Legal Profession Complaints Committee v Khosa* [2021] WASAT 34
- Investigating potential *Corporations Act 2001* (Cth) breaches, focusing on insider trading, market manipulation and breaches of section 1041G.

### **Professional Qualifications/ Admission**

Bachelor of Laws- *University of Western Australia*, 2004

Admitted Practitioner- *Supreme Court of Western Australia*, February 2006

Admitted Practitioner- *High Court of Australia*, 2007

### **Professional Memberships**

Law Society of Western Australia

Western Australian Bar Association

Women Lawyers of Western Australia