

# Patrick Larkin SC

## Bar Admissions & Appointments

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Senior Counsel, New South Wales Bar	2011
Barrister-at-law, Victorian Bar	1996
Barrister-at-law, Fiji Bar (on a temporary basis)	1994
Barrister-at-law, Queensland Bar	1990
Barrister-at-law, New South Wales Bar	1989

## Academic Background

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University of Sydney, Bachelor of Science (Physics and Pure Mathematics) and Bachelor of Laws	1982-1988
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## Main areas of practice

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- Administrative law, Environmental and Planning Law, Local Government law
- Criminal Law
- Commercial and Business Law, Equity and Trusts
- Commissions and Inquiries
- Constitutional law
- Public Interest Litigation
- Sports law, disciplinary tribunals.

## Significant cases

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### **Administrative law, Environmental and Planning Law, Local Government law**

*Transport for NSW v North Sydney Council* [2024] NSWLEC 100 – compulsory acquisition of land in North Sydney for Warringah Freeway upgrade and Western Harbour Tunnel project; crown lands; statutory construction.

*The Trustees of the Roman Catholic Church for the Diocese of Broken Bay v Willoughby City Council* [2024] NSWLEC 1010 – medium density residential development; heritage; interim heritage orders; whether item is being or is likely to be harmed.

*IOF Custodian Pty Limited atf the 105 Miller Street North Sydney Trust v North Sydney Council* [2023] NSWLEC 1207 – development of CBD mixed retail and commercial high-rise; heritage; valuation of development and retention scenarios; planning.

*Verde Terra v Central Coast Council* - [2023] NSWCA 121 (CA); [2020] NSWLEC 140; [2020] NSWLEC 148; [2020] NSWLEC 40; [2020] NSWLEC 10; [2019] NSWLEC 166; [2020] NSWLEC 45; [2020] NSWLEC 64; [2022] NSWLEC 29; [2022] NSWLEC 49; [2022] NSWLEC 29 - Civil enforcement and judicial review; landfills; judgments in rem; res judicata, issue estoppel, Anshun estoppel and abuse of process; legal professional privilege and waiver.

*Settlers Estate Pty Ltd v Penrith City Council* [2021] NSWCA 13 (CA) – implementation of substantial residential subdivision; statutory construction; construction certificates.

*RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 (CA); [2018] NSWLEC 191 – section 4.6 statements; exemptions from development standards.

*Verde Terra Pty Ltd v Environment Protection Authority* [2018] NSWLEC 159; [2018] NSWLEC 160; *Martin v State of New South Wales* [2011] NSWLEC 20; *Julius Bokor Architect v North Sydney Council* [2006] NSWLEC 58; *Merimbula Nominees v Bega Valley Shire Council* [2007] NSWLEC 107; – propounding various significant developments, including landfills, mining, high rise apartment buildings and shopping centres.

*Cheetham v Goulburn Motorcycle Club Incorporated* [2017] NSWCA 83 (CA); [2016] NSWLEC 80. Judicial review; planning instruments; sporting facilities.

*Reyson Pty Ltd v Roads and Maritime Services* [2016] NSWLEC 69; [2016] NSWLEC 159; [2011] NSWLEC 153; – compulsory acquisition of land; highest and best uses of the land; valuation of en-globo development site; commencement of development consents; regularity of judgments.

*Toner Design Pty Ltd v Newcastle City Council* [2013] NSWCA 410 (CA); [2012] NSWLEC 248 – contaminated land management; environmental impact statements; ancillary and independent uses.

*Ecological Centre v Council of the City of Sydney (No 2)* [2011] NSWLEC 1206; (No 1) [2011] NSWLEC 1203; *Warriewood Properties v Pittwater Council* [2010] NSWLEC 215; *Jetset Properties v Eurobodalla* [2007] NSWLEC 198; and *West Apartments v Council of the City of Sydney* [2009] NSWLEC 1411 – opposition to major retail and commercial developments; retail economics and planning.

