

Craig Lenehan

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Education

1989-1994

Bachelor of Science/Bachelor of Laws

- Ranked 12th in law in graduating year of 252 students at the University of New South Wales (first class honours level)
- Corrs Chambers Westgarth Scholarship in Law (UNSW).
- Le Fevre prize for physical chemistry (Macquarie University).
- Final year physical geography prize (Macquarie University).

I am also a fellow of the Gilbert + Tobin Centre of Public Law (see link [here](#))

Professional

May 2006 onwards **Barrister at the NSW Bar (Banco Chambers and 5 St James Hall)**

I was awarded the Con Varnavas prize for the highest aggregate mark in the bar exams and came to the bar in May 2006. I have a broad public law practice, specialising in constitutional and administrative law.

I have appeared in over 30 appeals and original jurisdiction matters in the High Court involving questions arising under the Constitution or other significant public law issues.

I have appeared unled or presented a significant part of the oral argument in 29 appellate matters (appeals and original jurisdiction matters in the High Court and appeals in intermediate courts of appeal). That has involved presenting argument against experienced senior counsel, including the Solicitors-General of the Commonwealth and the States and other leading members of the bar.

I regularly appear, mainly unled, in other matters in the Federal Court and the Supreme Court of New South Wales.

I am a member of the Human Rights Committee of the NSW Bar Association and of the Ethics Committee of the Australian Bar Association.

Some examples of my work at the bar:

- ***Hocking v Director General of Archives*** - An appeal to the High Court concerning an application by Ms Hocking for access to Sir John Kerr's personal letters to the Queen, held by the Australian Archives. I am briefed by the Director General of Archives, led by the Commonwealth Solicitor-General (Dr Donaghue QC). I also appeared in the matters below: ***Hocking v Director-General of the National***

Archives of Australia [2019] FCAFC 12 and *Hocking v Director-General of the National Archives of Australia* (2018) 255 FCR 1.

- ***Smethurst v Commissioner of Police*** – This is a matter in the original jurisdiction of the High Court, raising issues concerning the execution of a warrant and the implied freedom of political communication. I am briefed by the Commissioner, led by the Commonwealth Solicitor-General (Dr Donaghue QC).
- ***Masson v Parsons*** [2019] HCA 21; 93 ALJR 848 – An appeal from the Full Family Court, raising issues regarding s79 of the *Judiciary Act 1902* (Cth), s109 of the Constitution and whether “sperm donors” can be “parents” for the purposes of the *Family Law Act 1975* (Cth). I appeared unled in the special leave application and presented part of the oral argument and the reply in the appeal, led by Mr Kearney SC.
- ***Comcare v Banerji*** [2019] HCA 23– A matter removed into the High Court from the Full Federal Court raising issues regarding the use of social media by public servants and the implied freedom of political communication. I was led by the Commonwealth Solicitor-General (Dr Donaghue QC) and I presented part of the oral argument on an issue concerning a notice of contention.
- ***Unions NSW v New South Wales*** [2019] HCA 1 (2019) 93 ALJR 166– An original jurisdiction matter in the High Court concerning the implied freedom of political communication and electoral expenditure. I appeared for the Attorney-General of the Commonwealth, led by the Commonwealth Solicitor-General (Dr Donaghue QC).
- ***Clubb v Edwards; Preston v Avery*** [2019] HCA 11 (2019) 93 ALJR 448 – Two appeals removed into the High Court, each raising challenges to laws which prohibited certain communications and protest activities in “access zones” around premises at which abortions are provided. I appeared for the Attorney-General of the Commonwealth, led by the Commonwealth Solicitor-General (Dr Donaghue QC).
- ***HFM043 v Republic of Nauru*** [2018] HCA 37; (2018) 92 ALJR 817; 359 ALR 176 – An appeal from the Nauruan Supreme Court to the High Court raising various issues concerning the construction of the Refugees Convention Act 2012 (Nr). I appeared unled for the plaintiff against Mr Chris Horan QC.
- ***Ku-ring-gai Council v Bunnings Properties Pty Ltd*** [2019] NSWCA 28, a matter concerning the so called “amber light approach” which has been applied in the Land and Environment Court. The appeal raised questions about the limits and nature of judicial power. I appeared for the appellant, led by Mr Kennett SC.
- ***Banerjee v Commissioner of Police*** [2018] NSWCA 283, a matter referred to the Court of Appeal by Sackar J for consideration of an issue regarding s109 of the Constitution. I appeared, unled, for the Commissioner against Mr Cheshire SC.
- ***Alley v Gillespie*** [2018] HCA 11, (2018) 92 ALJR 373; 353 ALR 1 – This was an original jurisdiction matter concerning the *Common Informers (Parliamentary Disqualifications) Act 1975* (Cth) and the proper construction of ss46 and 47 of the Constitution. I appeared for the Attorney-General of the Commonwealth, led by the Commonwealth Solicitor-General (Dr Donaghue QC).

