

Brendan Lim

Barrister

Eleven Wentworth Chambers

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Practice

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

I practice widely in all areas of public and commercial law and appear unled and led in trials and appeals throughout Australia.

Public law: I practice in constitutional and administrative law and across diverse statutory regimes such as electoral, financial services, migration, environmental, customs and trade law. I am often briefed as sole or leading counsel, including in intermediate appellate courts.

Commercial law: I have broad experience in general commercial matters including contractual disputes, equity, negligence, consumer law, corporations and private international law. I am retained as sole counsel where appropriate and, where led by senior counsel, routinely appear unled at interlocutory stages.

Competition law: I have acted for participants in digital platforms, energy, telecommunications, broadcasting, and transport markets in relation to restrictive trade practices, contested mergers and access regulation.

I have been included for several years in the Doyles Guide of leading junior counsel. I appear in that publication for public law, commercial litigation, and competition law.

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**

Studied at Yale as a 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)

Selected recent cases (as at February 2023)
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High Court of Australia

I have appeared on behalf of government, corporate and individual clients, and as court-appointed contradictor, in High Court proceedings involving constitutional and administrative law, class actions, negligence, evidence, electoral, family and migration law.

Zurich Insurance v Koper (2022, ongoing) (**AG (Cth)**)

Vunilagi v The Queen (2022, ongoing) (**AG (Cth)**)

Unions NSW v New South Wales (No 3) (2022, reserved)

Electricity Networks Corporation v Herridge Parties [2022] HCA 37

Lazenby v Minister for Home Affairs (Minister conceded shortly before hearing) (**unled**)

Ruddick v Commonwealth [2022] HCA 9

LibertyWorks Inc v Commonwealth [2021] HCA 18

Plaintiff S64/2020 v Minister for Home Affairs (Minister conceded shortly before hearing)

BMW Australia v Brewster (2019) 374 ALR 627 (the **litigation funder**)

Clubb v Edwards (2019) 267 CLR 171 (the **Fertility Control Clinic**)

Masson v Parsons (2019) 266 CLR 554 (**AG (Cth)**)

Unions NSW v New South Wales (No 2) (2019) 264 CLR 595

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

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

Re Culleton (2018) 358 ALR 678 (**AG (Cth)**) (**unled**)

Re Mr Stephen Parry; Ms Jacquie Lambie (2018) 263 CLR 601 (**AG (Cth)**)

Re Nash [No 2] (The Hollie Hughes Case) (2017) 263 CLR 443 (**Contradictor**)

Re Senator Canavan & Ors (Citizenship Cases) (2017) 263 CLR 284 (**Contradictor**)

Dimitrov v The Supreme Court of Victoria & Ors (2017) 263 CLR 130 (an **Executive Director**)

Wilkie v Commonwealth (Australian Marriage Law Survey Case) (2017) 263 CLR 487

Graham v Minister for Immigration and Border Protection (2017) 263 CLR 1

Re Day (2017) 340 ALR 368 (Gordon J); 263 CLR 201 (Full Court) (**AG (Cth)**)

Re Senator Culleton (2017) 340 ALR 550 (Gageler J); 263 CLR 176 (Full Court) (**AG (Cth)**)

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

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

Murphy v Electoral Commissioner (2016) 261 CLR 28

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

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

RCB as litigation guardian of EKV et al v Justice Forrest (2012) 247 CLR 304 (**AG (Cth)**)

Australian Crime Commission v Stoddart (2011) 244 CLR 554

Edwards v Santos Ltd (2011) 242 CLR 421 (**AG (Cth)**)

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

Public law

I appear unled, often against silk, in significant public law cases. Recent unled matters include:

<i>BDR21 v Australian Broadcasting Corporation</i> (FCAFC ongoing)	Relationship between <i>Parliamentary Privileges Act 1987</i> (Cth) and <i>Public Interest Disclosure Act 2013</i> (Cth) including constitutional issues (direct access)
<i>Environment Victoria Inc v AGL Loy Yang</i> [2022] VSC 814	Successfully defended power station licence conditions against allegation of EPA failure to consider climate change (HSF)
<i>Koper v Zurich Insurance</i> [2021] NSWSC 1587; [2022] NSWCA 128	For Commonwealth . Successfully defended constitutional validity of <i>Trans-Tasman Proceedings Act 2010</i> on Ch III grounds (with J Wherrett on appeal) (AGS)
<i>Aboriginal Areas Protection Authority v Director of National Parks</i> [2022] NTSCFC 1	For Commonwealth . Established non-amenability of Director of National Parks to criminal prosecution by NT authority (with A Sapienza on special leave) (AGS)
<i>McNab v DPP (NSW)</i> [2021] NSWCA 298	Nature of appeal against conviction from Local Court to District Court (Makinson d'Apice)
<i>Jabbour v Secretary, Department of Home Affairs</i> [2019] FCA 452	Established availability of judicial review for unreasonableness of non-statutory executive power (Kinslor Prince)

Commercial law

Recent unled matters include:

<i>Henry Morgan Limited v ASX Ltd</i> (QSC, ongoing)	Preliminary discovery / substitution of plaintiffs on purported assignment of action (with S Spottiswood) (HSF)
<i>Quirk v Suncorp Portfolio Services</i> (2019-2022, NSWSC, settled on first hearing day)	For an executive director ; superannuation class action (ABL)
<i>Stead v Gould Galleries</i> (2021, FCA, settled)	Misleading or deceptive conduct in relation to sale of artwork attributed to Howard Arkley (ABL)
<i>Port Authority NSW v Svitzer</i> (2022, NSWDC, ongoing)	For Port Kembla , cross-defendant; negligence/contract re boat collision (Buchanan Rees)
<i>iSignthis Pty Ltd v ASX Ltd</i> (2019-2022 FCA, settled)	Obtained more than \$2.5m security for costs (with C Mintz) (HSF) (against silk)
	Otherwise led by CG Button QC, later NJ Young QC, in damages claim re suspension of listed company; [2020] FCA 567 (successfully resisted interlocutory injunction to restrain publication of reasons)

I also appear led in a diverse range of commercial disputes such as:

Forex Capital Trading Ltd (in liq) v Invesus Group (NSWSC, ongoing)	Liquidator claim on letter of comfort from Gibraltar-based parent company Led by B Dharmananda SC (KWM)
Watson v Greenwoods HSF and Lendlease (FCA, ongoing)	Whistleblower claim by former partner of Greenwoods HSF against firm and client Led by E Collins SC (KWM)
Australian Centre for Climate Responsibility v Santos Limited (FCA, ongoing)	Alleged “greenwashing” of emission targets Led by N Young QC, with C Trahanas (HSF)
Hazelhurst v Toyota [2022] NSWSC 1076 (Takata Air Bags Class Action Settlement)	Led by A Leopold SC for the Funder obtaining a common fund order (Watson Mangioni)
Mirvac (WA) Pty Ltd v Binningup Nominees Pty Ltd [2021] WASCA 130; [2020] WASC 28	Breach of contract, express good faith clause, principles of damages Led by B Dharmananda SC (MinterEllison)
Wiggins Island Coal Export Terminal v New Hope Corporation [2019] NSWCA 316	Construction of Deed of Cross Guarantee Led by RCA Higgins SC and JJ Hutton for WICET (Ashurst)

Competition law

I have appeared in significant contested mergers, and section 45 proceedings, including:

Telstra and TPG v ACCC (ACompT ongoing)	Led by CA Moore SC for Optus (HSF)
ACCC v NSW Ports [2021] FCA 720 (appeal reserved)	Led by NC Hutley SC and RCA Higgins SC, with T Rogan (G+T)
ACCC v Pacific National Pty Ltd [2020] FCAFC 77; [2019] FCA 669; [2018] FCA 1221	Led by NC Hutley SC and RCA Higgins SC, with A Barraclough (Clayton Utz)
Vodafone v ACCC [2020] FCA 117 (in relation to pre-trial matters and s 155 examinations)	Led by PJ Brereton SC / GKJ Rich SC (Allens / NRF)

