

RICHARD LANCASTER SC

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Areas of practice

As a barrister since 1997 and Senior Counsel since 2009, I have extensive experience as a trial and appellate advocate, with expertise in **public law** (in particular, judicial review and regulatory action), **commercial law** (consumer law, contractual disputes and class actions), **intellectual property, media and technology** (in particular, copyright and trade mark disputes and regulation of media and technology), and **environmental and planning law** (in all classes of the jurisdiction of the NSW LEC and in the Federal Court in judicial review).

I regularly appear in trials and appeals in the Federal Court of Australia, the Supreme Court of NSW and the Land and Environment Court of NSW. I have appeared on multiple occasions as the advocate in appeals and special leave applications in the High Court. I have extensive experience in commercial arbitrations throughout Australia, including in current matters in Western Australia and the Northern Territory.

Please refer to my website www.richardlancaster.com.au for a wide selection of cases in which I have appeared during my 25+ years in practice, which can be searched by jurisdiction and/or subject matter. Some recent examples are set out below:

Public law

- **The Next Generation (NSW) Pty Ltd v State of New South Wales** [2023] NSWCA 159 and [2022] NSWLEC 138. Appeared for the State. Main issue was whether a regulation was within the regulation making power of the *POEO Act 1997*, or inconsistent with that Act or the *EP&A Act 1979*. Application dismissed in LEC and an appeal to NSWCA dismissed.
- **Raghubir v Nicolopoulos** [2022] FCAFC 97, (2022) 402 ALR 532. Appeared as amicus curiae at request of the Court. Scope of the jurisdiction of the Federal Court of Australia - want of jurisdiction in respect of a claim for damages for defamation by publications made wholly within NSW.
- **Jam Land Pty Ltd v Minister for the Environment** [2022] FCA 1058, (2022) 178 ALD 406. Appeared for Minister defending application for judicial review of remediation determination under the EPBC Act.
- **The Environment Centre NT Inc v Minister for Resources and Water (No 2)** [2021] FCA 1635, (2021) 399 ALR 68. Appeared for the proponent defending judicial review of a Commonwealth instrument issued under the *Industry, Research and Development Act 1986* (Cth) and of decisions to make grants for gas exploration under the Beetaloo Cooperative Drilling Program.
- **Opinion** on constitutional effect of proposed amendment for the Voice (April 2023) – attached to a submission made by Gilbert + Tobin to the Commonwealth Parliament's Joint Select Committee on the Aboriginal and Torres Strait Islander Voice Referendum

Environmental and planning law

- **Valuer-General v Sydney Fish Market Pty Ltd** [2023] NSWCA 52. Appeared for SFM, which successfully contended that the lease granted in 1994 over the site meant the land is 'Crown lease restricted' for purposes of *Valuation of Land Act 1916* (NSW), s 14I.
- **Perry Properties Pty Limited v Georges River Council** [2023] NSWLEC 51. Appeared for the Council in successful defence of claim to set aside proposed compulsory acquisition notices on the ground of improper purpose and breach of s 10A of the Just Terms Act.
- **Olde English Tiles Australia v Transport for NSW** [2023] HCATrans 12 and [2022] NSWCA 108, (2022) 108 NSWLR 503. Appeared for Transport in claim for compensation for compulsory acquisition of land. A five-judge bench of the NSWCA held the applicant did not have any "interest" "*privilege over, or in connection with, the land*" and upheld the primary judge's dismissal of the claim; the HCA refused special leave.
- **Shah Friends v Cumberland Council** [2023] NSWLEC 31. Appeared for the applicant in successful application to set aside a Stop Use Order issued under the EP&A Act 1979 in respect of a metal recycling and recovery business.
- **Ausbao (286 Sussex Street) Pty Ltd v The Registrar General of New South Wales** [2023] NSWCA 18. Appeared for the Registrar General in successful defence of decision to refuse compensation out of the Torrens assurance fund under the *Real Property Act 1900* (NSW) for loss by reason of an error or miscalculation in the measurement of land.