*Redfern v Water Administration Ministerial Corporation of New South Wales* [2007] NSWLEC 426 – statutory construction; water allocation in the Murray-Darling under the *Water Management Act (NSW)* and its predecessor, the *Water Act (NSW)*.

*Grosvenor Australia Property v Sydney (No.1)* [2006] NSWLEC 267; [2006] NSWLEC 270; *Grosvenor (No.2)* [2007] NSWLEC 2; *Progress and Securities v Burwood (No.1)* [2006] NSWLEC 518; *Progress and Securities (No.2)* [2006] NSWLEC 706; *Steve Nolan v Burwood (No. 2)*; *Phoenix Corporation v Penrith City Council* [2011] NSWLEC 1178 – cases concerning development affecting the Sydney rail network.

*Zhang v Canterbury* (2001) 51 NSWLR 589 (CA); [1999] NSWLEC 209 - mandatory relevant considerations; development control plans.

*Coalcliff Community Association v Minister for Urban Affairs & Planning* (1999) 106 LGERA 243 (CA); [1997] NSWLEC 94 - coal mining; breach, modification and lapse of development consents.

*Macquarie International Health Clinic v University of Sydney* (1998) 98 LGERA 218 (CA) - characterisation of land uses.

*Friends of Pryor Park. v Ryde Council* (1996) 91 LGERA 302 (CA); [1995] NSWLEC 160 - statutory construction; alienation of public land.

*Byron Shire Businesses v Byron Shire Council* (1994) 84 LGERA 434 – Judicial review; jurisdictional error; failure to take into account relevant considerations.

*Vaughan-Taylor v David Mitchell Melcann* (1991) 25 NSWLR 580 (CA); (1991) 73 LGRA 366 (CA); *Minister for Minerals & Energy v Vaughan-Taylor*; (1991) 73 LGRA 18 (*The Yessabah Caves case*) - Existing uses; mining leases; statutory construction.

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## **Criminal Law**

*Environment Protection Authority v Dial-A-Dump (EC) Pty Ltd* [2024] NSWLEC 21 - emission of offensive odour; objective seriousness; environmental harm; practical measures available to avoid or mitigate harm; environmental services orders; publication orders.

*Environment Protection Authority v Minto Recycling* [2019] NSWLEC 91; [2019] NSWLEC 193 – application of the principle in *The Queen v De Simoni* (1981) 147 CLR 383 to pollution offences; evidentiary issues; financial forfeiture orders.

*Willoughby City Council v Screnci* [2015] NSWLEC 192 – withdrawal of guilty plea; plea in bar to prosecutions; limitation periods.

*Gerondal v Eurobodalla Shire Council* [2009] NSWLEC 160; [2011] NSWLEC 132 – appeal from conviction; subsequent prosecution for contempt.

*Bentley v Gordon* [2005] NSWCCA 157 (CCA) - duplicity; continuing offences.

*Council of the City of Hawkesbury v Mushroom Composters* [1995] NSWLEC 87; [1995] NSWLEC 124 – contempt of court.

*Lessur-Miller v The Queen* (1990) 6 Leg Rep C1 (HCA) – criminal law; abuse of process; presence of accused in Australia allegedly tainted by illegality. The legal argument relied upon by the applicant was ultimately held by the High Court to be sound in *Moti v The Queen* (2011) 245 CLR 456; [2011] HCA 50.

“Brennan J: Mr Larkin of counsel, who has appeared in this Court so that an applicant with no legal aid will not go unrepresented, has given the Court the benefit of an interesting and able argument in a difficult case ...”

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## **Commercial and Business Law, Equity and Trusts**

*Munro v Wheeler* [2025] NSWDC 3 – Social media; defamation; publication and downloading; common law and statutory qualified privilege; honest opinion and comment; justification; s 91 of the Broadcasting Services Act (Cth); innocent dissemination.

*ACCC Inquiry into the acquisition by Bingo Industries Limited of Dial-a-Dump Industries* (2019) – alleged market concentration; substantially lessening competition in a market.

*Cumberland City Council v City of Parramatta Council* (2017) – commercial arbitration; division of financial resources consequent upon Council mergers and boundary adjustments.

