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## Sarah Byrne

p: 1800 959 885  
m: 0411 235 725  
e: sarah.byrne@proximity.com.au

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### BACKGROUND

Sarah is a highly qualified and experienced government lawyer, company director and mediator, with an excellent reputation for client-focused and strategic problem-solving.

Sarah has considerable experience as an in-house Counsel specialising in administrative law, statutory interpretation, information law and litigation, including as General Counsel for several agencies, head of the AGS Information Law team, and the ACT senior executive with oversight of legislation and policy for the whole of the Territory.

Sarah has extensive experience in legislative drafting and acting as an advocate in administrative appeals, including negotiating the advantageous resolution of matters before hearing.

She also has demonstrated expertise in the sensitive and constructive handling of volatile issues in environments of intense public scrutiny.

Clients value her strategic and lateral approach to finding innovative and lasting solutions to complex problems, and her ability to manage difficult stakeholders through the use of her negotiation and mediation skills.

Since leaving the APS in June 2016 Sarah has focused on governance, human rights and discrimination, administrative, information law and mediation.

Sarah possesses a thorough and practical knowledge of relevant legislation, APS policy, common law and HR management.

Sarah has a current NV1 (Secret) security clearance with AGSVA.

### EXPERTISE

- › Administrative law
- › Statutory Interpretation
- › Freedom of Information, privacy and public interest disclosure
- › Legislative drafting
- › Dispute Resolution & Litigation
- › Employment and Industrial Relations
- › Workplace Health and Safety
- › Compensation, damages and personal injury
- › Human Rights
- › Mediation
- › Employment law
- › Contracting
- › Debt recovery

### KEY ADMINISTRATIVE LAW EXPERIENCE

Sarah is advising Industry on venture capital funding, motor vehicle industry subsidies and exemptions from anti-dumping duties. She has also advised Industry on several CDDA claims, including in relation to an importer which argued that it should have been granted an exemption from anti-dumping duty.

Sarah has previously been General Counsel at Finance and FaHCSIA (now DSS). She advises frequently on issues of delegations and authorisations, the limits of

executive power, statutory interpretation, legislative interrelationships, decision making and remaking decisions.

She has advised on Act of Grace payments and established ex gratia schemes to resolve class actions. At NHMRC she implemented the Public Governance and Accountability Act 2013, including review and revision of statutory reporting processes, Accountable Authority Instructions, and approvals templates and conducting training throughout the agency.

### **Freedom of Information, privacy and public interest disclosure**

Sarah has worked in information law since 1992, when she helped develop and implement the first Queensland FOI Act. Her work has included advice on hundreds of FOI applications and appearing in the AAT and Federal Court in many contentious appeals. She led the Information Law team at AGS, advising on numerous high-profile matters, including the Senator Heffernan request for Comcar documents relating to Justice Michael Kirby, journalist applications for ministerial travel expenses, DFAT documents concerning the Balibo Five, and matters relating to national security. She appeared as Counsel in *Sobczuk v ATO*, winning a test case in relation to the commercial operations of the AGS.

### **Human rights and discrimination**

Sarah was Human Rights Advisor to the ACT Government, the first jurisdiction in Australia to enact a Human Rights Act and advised on the human rights compliance of all ACT legislation, policies and programs. Sarah also served as ACT Public Advocate, delivering a review of ACT Corrections' treatment of prisoners in court cells, and a major review of the death of a young person in the care of a disability service provider.

Sarah is experienced in human rights in the context of human research, having managed NHMRC's research integrity function, and as the lawyer on the Health and Defence/DVA Human Research Ethics Committees.

### **Debt Recovery**

Sarah was the first Commonwealth lawyer to obtain a bankruptcy order against a vexatious litigant for unpaid costs relating to numerous unsuccessful claims against the Commonwealth. She has considerable experience in grants management, supervising a team at NHMRC whose role it was to ensure the recovery of all unspent or misspent funds from more than \$800 million in research funding annually.

As General Counsel at FaHCSIA (now DSS) Sarah frequently advised on options to recover funding under grant programs there. She also supervised a team whose role was to lodge caveats against thousands of properties purchased with Commonwealth funding. In private practice Sarah ran debt recovery matters for large corporate clients, including a major bank.

### **Dispute resolution and litigation**

Sarah had carriage of major litigation for Health, such as the High Court action against the Commonwealth by Philip Morris asserting that the Tobacco Advertising Prohibition Act was unconstitutional. She defended in the Federal Court the Pharmaceutical Benefits Advisory Committee's decisions not to recommend drugs such as Viagra, Infiximab and Enbrel for PBS subsidies. She represented Health in dozens of contentious AAT appeals from decisions of the Australian Community Pharmacy

Authority, in addition to her FOI advocacy, with an excellent record for resolving cases before hearing and winning those cases that did go to hearing.

