KIM PHAM

Eleven Wentworth | Level 11, 180 Phillip Street, Sydney NSW 2000 | T (02) 8231 5047
kpham@elevenwentworth.com

ADMISSIONS

Barrister (NSW) 2017

Solicitor (ACT Supreme Court and High Court) 2009

PROFESSIONAL EXPERIENCE

Barrister
Eleven Wentworth 2024 – present
Sixth Floor Selborne Wentworth 2017 – 2023

Office of General Counsel, Australian Government Solicitor
Senior Lawyer (from 2015) 2009, 2012 – 2016

Office of the International Co-Prosecutor, United Nations Assistance to the Khmer Rouge Tribunal (Phnom Penh, Cambodia) Jan–Apr 2012
Legal intern

Hague Conference on Private International Law (The Hague, The Netherlands) Feb–Sep 2011
Consultant (from July 2011)

Australian National University 2010, 2012-2014
Sessional tutor in Torts, Administrative Law, and Constitutional Law

High Court of Australia 2010
Associate

Australian National University 2005-2008
Research assistant to Professor Hilary Charlesworth

EDUCATION

Bachelor of Civil Law (Distinction), Oxford University 2017
Oxford Law Faculty and Jesus College Scholarship

Bachelor of Arts and Bachelor of Laws (Honours), Australian National University 2008
University Medal in Law
ANU Honours Scholarship for Honours in Law

SELECT APPEARANCES

COMMERCIAL

General commercial, regulatory and tax

Secretary, Dept of Health v Prefixx Ltd (in liq) (judgment reserved)	*Therapeutic Goods Act* – civil penalty proceedings for advertising of vaping products	**Unled** for the Secretary, with R Vassel (briefed by AGS)
Otsuka Pharmaceutical Co Ltd v Generic Health Pty Ltd (judgment reserved)	Undertaking as to damages – whether referee report should be adopted	Led by P Knowles SC, with M Caristo for the Commonwealth (briefed by Corrs)
Commissioner of Taxation v Burswood Nominees Limited (2021) 286 FCR 59	Taxation –application of GST to casino junket agreements	Led by D Thomas SC for the appellant (briefed by AGS)
Greig v Federal Commissioner of Taxation (2020) 275 FCR 445	Taxation – application of *Myer Emporium* principle to shares	Led by D Thomas SC for the respondent (briefed by ATO)
Australian Securities and Investments Commission v AMP Financial Planning [2020] FCA 47	*Corporations Act* – civil penalty proceedings for breach of financial services licensee obligations	Led by E Collins SC and I Ahmed for the respondent (briefed by Clayton Utz)
Greig v Federal Commissioner of Taxation [2018] FCA 1084	Taxation – application of Myer Emporium principle to shares	Led by D Thomas for the respondent (briefed by ATO)

Class actions

Boulos v MRVL Investments Pty Ltd (Federal Court, settled)	Class action – workplace entitlements – validity of workplace agreement	Led by R McHugh SC (previously by J Kirk SC and Y Shariff SC) for the respondent (briefed by JWS)
Bartlett v Commonwealth (Federal Court, settled)	Class action – negligence, nuisance, arising out of use of fire-fighting foam	Led by K Williams SC and C Gleeson for the respondent (briefed by KWM)

PUBLIC

Constitutional Law

Zhang v Commissioner of Police (2021) 273 CLR 216	Implied freedom of political communication – foreign interference laws	Led by M Sexton SC for the NSW Attorney-General (intervening) (briefed by CSO)
Westpac Banking Corporation v Lenthall; BMW Australia Ltd v Brewster (2019) 269 CLR 574	Statutory construction, judicial power and acquisition of property – common fund orders	Led by S Lloyd SC and D Hume for the Commonwealth Attorney-General (intervening) (briefed by AGS)
Jackmain (a pseudonym) v R [2020] HCATrans 149	Special leave – *Kable* principle – validity of evidentiary rules	**Unled** for the NSW Attorney-General (briefed by CSO)
Plaintiff S321/2019 v Minister for Immigration [2020]	Migration – challenge to legality of detention	Led by S Donaghue QC and P Herzfeld for the respondent