- ***Burns v Corbett*** [2018] HCA 15, (2018) 92 ALJR 423; 353 ALR 386 – This was an appeal from the New South Wales Court of Appeal concerning the question of whether State tribunals (that are not “courts of the States” within the meaning of Ch III of the Constitution) can exercise jurisdiction to determine any of the matters identified in ss75 or 76 of the Constitution. I appeared for the Attorney-General of the Commonwealth, led by the Commonwealth Solicitor-General (Dr Donaghue QC). I presented the part of the oral argument concerning s109 of the Constitution and the *Judiciary Act 1903* (Cth) in the High Court. I also appeared unled in the Court of Appeal against Mr M Sexton SC, Ms Richardson SC and Ms Nomchong SC – ***Burns v Corbett; Gaynor v Burns*** [2017] NSWCA 3; (2017) 96 NSWLR 247.
- ***Graham v Minister for Immigration and Border Protection; Te Puia v Minister for Immigration and Border Protection*** [2017] HCA 33, (2017) 91 ALJR 890 – this matter raised the question of whether ss501(3) and 503A(2) of the *Migration Act 1958* (Cth) are invalid as requiring a Federal court to exercise judicial power in a manner inconsistent with the essential character of a court or as impermissibly limiting ability of affected person to seek relief under s75(v) of the Constitution. I appeared for the defendant and the Attorney-General of the Commonwealth, led by the Commonwealth Solicitor-General (Dr Donaghue QC).
- ***Alley v Gillespie*** [2018] HCA 11 (2017) 91 ALJR 890. This was an original jurisdiction matter concerning the *Common Informers (Parliamentary Disqualifications) Act 1975* (Cth) and the proper construction of ss46 and 47 of the Constitution. I appeared for the Attorney-General of the Commonwealth, led by the Commonwealth Solicitor-General (Dr Donaghue QC).
- ***Lazarus v Independent Commission Against Corruption*** [2017] NSWCA 37; (2017) 94 NSWLR 36. This was a matter heard by the Court of Appeal concerning, inter alia, Ch III of the Constitution and the ICAC. I appeared for the Attorney-General for NSW (led by Mr Sexton - the NSW Solicitor-General).
- ***Re Day [No 2]*** (2017) 263 CLR 201 – This was a reference from the Senate to the High Court sitting as the Court of Disputed Returns in relation to s44(v) of the Constitution. I appeared for the Attorney-General of the Commonwealth, led by the Commonwealth Solicitor-General (Dr Donaghue QC) and Mr Williams SC.
- ***Re Culleton [No 2]*** (2017) 263 CLR 176 – This was a reference from the Senate to the High Court sitting as the Court of Disputed Returns in relation to s44(ii) of the Constitution. I appeared for the Attorney-General of the Commonwealth, led by Mr Williams SC.
- ***Graham v Minister for Immigration and Border Protection; Te Puia v Minister for Immigration and Border Protection*** (2017) 91 ALJR 890. This matter involved the question of whether ss501(3) and 503A(2) of the *Migration Act 1958* (Cth) are invalid as requiring a Federal court to exercise judicial power in a manner inconsistent with the essential character of a court or as impermissibly limiting ability of affected person to seek relief under s75(v) of the Constitution. That matter is currently reserved. I was led by the Commonwealth Solicitor-General (Dr Donaghue QC) for the defendant and the Attorney-General of the Commonwealth.