*Iseek Communications Pty Ltd v Jones* [2017] NSWSC 251 – breaches of contract, breaches of confidence and breach of a restraint of trade.

*Plate Glass Holdings as trustee for the R Gregg Family Trust v Fraser Gordon Investments* [2013] FCA 288; [2012] FCA 1487 – shareholders’ agreements; competition and consumer law; releases from the implied undertaking referred to in *Hearne v Street* (2008) 235 CLR 125.

*National Biofuels Group v Elbow River Marketing* [2009] FCA 613 – Admiralty/international shipping; alleged termination of a CIF contract for the shipment by a Canadian entity of biodiesel from the United States to Australia; obtaining security for costs from a defendant.

*Newcastle City Council v Caverstock Group* [2008] NSWCA 249 (CA) - freezing orders; tracing; alleged constructive trust; developer contributions.

*Byron Shire v Vaughan* [2002] NSWCA 158 (CA) - equitable and common law estoppels; real property.

*Phoenix Management Corporation v Barrenjoey Road Bungan Beach* [2001] NSWSC 1098; [2001] NSWSC 1099 – joint venture agreements for development of northern beaches land; freezing orders and search orders; trusts; privilege against self incrimination.

*Commonwealth Bank of Australia v Hollier* (2001) NSWSC 805 – loan agreements, guarantees and joint venture agreements in relation to a major building project.

*Menzies v Perkins* [2000] NSWSC 40 – deceit and misrepresentation in the establishment of a commercial undertaking; freezing orders and search orders.

*China Shenyang Feiyu Rubber Products Corporation v Auspower* [1999] NSWCA 235 – international agreement for the sale of goods; security for costs.

*Tsaoucis v Gallipoli Memorial Club Limited* [1998] NSWCA 238 (CA) - renewal of CBD commercial leases.

*Schipp v Cameron* (1995) 8 ANZ Ins Cas 61-256 – direct suit against the insurers of a commercial venture.

*Pacific Timber Development v NZ Forest Products* [1994] FJHC 149; [1994] FJHC 40 (High Court of Fiji) – international financing agreements; commercial contracts for forestry operations; charges and securities over Fijian land; equitable set-off; conformity with Fijian customary land law.

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### **Commissions and Inquiries**

ICAC Investigation - *University of Sydney - Allegations concerning contract security suppliers (Operation Gerda)*, 2020.

ICAC Investigation – *Investigation into the conduct of Ian McDonald, John Maitland and others (Operation Acacia)*, 2012-2013.

*Inquiry into the proposed Chemical Storage Facility*, Point Lillias, Victoria, 1996.

ICAC Investigation - *Southern Mitchell Electricity - Purported termination of employment of two senior officers*, 1995-1996.

NSW State Coroner - *Inquest and Inquiry concerning the 1993-94 Bushfires*.

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### **Constitutional law**

*St Marys Recycling & Ors v The State of NSW & Ors* (Federal Court No. NSD 1735/2015) – freedom of interstate trade; duties of excise.

“Mr Buffier informed the committee that the proximity principle has been challenged by an affiliate of the Bingo Group, leading the NSW EPA to seek advice about the legality of the regulation. The advice suggested that the proximity principle may offend s92 of the Commonwealth Constitution, which provides that all trade amongst the states must be free. Accordingly, Mr Buffier advised that the principle is not currently being enforced: ‘We formed the view that it offended section 92 of the Constitution and that it could not be enforced. We relayed that information that we would not be enforcing it to the industry’.”

- “‘Energy from waste’ technology”, Report of the NSW Legislative Council Select Committee, [4.33].

*Donnelly & Anor v v. Tenterfield Shire Council* [1998] NSWLEC 7 – native title; inconsistency between Federal and State laws; covering clause 5 to the *Constitution*.

*Concord, North Sydney, Woollahra & Manly Councils v Optus Networks* (1996) 131 FLR 294; (1996) 90 LGERA 232; *Lane Cove Council v Optus Networks* (1996) 90 LGERA 225 – inconsistency between Federal and State laws; development of telecommunications networks and facilities.

