

Brendan Lim

Barrister

Eleven Wentworth Chambers
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Practice

Called to the bar in 2014. Admitted to practice in 2009.

I accept briefs in all areas of law, with a focus on public and commercial law.

My **public law** practice includes constitutional law, administrative law and statutory construction. I have appeared in several recent High Court cases in these areas. I have a general **commercial practice**, with experience in contractual disputes, equity, corporations, and private international law. I also practice in **competition and regulation** and have acted for participants in electricity, gas, telecommunications, and transport markets in relation to restrictive trade practices, contested mergers, and access regulation.

Professional experience

2014-present

Barrister
Eleven Wentworth Chambers

2012-2013

Associate to Justice Stephen Gageler
High Court of Australia

2009-2011 and 2012

Counsel Assisting the Solicitor-General

Worked for Stephen Gageler SC in the preparation of advice to and litigation on behalf of the Commonwealth government. Appeared as junior counsel in domestic and international matters.

2007-2008

Associate to Justice Anthony Besanko
Federal Court of Australia

Education

Yale Law School

2013 **JSD** with John Addison Porter Prize
2009 **LLM**

John Monash Scholar

University of Adelaide

2007 **LLB (Hons)** with University Medal in Law
2007 **B Mus (Hons)** with University Medal in Music
2004 **B Ma & Comp Sc** (Pure Mathematics & Statistics)

Honours Alumni University Medal

First place in: Equity, Remedies, Litigation Practice, Constitutional Law, Administrative Law, Comparative Law, Jurisprudence, Jessup Moot (Best Oralist, Australian Rounds 2005)

Selected appearances (current to March 2019)

High Court of Australia

Masson v Parsons (ongoing)

- “Parent” in artificial conception context; operation of s 79 *Judiciary Act 1903* (Cth)
- Led by SP Donaghue QC for the Attorney-General (Cth) (AGS)

Clubb v Edwards (reserved)

- Constitutional validity of abortion safe access zones in Victoria
- Led by CM Harris SC for the Fertility Control Clinic as amicus curiae (Maurice Blackburn)

Unions NSW v New South Wales [2019] HCA 1

- Constitutional validity of third-party campaign expenditure caps in NSW
- Led by MG Sexton SC, JK Kirk SC and AM Mitchelmore SC for NSW (CSO)

Wehbe v Minister for Home Affairs (2018) 361 ALR 1

- Administrative law, materiality of error
- Unled for the Minister (AGS)

Commonwealth v Walker (2018, discontinued prior to final hearing)

- Amenability of Commonwealth officers to a State Royal Commission
- Led by SP Donaghue QC and FI Gordon for the Commonwealth (AGS)

Re Culleton (2018) 358 ALR 678

- Re-opening final orders of the Court of Disputed Returns; parliamentary privilege
- Unled for the Attorney-General (Cth) (AGS)

Re Mr Stephen Parry; Ms Jacquie Lambie (2018) 351 ALR 559

- Constitutional law
- Led by SP Donaghue QC and ZE Maud for the Attorney-General (Cth) (AGS)

Re Nash [No 2] (The Hollie Hughes Case) (2017) 350 ALR 204

- Constitutional law
- Led by GR Kennett SC appearing as amicus curiae (AGS)

Dimitrov v The Supreme Court of Victoria & Ors (2017) 350 ALR 191

- Constitutional law and representative proceedings
- Led by GKJ Rich SC for the executive directors of Great Southern (Arnold Bloch Leibler)

Re Senator Canavan & Ors (Citizenship Cases) (2017) 349 ALR 534

- Constitutional law
- Led by GR Kennett SC appearing as amicus curiae (AGS)

Wilkie v Commonwealth (Australian Marriage Law Survey Case) (2017) 349 ALR 1

- Constitutional and administrative law
- Led by SP Donaghue QC and MJ O’Meara for the Commonwealth (AGS)

Graham v Minister for Immigration and Border Protection (2017) 347 ALR 350

- Constitutional and migration law
- Led by SP Donaghue QC and CL Lenehan, for the Minister (AGS)

Re Day (2017) 340 ALR 368 (Gordon J); 343 ALR 181 (Full Court)

- Constitutional and electoral law
- Led by NJ Williams SC (trial of fact) and by SP Donaghue QC, NJ Williams SC, and CL Lenehan (Full Court), for the Attorney-General (Cth) (AGS)