Commercial law and class actions

- Appeared for the Commonwealth in a series of class actions in the Federal Court in respect of the use of firefighting foam containing PFAS chemicals on Commonwealth defence land. One matter settled in 2020 (see [2020] FCA 837); another action settled in 2023.
- Appear for the State of NSW in ongoing class action and civil penalty proceedings brought by junior medical officers for unpaid rostered and unrostered overtime and other claims in the NSW Supreme Court. Interlocutory applications have been determined, such as *Fakhouri v Secretary, NSW Ministry of Health* [2022] NSWSC 233, (2022) 316 IR 221 and *Australian Salaried Medical Officers Federation (NSW) v State of NSW* [2023] NSWSC 637, while other applications are reserved or listed for hearing.
- Appear for the plaintiff in an ongoing contractual dispute in the Supreme Court of Victoria concerning the remediation of potentially contaminated land.
- Appear in ongoing commercial arbitrations in Western Australia (property law and statutory compensation) and the Northern Territory (contract dispute and identification of land boundaries of traditional owners of land in North East Arnhem Land)

Intellectual property, media and technology

- **Australian News Channel v Isentia** (FCA, 2023, reserved). Appeared for ANC in application raising the interpretation and application of s 183 of the Copyright Act 1968 (use of copyright material for the services of the Crown).
- **Application by Isentia Pty Limited (No 2)** [2021] ACopyT 3. Appeared for Copyright Agency in a decision of the Copyright Tribunal in respect of contested terms and conditions of the copyright licence between publishers (represented by Copyright Agency) and media monitoring organisations (Isentia and Meltwater).
- **Hashtag Burgers v In-N-Out Burgers** [2020] FCAFC 235, (2020) 385 ALR 514, 159 IPR 186. Proceedings for infringement of trade mark, consumer law and passing off in a burger business by reason of DOWN-N-OUT being deceptively similar to IN-N-OUT BURGER

Professional appointments

- Fellow of the Australian Academy of Law <https://academyoflaw.org.au/>
- Editor of the *Australian Law Reports* (since August 2008, continuing). I select the cases that are reported in the ALR from the judgments delivered in the High Court, the Federal Court of Australia and the intermediate courts of appeal of the States and Territories.
- Chair of the NSW Bar Association Climate Change Committee (member since 2020, Chair since 2023)
- Environmental Counsel to the Board of the NSW Environment Protection Authority (appointed for 3 years from 1 January 2023 pursuant to s 17 of the *Protection of the Environment Administration Act 1991* (NSW))
- Past member of the National Human Rights Committee of the Law Council of Australia (2019-2022) and past member of the Human Rights Committee of the New South Wales Bar Association (2006 – 2019)
- Member of the NSW Bar Association Working Party on the Over-Representation of Indigenous People in the NSW Criminal Justice System (since 2017, continuing)
- Past President of the Environment and Planning Law Association (NSW) Inc (December 2015 – December 2018). EPLA has over 750 members, including individual and corporate members from legal, planning and other professions involved in environmental and planning law.
- Past member of the NSW Trustee and Guardian Advisory Council (2011 to 2016).
- Past member of the Council of Law Reporting for New South Wales (2011 to 2015).
- Past member of the Council of NSW Bar Association (elected for 2006-2007 and 2008-2009) and of Professional Conduct Committee #3

Recognition

Practice recognition includes the following recent rankings from Doyle's Guide –

- Leading **Planning & Environment** Senior Counsel – New South Wales, 2023 (“Preeminent”)
- Leading **Technology, Media & Telecommunications** Senior Counsel – Australia, 2023 (“Leading”)
- Leading **Technology, Media & Telecommunications** Senior Counsel – NSW, 2023 (“Leading”)
- Leading **Intellectual Property** Senior Counsel – Australia, 2023 (“Recommended”)
- Leading **Intellectual Property** Senior Counsel – New South Wales, 2023 (“Recommended”)

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