HCATrans 24		(briefed by AGS)
Elliott-Carde v McDonald's Australia [2023] FCAFC 162	Power to make common fund orders – existence of a "matter" – judicial power	Led by S Lloyd SC, leading J Wherrett for the Cth AG (intervening) (briefed by AGS)
Nevins v Urwin [2022] FedCFamC1A 57; (2022) 369 FLR 359	Jurisdiction of Federal Circuit and Family Court – application of transitional provisions	Led by T Howe QC for the Cth AG (intervening) (briefed by AGS)
Jackmain (a pseudonym) v R [2020] NSWCCA 150	*Kable* principle – validity of evidentiary rules	Led by M Sexton SC for the NSW Attorney-General (briefed by CSO)
Banerjee v Commissioner of Police (NSW) [2018] NSWCA 283; (2018) 98 NSWLR 730	Section 109 inconsistency	Led by C Lenehan for the respondent (briefed by CSO)
Sami v Minister for Home Affairs [2022] FCA 1513	Validity of detention – Al-Kateb principle – prospects of removal	Led by P Herzfeld SC for the respondent (briefed by AGS)
Talbott v Minister for the Environment [2020] FCA 1042	Races power – *Aboriginal and Torres Strait Islander Heritage Protection Act 1984*	Led by S Free SC for the respondent (briefed by AGS)
R v RB [2019] NSWDC 368	Kable principle – validity of evidentiary rules and right to fair trial	**Unled** for the NSW Attorney-General (intervening) (briefed by CSO)
Environment and planning		
Forestry Corporation of NSW v South East Forest Rescue (special leave application)	*Forestry Act* – civil enforcement proceedings – standing	Led by N Hutley SC for the applicant (briefed by Norton Rose)
South East Forest Rescue Inc v Forestry Corporation NSW (No 2) [2024] NSWCA 113	*Forestry Act* – civil enforcement proceedings – statutory construction – procedural fairness – standing	Led by I Hemmings SC and J Taylor for the respondent (briefed by Norton Rose)
South East Forest Rescue Inc v Forestry Corporation NSW [2024] NSWCA 64	*Forestry Act* – injunction to stop forestry operations	Led by S Hall SC for the respondent (briefed by Norton Rose)
South East Forest Rescue Inc v Forestry Corporation NSW (judgment reserved)	*Forestry Act* – class 4 proceedings – statutory construction of "den"	Led by I Hemmings SC for the respondent (briefed by Norton Rose)
Tamworth Regional Council v Independent Planning Commission [2025]NSWLEC 67	Class 1 appeal – joinder – whether appeal can proceed without originating party	Led by A Shearer SC for second respondent, Hills of Gold (briefed by HSF)
Maules Creek Community Council v Environment Protection Authority [2024] NSWLEC 71	Review of environment protection licence – privative clause – failure to consider mandatory considerations -	Led by P Herzfeld SC for second respondent, Maules Creek Coal (briefed by Ashurst)
Bob Brown Foundation Inc v Minister for the Environment (No 2) [2022] FCA 873	*EPBC Act* – precautionary principle	Led by N Wood SC for the respondent (briefed by AGS)

Australian Conservation Foundation v Minister for Environment [2021] FCA 550	*EPBC Act* – meaning of "large coal mining development"	Led by A Mitchelmore SC for the respondent (briefed by AGS)
Law enforcement		
Hartley v Commissioner of the Australian Federal Police [2023] FCAFC 197	Validity of search warrant – whether warrant disclosed offence	Led by P Herzfeld SC for the respondent (briefed by AGS)
Application by Alameddine under the Crimes (Appeal and Review) Act [2026] NSWSC 13	Application for inquiry into conviction	**Unled** for the second respondent, Attorney-General (Cth) (briefed by AGS)
Hartley v Commissioner of the Australian Federal Police [2023] FCA 368	Validity of search warrant – whether warrant disclosed offence	Led by P Herzfeld SC for the respondent (briefed by AGS)
Attorney-General of the Commonwealth of Australia v Amin (Final) [2023] NSWSC 1586	Application for extended supervision order	Led by J Emmett SC for the respondent, with T Liu (briefed by AGS)
Ford v Commissioner for Corrective Services NSW [2021] NSWSC 1541	Validity of directions for drug testing within correctional centres – judicial review	**Unled** for the respondent (briefed by CSO)
O'Neill v Commissioner of Police [2020] NSWSC 1805	Child protection offenders registration order – judicial review	**Unled** for the respondent (briefed by CSO)
Licensing decisions – judicial and merits review		
Precious Family Daycare v Secretary, Department of Education [2024] FCA 20	Approval for childcare subsidy – judicial review	**Unled** for the respondent (briefed by Minter Ellison)
Barque Institute Pty Ltd v Tertiary Education Quality and Standards Agency [2021] FCA 39	*Higher Education Standards Framework* – judicial review of application for provider approval	Led by C Lenehan SC for the respondent (briefed by AGS)
Green v Legal Profession Admission Board [2020] NSWSC 1655	*Legal Profession Uniform Law* constitutional validity (s 92) – apprehended bias – damages	**Unled** for the respondent (briefed by CSO)
Al-Huda Pty Ltd v Secretary, Department of Education and Training [2018] FCA 1668	*ADJR Act* – application for stay of decision – eligibility for child care benefits	**Unled** for the applicant (briefed by Birchgrove Legal)
Tukel v Combat Sports Authority [2023] NSWCATAD 180	Application for combat sports trainer licence – merits review	**Unled** for the respondent (briefed by CSO)
Gault v Commissioner of Police [2022] NSWCATAD 370	Firearms prohibition order – jurisdiction of Tribunal	**Unled** for the respondent (briefed by CSO)
Sumer Child Care v Secretary, Department of Education [2021] NSWCATAD 42	Family day care provider cancellation – merits review	**Unled** for the respondent (briefed by CSO)