I appear in arbitrations concerning access to essential infrastructure:

Gypsum Resources v Viterra (2021)	Access to gypsum loading services at Port Thevenard under the <i>Maritime Services (Access) Act 2000</i> (SA) (Led by GKJ Rich SC) (G+T)
Hydro Tasmania v Tasmanian Gas Pipeline (2018)	Access to gas transportation under the National Gas Rules (Led by RCA Higgins SC) (Clayton Utz)

I have extensive experience in judicial review of merger and access decisions:

<i>TX Australia Pty Ltd v ACCC</i> [2021] FCAFC 113; [2020] FCA 1100	Review of decision to arbitrate access to television transmission infrastructure (led by DFC Thomas SC) (HSF)
<i>SA Power Networks v Competition Tribunal (No 2)</i> [2018] FCAFC 3	Review of SA electricity price determination (led by CA Moore SC) (G+T)
<i>Port of Newcastle Operations v ACCC</i> (2017) 350 ALR 552	Review of decision to arbitrate access to coal port (led by SJ Free SC) (Webb Henderson)
<i>Vodafone Hutchison Australia v ACCC</i> [2017] FCA 1549	Review of mobile roaming inquiry (led by NC Hutley SC) (NRF)
<i>ACCC v Tabcorp</i> (2017) 254 FCR 341; [2017] FCAFC 157	Review of Tatts-Tabcorp merger authorisation (led by CA Moore SC) (HSF)
<i>AER v Australian Competition Tribunal (No 2)</i> (2017) 255 FCR 274	Review of NSW electricity price determination (led by TM Howe QC for Commonwealth Energy Minister)

Tribunals, regulatory bodies, and inquiries

I have appeared in proceedings before a wide variety of decision-makers, including the AAT, NCAT, the Australian Competition Tribunal, ASIC (insider trading), Market Disciplinary Panel (market manipulation), Medicare Participation Review Tribunal, Tax Practitioners' Board, Royal Commission into Trade Union Governance and Corruption, Independent National Security Legislation Monitor, and Parliamentary Joint Committee on Intelligence and Security.

Public international law

<i>Australia — Measures Affecting the Importation of Apples from New Zealand</i> [2010] WT/DS367/AB/R (World Trade Organization Appellate Body)	International trade law appeal concerning conformity of Australia's quarantine laws with WTO Agreement (led by S Gageler SC)
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Publications and presentations

Book

Australia's Constitution after Whitlam (Cambridge University Press, 2017; paperback 2018)

Book chapters

'Federation' in Peter Cane, Lisa Ford and Mark McMillan (eds), *The Cambridge Legal History of Australia* (Cambridge University Press, 2022)

'Executive Power and the Principle of Legality' in Lisa Burton Crawford and Janina Boughey (eds), *Interpreting Executive Power* (Federation Press, 2020)

'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)

Journal articles

‘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)

Book reviews and commentary

‘Book Forum on Appleby, Olinjyk, Stellios and Williams, *Judicial Federalism in Australia* (on AUSPUBLAW (3 November 2021)

‘Book Forum on Susan Bartie’s *Free Hands and Minds: Pioneering Australian Legal Scholars* on AUSPUBLAW (3 February 2021)

‘The Continued Legacy of the *Engineers Case*’ (Comment on Aroney) (2020) 94 *Australian Law Journal* 841 (co-authored with Rosalind Dixon)

‘Coper, Roberts and Stellios (eds), *The Tasmanian Dam 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

Unpublished presentations

‘The 2022 Term: the High Court on Constitutional Law’, G+T Centre Conference, 10 Feb 2023

‘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*’, G+T Centre Conference, 13 Feb 2015

Community

2014 – present	Fellow, Gilbert + Tobin Centre of Public Law, UNSW
2019 – present	Council Member, Australian Association of Constitutional Law
2016 – 2021	NSW Convenor, Australian Association of Constitutional Law
2018 – 2019	Member of a Professional Conduct Committee, NSW Bar
2016	NSW Selection Panel, General Sir John Monash Awards