- ***Day v Australian Electoral Officer (South Australia)*** (2016) 261 CLR 1 – This matter concerned the validity of amendments made to the Commonwealth Electoral Act 1918 (Cth). The challenged provisions dealt with the form of the Senate ballot paper and the process for marking it. I was led by Mr Williams SC for the defendant.
- ***Plaintiff M68 v Minister for Immigration and Border Protection*** (2016) 257 CLR 42 – This was an original jurisdiction matter in the High Court challenging, on constitutional and other grounds, the arrangements regarding the detention of asylum seekers in Nauru. I was led by Mr Merkel QC for the plaintiff and presented part of the oral argument and the reply.
- ***McCloy v State of New South Wales*** (2015) 257 CLR 178 – This was a High Court constitutional challenge, based upon the implied freedom of political communication, to aspects of NSW legislation regulating political donations. I was led by the Commonwealth Solicitor-General (then Mr Gleeson SC) for the Attorney-General of the Commonwealth.
- ***CPCF v Commonwealth*** (2015) 255 CLR 514 – This was an original jurisdiction matter in the High Court regarding the executive power of the Commonwealth and the statutory power to expel aliens. I was led by Mr Merkel QC for the plaintiff and presented part of the oral argument and the reply.
- ***Alqudsi v Commonwealth*** – Constitutional challenge to the *Crimes (Foreign Incursions and Recruitment) Act 1978* (Cth). I appeared unled for the Commonwealth in the High Court (where the matter was commenced) and (after the matter was remitted) in the Supreme Court before Adamson J – see [2015] NSWSC 2015 - and the Court of Appeal – (2015) 91 NSWLR 92. I also appeared with the Commonwealth Solicitor General (Mr Gleeson SC) in the special leave application in that matter.
- ***Kerrison v Melbourne City Council*** (2014) 228 FCR 87 – Appeal in the Occupy Melbourne case, involving various issues under the *Charter of Human Rights and Responsibilities Act 2006* (Vic) and the implied freedom of political communication. I appeared with Mr Merkel QC and presented part of the argument.
- ***Kuczborski v Queensland*** (2014) 254 CLR 51 – original jurisdiction matter in the High Court regarding Chapter III of the Constitution. Appeared with the Commonwealth Solicitor-General (Mr Gleeson SC).
- ***Argos v ACT Minister for Planning*** (2014) 254 CLR 394– appeal to the High Court regarding standing in a judicial review matter (led by Mr Hutley SC). I also appeared in the remitted judicial review proceeding in the ACT Court of Appeal.
- ***Plaintiff M150 of 2013 v Minister for Immigration and Border Protection*** (2014) 88 ALJR 735– High Court original jurisdiction matter regarding the exercise of the visa cap power under the *Migration Act 1958* (Cth) (led by Mr Niall QC).
- ***Unions NSW v New South Wales*** (2013) 252 CLR 530 – High Court constitutional challenge, based upon the implied freedom of political communication, to aspects of NSW legislation regulating political donations (appeared for the Commonwealth Attorney-General, led by Mr Williams SC).

- ***Kline v Official Secretary to the Governor General*** (2013) 249 CLR 645 – Appeal to the High Court concerning freedom of information application made to the Official Secretary of the Governor General. Appeared with the Commonwealth Solicitor-General (Mr Gleeson SC).
- ***Paphos Providores Pty Limited v Constable Aziz Ladha*** (2015) 91 NSWLR 400, Constitutional matter in NSW Supreme Court and Court of Appeal concerning Chapter III and 51(xxxi). Appeared for the Attorney-General of New South Wales unled at first instance and led by the NSW Solicitor-General on appeal.
- ***AGU v Commonwealth*** (2013) 306 ALR 42. NSW Court of Appeal case regarding Chapter III and s109 of the Constitution and whether the Commonwealth is subject to State legislation (led by Mr Lloyd SC).
- ***Commonwealth v ACT*** (2013) 250 CLR 441 – Constitutional case concerning the marriage power and the validity of the *Marriage Equality (Same Sex) Act 2013* (ACT). Appeared with the Commonwealth Solicitor-General (Mr Gleeson SC).
- ***M76/2013 v Minister for Immigration*** (2013) 251 CLR 322– High Court administrative law and constitutional matter regarding migration detention (led by Mr Niall QC).
- ***Maloney v R*** (2013) 252 CLR 168 – constitutional challenge to alcohol restrictions on Palm Island (led by the Commonwealth Solicitor-General, Mr Gleeson SC).
- ***Lee and Gropler v Commonwealth*** (HCA and FCA) – Constitutional challenge to the *Water Act 2007* (Cth) and the Murray Darling Basin Plan. I appeared unled in the High Court for the Commonwealth in a successful application to have the matter remitted to the Federal Court (reported at (2012) 87 ALJR 232). I continued to act in the matter (led by Mr Donoghue SC) during the Federal Court hearing; an appeal to the Full Federal Court and an application for special leave to appeal to the High Court.
- ***JTI v Commonwealth*** (2012) 250 CLR 1- Constitutional challenge to the plain packaging laws for tobacco products (led by Mr Walker SC).
- ***M47 v Australian Security Organisation*** (2012) 251 CLR 1 – High Court administrative law and constitutional matter regarding the detention of Sri Lankan asylum seekers and adverse security assessments (led by Mr Niall QC).
- ***X7 v Australian Crime Commission*** (2013) 248 CLR 92– High Court matter concerning Chapter III of the Constitution and the compulsory questioning of people charged with an offence (led by the NSW Solicitor-General).
- ***M70 v Commonwealth of Australia*** (2011) 244 CLR 144 - Matter brought in the original jurisdiction of the High Court regarding the “Malaysian Solution” (led by Ms Mortimer SC and Mr Niall QC)