### **Employment and Industrial Relations**

Sarah has considerable experience including as General Counsel for several agencies, and most recently as Executive Director of NHMRC Corporate Services, with responsibility for both Legal Services and Human Resources, and as Enterprise Bargaining representative for that agency. Her proactive advice has assisted clients to avoid or resolve issues of potential discrimination – for example, advising NHMRC on their policies about the funding of part-time researchers and researchers who had taken leave. She provided advice on complex issues involving statutory appointments, conflicts of interest, engagement of State public servants, superannuation and visa requirements for statutory panel members, and obligations in relation to staff with mental health issues. She was also an authorised officer under the PID Act, providing NHMRC with training in this, as well as induction seminars and training in the APS Code of Conduct and the prevention of bullying and harassment.

Sarah has managed, advised on or investigated numerous disciplinary processes for multiple APS agencies, including cases involving allegations of fraud, sexual harassment, bullying, and theft. She has advised on and conducted many successful underperformance management processes; and has advised on and facilitated redundancy processes at Finance, NHMRC and FaHSCIA (now DSS), including managing the involuntary departures of an SES Band 3 officer and a ministerial staffer.

Sarah advised Agriculture on the successful merger of five certified agreements, all with different provisions and end dates, in an urgent time frame. She streamlined the NHMRC Enterprise Agreement and represented that agency in negotiations with staff. She negotiated the working conditions of policing personnel under the ACT's contract with the AFP for policing services and acted for the AMA in negotiations with Defence for the engagement of Visiting Medical Officers. She has advised many agencies on more than 100 APS recruitment processes.

### **Workplace Health & Safety**

Sarah was ACT representative on the COAG officers working group which developed the harmonized WHS legislation, and managed WHS law and policy in the ACT, including oversight of the Work Safety Commissioner. Sarah has advised several non-profit organisations on practical and cost-effective compliance with WHS law, and on obligations to volunteers.

Sarah developed and implemented a proactive strategy which reduced NHMRC's unplanned absences by an average of two days per employee per year, and introduced systems allowing the agency to "right-size" positions and pool staff to address fluctuations in workloads. She advised on, and conducted training throughout the agency for, the introduction of new WHS legislation, and advised on WHS obligations in relation to the hundreds of statutory appointees who worked off-site.

### **Dispute Resolution and Litigation**

Sarah successfully defended Health against claims that not offering voluntary redundancies to employees on parental leave was a breach of anti-discrimination law, establishing a precedent for these cases in the APS. She represented Finance

in several unfair dismissal cases, including an employee suspended for sexual harassment, another who was running a business at work, and another concerning an underperforming new starter who claimed that the signature on her probation documents had been forged. She has appeared in the ACT Magistrates Court to obtain workplace protection orders for staff who had received threatening emails. At NHMRC she advised on and resolved disputes involving claims of bullying, accessing pornographic materials, unlawful discrimination and misuse of Commonwealth resources.

After leaving the APS, Sarah secured a significant out-of-court settlement for a client for claims including constructive dismissal and reprisals under the PID Act, an action on which there is still no established precedent. She also conducted a successful workplace mediation for the board members of a non-profit, before which it appeared the organisation would be dissolved. Sarah's mediation expertise has been effective in resolving workplace conflicts and improving relationships between staff in conflict.

Sarah also ran the Federal Court action in which the Tobacco Institute appealed NHMRC's decision to release a guideline on passive smoking.

Whilst at NHMRC, Sarah worked on litigation concerning allegations of research misconduct, and assisted Queensland authorities on the first successful Australian prosecutions of research fraud.

**OTHER  
GOVERNMENT  
LAW EXPERIENCE**

**General Counsel/Assistant Secretary Legal Services, Department of Finance & Administration** - Established the first legal services branch in a central agency. Worked closely with the Human Resources Branch in relation to disciplinary matters and investigations from claims of sexual harassment, to fraud, to underperformance. Work included advice to the Minister on legal aspects of superannuation policy, including supplementary superannuation payments to low-income earners, and changes to the superannuation entitlements of Members of Parliament; the lease and buyback of State rail networks; asset sales and infrastructure development, information law and the whole range of in-house counsel responsibilities.

**Principal Counsel, Australian Government Solicitor** – Specialised in information law, policy and litigation, administrative appeals and public law, industrial relations and employment law, and intellectual property (especially Plant Breeders' Rights).

**QUALIFICATIONS**

- › Bachelor of Laws (University of Queensland, 1989)
- › Bachelor of Arts (University of Queensland 1987) – Classics and History
- › Solicitor and Barrister - admitted in Queensland (1992) and ACT (2005)
- › Resolution Institute Mediation Course 2016 (accreditation pending)
- › Graduate, Australian Institute of Company Directors 2015
- › ACT Law Society Practice Management Course 2015
- › LEADR Mediation Course 2010
- › Public Sector Management Course 1999