Re Senator Culleton (2017) 340 ALR 550 (Gageler J); 341 ALR 1 (Full Court)

- Constitutional and electoral law
- Led by NJ Williams SC and CL Lenehan, for the Attorney-General (Cth) (AGS)

NSW Aboriginal Land Council v Crown Lands Minister (2016) 260 CLR 232

- Aboriginal land claim, statutory construction and New South Wales constitutional law
- Led by BW Walker SC, for NSWALC (Chalk & Fitzgerald)

CFMEU v Director, Fair Work Building Industry Inspectorate (2016) 338 ALR 360

- Administrative law
- Led by NJ Williams SC, for the Director (AGS)

Murphy v Electoral Commissioner (2016) 261 CLR 28

- Constitutional and electoral law
- Led by R Merkel QC, with CJ Tran, for Mr Murphy (King & Wood Mallesons)

Maritime Union of Australia v Minister for Immigration (2016) 259 CLR 431

- Offshore resources and administrative law
- Led by NJ Williams SC, for the MUA (Slater & Gordon)

Duncan and Cascade Coal Pty Ltd v New South Wales (2015) 255 CLR 388

- Constitutional law
- Led by AS Bell SC, for Mr Duncan and Cascade Coal (YPOL and Tresscox)

RCB as litigation guardian of EKV, CEV, CIV and LRV v Justice Forrest (2012) 247 CLR 304

- Constitutional and family law, Hague Convention on Civil Aspects of Int'l Child Abduction
- Led by SJ Gageler SC and R Graycar, for the Attorney-General (Cth) (AGS)

Australian Crime Commission v Stoddart (2011) 244 CLR 554

- Evidence law, established non-existence of privilege against spousal incrimination
- Led by SJ Gageler SC, for the Australian Crime Commission (AGS)

Edwards v Santos Ltd (2011) 242 CLR 421

- Constitutional and native title law
- Led by SJ Gageler SC and RG Orr QC, for the Attorney-General (Cth) (AGS)

I have also appeared in various applications for special leave to appeal, applications for removal, and applications for summary dismissal.

Competition and regulation

ACCC v NSW Ports (FCA, ongoing)

- Alleged contraventions of s 45 CCA in connection with port privatisation
- Led by NC Hutley SC and RCA Higgins SC for NSW Ports (Gilbert + Tobin)

ACCC v Pacific National Pty Ltd & Ors (FCA, reserved); [2018] FCA 1221 (injunction)

- Alleged contraventions of ss 45, 50 CCA in connection with acquisition of rail terminal
- Led by NC Hutley SC, RCA Higgins SC, A Barraclough for Pacific National (Clayton Utz)

DPP (Cth) v ANZ & Ors (ongoing)

- Criminal prosecution of alleged cartel conduct in connection with capital raising
- Led by PW Neil SC, RCA Higgins SC and SJ Free SC for the CDPP (CDPP / ACCC)

AETV v Tasmanian Gas Pipeline (2017-2018)

- Access arbitration under Pt 23, National Gas Rules (Mr JT Gleeson SC, Arbitrator)
- Led by RCA Higgins SC for AETV (a subsidiary of Hydro Tasmania) (Clayton Utz)

SA Power Networks v Australian Competition Tribunal (No 2) [2018] FCAFC 3

- Judicial review of electricity revenue determination
- Led by CA Moore SC and RCA Higgins, with C Dermody, for SAPN (Gilbert+Tobin)

Port of Newcastle Operations v ACCC (2017) 350 ALR 552

- Judicial review of conduct under Pt IIIA CCA
- Led by SJ Free for Port of Newcastle (Webb Henderson)

Vodafone Hutchison Australia v ACCC [2017] FCA 1549

- Judicial review of conduct under Pt XIC CCA
- Led by NC Hutley SC and RCA Higgins for Vodafone (Norton Rose Fulbright)

ACCC v Tabcorp; CrownBet v Tabcorp (2017) 254 FCR 341; [2017] FCAFC 157

- Judicial review of Tribunal authorisation of Tabcorp-Tatts merger
- Led by CA Moore SC for Tabcorp (Herbert Smith Freehills)

Australian Energy Regulator v Australian Competition Tribunal (No 2) (2017) 255 FCR 274

- Judicial review of electricity revenue determination; also appeared in merits phase
- Led by TM Howe QC, for the Commonwealth Energy Minister (AGS)

Commercial law

Mirvac (WA) Pty Ltd v Binningup Nominees Pty Ltd (WASC, ongoing)