*Brownlie v State Pollution Control Commission* (1992) 27 NSWLR 78; (1992) 61 A Crim R 400 (CCA) – result crimes; cross-border pollution; alleged inconsistency between laws of different states; covering clause 5 to the *Constitution*.

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### **Public Interest Litigation**

*Friends of Turramurra v Minister for Planning* [2011] NSWLEC 128. - Rezoning; Judicial review of plan-making and exhibition processes; powers to amend exhibited draft environmental planning instruments.

*Humane Society International v Minister for the Environment & Heritage* [2006] AATA 298 - merits appeal; commercial fishing; critically endangered Southern Bluefin Tuna.

*Greenpeace v CEO, Australian Radiation Protection & Nuclear Safety Agency* (2002) 125 FCR 186 – administrative law; statutory construction; a case concerning the lawfulness of the approval by the Commonwealth of a nuclear reactor.

*Melville v Craig Nowlan & Associates* (2002) 54 NSWLR 82 (CA) – security for costs; "open standing" provisions; statutory construction.

*Anderson v Wilson* (2000) 97 FCR 453 (Full Court of the Federal Court) - native title; whether the principle in *Wik Peoples v Queensland* (1996) 187 CLR 1 applies to western lands leases in NSW.

*International Study Programs v Greater Lithgow City Council* [2000] NSWLEC 91 – merits appeal; quarrying; traffic, noise, ecological impacts.

*Transport Action Group Against Motorways v Roads & Traffic Authority* (1999) 46 NSWLR 598 (CA) (The M5 East Case) – statutory construction; Part 5 of the EP&A Act; power to approve of amendments to major public infrastructure projects.

*Iron Gates v Oshlack* [1998] NSWCA 111 (CA); [1997] NSWLEC 89 - civil enforcement proceedings; circumstances in which a consent might be rendered nugatory by reason of its breach; remediation orders.

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### **Sports law and disciplinary tribunals - Appointments**

Chair, Sydney Hockey Judiciary & Investigations Committee

2003-2018

Chair, Selection Appeals Panel, Hockey NSW	2011
Chair, Inquiry into the administration of men's veterans hockey in NSW and the alleged misuse of members' funds	2006

### **Professional history**

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Board member, Jenolan, Wombeyan, Abercrombie & Borenore Caves Reserve Trust	1991-2004
Pupilage with Bret Walker (later AO SC) and Michael Slattery (later Rear Admiral the Honourable Justice Slattery AM KC RFD of the Supreme Court of NSW)	1989-1990
Research Assistant to Peter McClellan QC (later the Honourable Justice McClellan AM KC, Royal Commissioner into Institutional Child Abuse, Chief Judge in Common Law of the Supreme Court of NSW and Chief Judge of the Land & Environment Court of NSW)	1988-1989
Stephen Comino & Cominos, Brisbane - Paralegal	1988-1989
Allen, Allen & Hemsley, Sydney - Paralegal (Commercial Litigation)	1984-1988

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### **Interests**

Football coach  
 Long distance and trail runner  
 Alpine Skier and Instructor  
 Caver and Cave Diver  
 Orchid enthusiast and cultivator

### **Selection of other achievements**

Football coach, North Sydney United – Premiership and consecutive final series wins	2023, 2024
Football Australia Coach - C-Diploma (Youth)	2023
Honorary Life Member - Gordon North Sydney Hockey Club	2014
Marist College Eastwood - "Respice Finem" Award	2012
Sydney Hockey Association - Four premierships in various grades	1997-2011
Canadian Ski Instructors' Alliance - Level 1 Ski Instructor	1999
Australian Speleological Federation - Fellow	1997
First (and, to date, only) complete traverse from Spider Cave through the Imperial Cave Streamway, Jenolan Caves.	1988
City to Surf - 58:38	1980
Athletics - NSW Bronze Medal - 4 x 3000m Harrier Parlauf Relay	1979
NSW Chess Association - 2 <sup>nd</sup> place, U/11 State Championship	1974
NSW Chess Association - U/11 City of Sydney Champion	1974
NSW Rugby League - U/9 State Champion	1972