- ***Wotton v Queensland*** (2012) 246 CLR 1 – High Court constitutional matter concerning the implied freedom of political communication (led by the Commonwealth Solicitor-General – Mr Gageler SC).
- ***Betfair Pty Limited v Racing New South Wales & Ors*** (2012) 249 CLR 217 – High Court matter concerning section 92 of the Constitution and internet betting (led by Neil Young QC). I also appeared in the appeal to the Full Federal Court in that matter (led by Mr Robertson SC and Mr Meagher SC).
- ***Queanbeyan City Council v ACTEW Corporation Ltd & Ors*** (2011) 244 CLR 530 - claim alleging that certain fees imposed by a Territory are duties of excise in contravention of s90 of the Constitution (led by Mr Walker SC). I also appeared in that matter as junior to Mr Robertson SC at first instance and in the appeal to the Full Federal Court; and appeared unled in the special leave application to the High Court.
- ***Spencer v Commonwealth*** (2010) 241 CLR 118 – matter concerning acquisition of property under s51(xxxi) of the Constitution; grants made under s96 of the Constitution and the Commonwealth’s obligations under the *Kyoto Protocol*. I was led by the Commonwealth Solicitor-General (Mr Gageler SC) and Mr Robertson SC. I also appeared in the proceedings below before the Federal Court (unled) and in the Full Federal Court (led by Mr Robertson).
- ***OV and OW v Members of the Board of Wesley Mission Council*** (2010) 270 ALR 542– appeared unled for the Attorney-General of New South Wales in an administrative law matter before the New South Wales Court of Appeal concerning freedom of religion, error of law, statutory construction and NSW discrimination legislation.
- ***Arnold v Minister Administering the Water Management Act 2000*** (2010) 240 CLR 242 – matter concerning s100 of the Constitution (abridgement of the right to the reasonable use of the waters of rivers); acquisition of property under s51(xxxi) of the Constitution; executive power of the Commonwealth; grants made under s96 of the Constitution and water rights. I was led by the Commonwealth Solicitor-General (Mr Gageler SC) and Mr Robertson SC.
- ***ICM Agriculture Pty Ltd v Commonwealth*** (2009) 240 CLR 140 – matter commenced in the original jurisdiction of the High Court, concerning acquisition of property under s51(xxxi) of the Constitution; executive power of the Commonwealth; grants made under s96 of the Constitution and water rights - led by the Commonwealth Solicitor-General (Mr Gageler SC) and Mr Robertson SC.
- Appearing for the State and Commonwealth governments and various governmental agencies and Ministers (including the Australian Prudential Regulation Authority, the Child Support Registrar, the Minister for Immigration, the Minister for the Environment, the Office of the Registrar of Indigenous Corporations, the Therapeutic Goods Administration and the Tax Agents Board) in numerous public law matters at first instance and on appeal.

**February 2001 to May 2006: Human Rights and Equal Opportunity Commission
(Senior Legal Officer, Deputy Director of Legal Services and Acting Director Legal Services)**

Senior Legal Officer and Deputy Director Legal section.

August 1994 – February 2001: Freehills (solicitor)

During my employment at Freehills, I worked in the commercial litigation section for Mr Bruce Ramsay, Mr Graeme Johnson and Ms Rebecca Davies.

Publications and seminars

- Contributor to *Constituting Law: Legal Argument and Social Values* (Federation Press).
- Presenter at Young Lawyers seminars on constitutional aspects of detention.
- Lecturer in masters subject (public law and international law) at the University of Sydney.
- Presented a paper at the 2017 Constitutional Law Conference conducted by the Gilbert and Tobin Centre for Public Law (dealing with the High Court's decision in *Murphy v Electoral Commissioner*).
- Presented a paper at a seminar conducted by the Australian Association of Constitutional Law on the *Day* and *Culleton* cases and on recent issues in constitutional interpretation (July 2017).
- Presented a paper at the 2019 Melbourne University Law School Conference on recent developments in the implied freedom of political communication.