

Craig Lenehan SC

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Education

Bachelor of Science/Bachelor of Laws

- 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 and a member of the Centre's Advisory Committee.

Professional

2019

Appointed Senior Counsel, New South Wales

From May 2006

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 was appointed senior counsel in 2019.

I have a broad public law practice, specialising in constitutional and administrative law matters and appellate work.

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

My work at the bar: I have appeared in 44 appeals and original jurisdiction matters in the High Court involving questions arising under the Constitution or other significant public law issues.

I also regularly appear in intermediate appellate and superior courts in public law matters.

Here are some examples of my work:

- ***Vanderstock v Victoria*** [2023] HCA 30 – an original jurisdiction matter in the High Court concerning whether an exaction applied to electric cars was invalid as a duty of excise within the meaning of s90 of the Constitution.
- ***AZC20 v Minister for Immigration*** (2023) 97 ALJR 674 – an appeal to the High Court concerning the meaning of “matter” in Ch III of the Constitution.

- ***SDCV v Director General of Security*** (2022) 405 ALR 209 – an appeal to the High Court concerning procedural fairness and Ch III of the Constitution.
- ***Citta Hobart Pty Ltd & Anor v Cawthorn*** (2022) 400 ALR 1 – an appeal to the High Court concerning state tribunals and Ch III of the Constitution.
- ***Plaintiff M1/2021 v Minister for Home Affairs*** (2022) 96 ALJR 497 – an original jurisdiction matter in the High Court dealing with whether a decision maker was required to consider the plaintiff's representations concerning non-refoulement obligations in making non-revocation decision pursuant to s 501CA(4) of the *Migration Act 1958* (Cth).
- ***Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs v Viane*** (2021) 274 CLR 398 – an appeal to the High Court regarding whether the Minister made certain factual findings based on personal or specialised knowledge and whether any errors were material and jurisdictional.
- ***Hobart International Airport Pty Ltd v Clarence City Council & Anor*** (2022) 399 ALR 214 – an appeal to the High Court concerning standing, privity of contract and the meaning of “matter” in Ch III of the Constitution.
- ***Chetcuti v Commonwealth*** (2021) 272 CLR 609 – an appeal to the Full Court of the High Court (from a decision of Nettle J) regarding the aliens power in s51(xix) of the Constitution.
- ***Minister for Immigration v Moorcroft*** (2021) 273 CLR 21 – an appeal to the High Court concerning the “behaviour concern non-citizen” criterion for special category visas in the *Migration Act 1958* (Cth).
- ***Gerner v Victoria*** (2020) 270 CLR 412 – an original jurisdiction matter in the High Court concerning restrictions imposed during the state of emergency arising from the pandemic and whether intra-state freedom of movement is to be implied in the Constitution.
- ***Hocking v Director General of Archives*** (2020) 271 CLR 1- 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.
- ***Smethurst v Commissioner of Police*** (2020) 272 CLR 177 – This was 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.
- ***Masson v Parsons*** [2019] HCA 21; (2019) 266 CLR 554 – 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).
- ***Comcare v Banerji*** [2019] HCA 23 (2019) 267 CLR 373 – 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.

- ***Unions NSW v New South Wales* [2019] HCA 1** (2019) 264 CLR 595 – An original jurisdiction matter in the High Court concerning the implied freedom of political communication and electoral expenditure.
- ***Clubb v Edwards; Preston v Avery* [2019] HCA 11** (2019) 267 CLR 171 – 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.
- ***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).
- ***Ku-ring-gai Council v Bunnings Properties Pty Ltd* [2019] NSWCA 28** (2019) 236 LGERA 35 a matter concerning the so called "amber light approach" which has been applied in the Land and Environment Court.
- ***Banerjee v Commissioner of Police* [2018] NSWCA 283** (2018) 98 NSWLR 730 a matter referred to the Court of Appeal by Sackar J for consideration of an issue regarding s109 of the Constitution.
- ***Alley v Gillespie* [2018] HCA 11**, (2018) 264 CLR 328 – 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.
- ***Burns v Corbett* [2018] HCA 15**, (2018) 265 CLR 304 – 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.
- ***Graham v Minister for Immigration and Border Protection; Te Puia v Minister for Immigration and Border Protection* [2017] HCA 33** (2017) 263 CLR 1 – 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.
- ***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.
- ***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.
- ***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.