Family and Children's Court

GR v Secretary, Department of Communities and Justice [2021] NSWCA 157	Powers of Children's Court to appoint a guardian ad litem	Led by P Herzfeld SC for Legal Aid NSW (as amicus) (briefed by Legal Aid)
Re Imogen (No 6) [2020] FamCA 761	Powers of Family Court to authorise treatment for gender dysphoria	Led by P Herzfeld for the Cth Attorney- General (intervening) (briefed by AGS)

Migration

Minister for Immigration v CBW20 [2021] FCAFC 63	Migration – scope of Minister's power to grant visa under s 195A	Led by C Lenehan SC for the Australian Human Rights Commission (intervening)
Makhmudkhodjaeva v Minister for Immigration [2020] FCAFC 88	Migration – judicial review of refusal of child visa	Led by A Mitchelmore SC for the respondent (briefed by Sparke Helmore)
Minister for Immigration and Border Protection v BHA17 [2018] FCAFC 68	Migration – judicial review of non-revocation of cancellation decision	Led by C Lenehan for the appellant
Minister for Immigration and Border Protection v DDK16 [2017] FCAFC 188	Migration – judicial review of refusal of protection visa	Led by C Lenehan for the appellant
Bale v Minister for Immigration [2020] FCA 646	Migration – judicial review of non-revocation of cancellation decision	**Unled** for the respondent (briefed by AGS)
BHW16 v Minister for Immigration and Border Protection [2019] FCA 2168	Migration – judicial review of refusal of protection visa	**Unled** for the respondent (briefed by AGS)

(Various Federal Circuit Court cases **unled**, not individually listed)

Inquiries

Review of the *National Security Information (Criminal and Civil Proceedings) Act 2004* – counsel assisting the Independent National Security Legislation Monitor (Grant Donaldson SC) (2023)

Review of Secrecy Offences in Pt 5.6 of the *Criminal Code* (Cth) – counsel assisting the Independent National Security Legislation Monitor (Jake Blight), with A Hall (2024)

ADVICES

Advices (led and unled) for various clients, briefed by various firms including Sparke Helmore, Minter Ellison, Herbert Smith Freehills, Johnson Winter Slattery, Equity Generation Lawyers, Australian Tax Office, Australian Securities and Investments Commission, AGS, and CSO.

PUBLICATIONS AND PRESENTATIONS

'*Libertyworks I* and *Zhang*' (Paper presented at the Gilbert & Tobin Constitutional Law Conference, 11 February 2022)

'Enforcement of Foreign Non-Monetary Judgments in Australia' (2008) 30 *Sydney Law Review* 663

'Annual Survey of Recent Developments in Australian Private International Law 2006' (2008) 27 *Australian Yearbook of International Law* 467 (co-author)

'Annual Survey of Recent Developments in Australian Private International Law 2007' (2009) 28 *Australian Yearbook of International Law* 409 (co-author)

'Annual Survey of Recent Developments in Australian Private International Law 2008' (2010) 29 *Australian Yearbook of International Law* 385 (co-author)

PRO BONO

Pro bono advice for Justice Connect, Refugee Advice and Casework Service, Environmental Defenders Office, Aboriginal Legal Service

Professional Volunteer, Cambodian Centre for Human Rights
(Phnom Penh, Cambodia)

Oct–Dec 2012