- Breach of contract, good faith in property development context
- Led by AS Bell SC (2014-2018) and B Dharmananda SC (2019) for Mirvac (MinterEllison)

Manboom Pty Limited v Q Media Pty Ltd (NSWSC, ongoing)

- Breach of contract, fiduciary duties, joint venture
- Led by RCA Higgins SC for Q Media (Lander & Rogers)

Winha Commerce and Trade International Ltd v ASX Limited (FCA, settled prior to hearing)

- Challenge to decision of ASX to delist a public company
- Led by RJ Dick SC for ASX Limited (Herbert Smith Freehills)

Dimmi Pty Ltd v Restaurantdiary.com Limited [2018] NSWSC 846

- Contract construction, conventional estoppel
- Led by MS Henry SC for Dimmi Pty Ltd (Arnold Bloch Leibler)

Bluescope Steel (AIS) v Illawarra Coal Holdings (NSWSC, settled during hearing)

- Contract construction, conventional estoppel
- Led by RJ Dick SC and JR Williams, for ICH (Herbert Smith Freehills)

CrownBet v NSW & Ors [2017] NSWSC 1470; [2017] NSWSC 1549; [2017] NSWSC 1558

- Gaming regulation, contracts, negative declaratory relief
- Led by PJ Brereton SC and RCA Higgins SC, for Tab Limited (Herbert Smith Freehills)

Woolworths Limited v About Life Pty Limited & Ors [2017] NSWSC 1117

- Equity, priorities, rights of first refusal
- Led by PM Wood with TE O'Brien, for Harris Farm Markets Pty Ltd (Arnold Bloch Leibler)

Parnell Manufacturing Pty Ltd v Lonza Ltd [2017] NSWSC 562

- Private international law, anti-suit injunction, forum non conveniens
- Led by RG McHugh SC, for Lonza Ltd (Webb Henderson)

Minumbra Pty Ltd v AM Lancewood Investment Nominees Pty Ltd [2015] NSWSC 302

- Contract construction, guarantees, subrogation
- Led by GJK Rich SC, for Lancewood (Arnold Bloch Leibler)

Hemmes Property Pty Ltd v Jomaring PL (NSWSC, 2015, settled shortly before hearing)

- Lease termination, relief against forfeiture regarding Coogee Pavilion
- Led by AS Bell SC and JJ Hutton, for Hemmes Property (Addisons)

Public law

Attorney-General (Tas) v Copper Mines of Tasmania (TASFC, ongoing)

- Procedural fairness and compliance with rules of expert evidence in coronial inquest
- Led by C Gunson SC for Copper Mines of Tasmania (McCullough Robertson)

Jabbour v Secretary, Department of Home Affairs (FCA, reserved)

- Judicial review of non-statutory executive power on ground of unreasonableness
- Unled for the applicants (Kinslor Prince)

Phonographic Performance Co v Australian Copyright Tribunal & Anor (FCAFC, reserved)

- Judicial review of approval of copyright licensing scheme
- Led by RP Lancaster SC and NR Murray for Foxtel (Minter Ellison)

Westpac Banking Corporation v Lenthall [2019] FCAFC 34; *BMW Australia v Brewster* [2019] NSWCA 35

- Challenges on constitutional grounds to power of court to make common fund order
- Led by NC Hutley SC / CN Bova for the funders (Roberts and Partners / Watson Mangioni)

UPM Asia Pacific v Asst Minister for Science, Innovation and Jobs (FCA, settled)

- Judicial review of anti-dumping decisions under Pt XVB of the *Customs Act 1901* (Cth)
- Led by MA Izzo SC for UPM (MinterEllison)

Lee v NSW Commissioner of Police & Ors (NSWSC, ongoing)

- Judicial review of search warrant and execution of warrant
- Led by TA Game SC for Dr Lee (Lenz Legal)

Stambe v Minister for Health & Anor (FCA, reserved)

- Judicial review of pharmacy location decision
- Unled for YL Health Pty Limited (proponent of impugned decision) (Meridian Lawyers)

APRA v TMeffect Pty Ltd (2018) 125 ACSR 334 (No 1); [2018] FCA 678 (No 2)

- Regulation of prohibited words under the *Banking Act 1959* (Cth)
- Led by RCA Higgins SC for APRA (APRA) / unled on remitter to AAT

Minister Administering Crown Lands Act v NSW Aboriginal Land Council [2018] NSWLEC 26