- ***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.
- ***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.
- ***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.
- ***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.
- ***Alqudsi v Commonwealth*** – constitutional challenge to the *Crimes (Foreign Incursions and Recruitment) Act 1978* (Cth): see [2015] NSWSC 2015 - and the Court of Appeal – (2015) 91 NSWLR 92.
- ***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.
- ***Kuczborski v Queensland* (2014) 254 CLR 51** – original jurisdiction matter in the High Court regarding Chapter III of the Constitution.
- ***Argos v ACT Minister for Planning* (2014) 254 CLR 394**– appeal to the High Court regarding standing in a judicial review matter.
- ***Plaintiff M150 of 2013 v Minister for Immigration and Border Protection* (2014) 88 ALJR 735**– matter regarding the exercise of the visa cap power under the *Migration Act 1958* (Cth).
- ***Unions NSW v New South Wales* (2013) 252 CLR 530** – constitutional challenge, based upon the implied freedom of political communication, to aspects of NSW legislation regulating political donations.
- ***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.
- ***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).
- ***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.

- ***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).
- ***M76/2013 v Minister for Immigration*** (2013) 251 CLR 322– matter regarding migration detention and questions of statutory construction.
- ***Maloney v R*** (2013) 252 CLR 168 – constitutional challenge to alcohol restrictions on Palm Island.
- ***Lee and Gropler v Commonwealth*** (HCA and FCA) – constitutional challenge to the *Water Act 2007* (Cth) and the Murray Darling Basin Plan.
- ***JTI v Commonwealth*** (2012) 250 CLR 1- constitutional challenge to the plain packaging laws for tobacco products.
- ***M47 v Australian Security Organisation*** (2012) 251 CLR 1 – matter regarding the detention of Sri Lankan asylum seekers and adverse security assessments.
- ***X7 v Australian Crime Commission*** (2013) 248 CLR 92– matter concerning Chapter III of the Constitution and the compulsory questioning of people charged with an offence.
- ***M70 v Commonwealth of Australia*** (2011) 244 CLR 144 - matter regarding the “Malaysian Solution”.
- ***Wotton v Queensland*** (2012) 246 CLR 1 – matter concerning the implied freedom of political communication.
- ***Betfair Pty Limited v Racing New South Wales & Ors*** (2012) 249 CLR 217 – matter concerning section 92 of the Constitution and internet betting.
- ***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.
- ***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*.
- ***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.
- ***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.

- Appearing on both sides of the record in numerous public law matters involving State and Commonwealth governments and various governmental agencies and Ministers at first instance and on appeal.

Prior to coming to the bar, I worked as a solicitor at Freehills and as a Senior Legal officer and the Deputy Director of Legal Services at the Human Rights and Equal Opportunity Commission (now the Australian Human Rights Commission).

Publications and seminars

- Auspublaw article - 'The Voice: imagined legal problems distract from the substance' on AUSPUBLAW (10 May 2023) - <https://www.auspublaw.org/first-nations-voice/the-voice-imagined-legal-problems-distract-from-the-substance/>
- Auspublaw article - 'Book forum: Craig Lenehan' on AUSPUBLAW (18 August 2021) - <https://auspublaw.org/blog/book-forum-craig-lenehan/>
- Book review of: 'Judicial review of administrative action and government liability' (7th ed), by Mark Aronson, Matthew Groves and Greg Weeks – 29(4) Australian Journal of Administrative Law (2022), p 280.
- Contributor to *Constituting Law: Legal Argument and Social Values* (Federation Press).
- Presented a paper at the 2020 Constitutional Law Conference conducted by the Gilbert and Tobin Centre for Public Law (*Limits on the executive power to detain: from Al Kateb to M47*).
- Presented a paper at the 2019 Melbourne University Law School Conference on recent developments in the implied freedom of political communication.
- Presented a paper at a seminar conducted by the Australian Association of Constitutional Law on inconsistency (September 2019).
- 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).