- Conformity with *Aboriginal Land Rights Act 1983* (NSW) of extensive land claims
- Led by JK Kirk SC for NSWALC (Chalk & Behrendt)

Kaldas v Barbour (2017) 350 ALR 292 (NSWCA)

- Construction and constitutional validity of privative clause in *Ombudsman Act 1974* (NSW)
- Led by MG Sexton SC for the Attorney-General (NSW) (CSO)

Alleasing Pty Ltd v OneSteel Manufacturing Pty Ltd (Admin App'td) (2017) 93 NSWLR 611

- PPSA registration, constitutional law (s 51(xxxi))
- Led by NC Hutley SC, for OneSteel (Arnold Bloch Leibler)

Taulahi v Minister for Immigration and Border Protection (2016) 246 FCR 146 (FC)

- Character-based visa cancellation and constitutional law
- Led by SP Donaghue QC and CL Lenehan, for the Minister (AGS)

Garth v The Queen (2016) 341 ALR 620 (NSWCCA)

- Constitutional and sentencing law
- Led by GA Bashir SC, for Mr Garth (Legal Aid NSW)

Tribunals, regulatory bodies, and inquiries

I have appeared in proceedings before the AAT, NCAT, the Australian Competition Tribunal, ASIC (insider trading), the Market Disciplinary Panel (market manipulation), the Royal Commission into Trade Union Governance and Corruption, the Independent National Security Legislation Monitor, and the Parliamentary Joint Committee on Intelligence and Security.

International law

Australia — Measures Affecting the Importation of Apples from New Zealand [2010] WT/DS367/AB/R (World Trade Organization Appellate Body)

- International trade law, quarantine
- Led by SJ Gageler SC, for Australia (DFAT and Office of International Law, AGD)

Publications and presentations

- Australia's Constitution after Whitlam* (Cambridge University Press, 2017; paperback 2018)
- 'Legitimacy' in Cheryl Saunders and Adrienne Stone (eds), *Oxford Handbook of the Australian Constitution* (Oxford University Press, 2018)
- 'Democratic Experimentalism' in Rosalind Dixon (ed), *Australian Constitutional Values* (Hart Publishing, 2018) (co-authored with Gabrielle Appleby)
- 'The Rationales for the Principle of Legality' in Dan Meagher and Matthew Groves (eds), *The Principle of Legality in Australia and New Zealand* (Federation Press, 2017)
- 'Collective Irrationality and the Doctrine of Precedent' (2014) 38 *Melbourne University Law Review* 525 (co-authored with Justice Stephen Gageler)
- 'Laboratory Federalism and the *Kable* Principle' (2014) 42 *Federal Law Review* 519 (joint winner of the Saunders Prize for Excellence in Scholarship in Constitutional Law)
- 'The Normativity of the Principle of Legality' (2013) 37 *Melbourne University Law Review* 372
- 'Hypothetical Jurisdiction: A Reply to Justice Leeming' (2013) 87 *Australian Law Journal* 680
- 'The Case for Hypothetical Jurisdiction' (2012) 86 *Australian Law Journal* 616
- 'An Australian Reads *Living Originalism*' (2012) 34 *Sydney Law Review* 809
- 'Attributes and Attribution of State Courts — Federalism and the *Kable* Principle' (2012) 40 *Federal Law Review* 31 (winner of the Zines Prize for Excellence in Legal Research)
- 'Coper, Roberts and Stellios (eds), *The Tasmanian Dams Case: 30 Years On*' (Book Review) (2018) 92 *Australian Law Journal* 312
- 'The Convergence of Form and Function: Commentary on Dixon' (2015) 43 *Federal Law Review* 505
- 'The second paragraph of s 90 of the Constitution', Centre for Comparative Constitutional Studies (Retrospectivity and the Rule of Law), Melbourne Law School, 21 July 2017
- '*ACMA v Today FM (Sydney) Pty Ltd*', Gilbert + Tobin Centre of Public Law, Constitutional Law Conference, Sydney, 13 February 2015

Community

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| 2019 – present | Council Member, Australian Association of Constitutional Law |
| 2018 – present | Member of a Professional Conduct Committee, NSW Bar |
| 2014 – present | Fellow, Gilbert + Tobin Centre of Public Law, UNSW |
| 2016 – present | NSW Convenor, Australian Association of Constitutional Law |
| 2016 | NSW Selection Panel, General Sir John Monash Awards |