

# Trish McDonald

Patricia (Trish) McDonald SC  
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Called to the Bar:  
August 1996

Appointed Senior Counsel:  
October 2010.

Appointments:

Commissioner of the NSW Independent Commission Against Corruption for the period August 2017 to August 2022.

This was a part time appointment. In addition to exercising powers under the ICAC Act such as issuing notices and summons and conducting examinations, I was the presiding Commissioner in public inquiries in:

- \* Operation Dasha – An investigation into the conduct of councilors of the former Canterbury City Council and Others; and
- \* Operation Ember – An investigation into the awarding of Contracts by employees of the Former NSW Roads & Maritime Services.



Education:

Bachelor of Economics, Honours - University of Sydney

Prizes and Scholarships: Commonwealth Bank Undergraduate Scholarship Industrial Relations.

The Economic Graduates Association Prize.

Bachelor of Laws, Honours - University of Sydney

Prize: Sir Peter Heydon Prize for the best contribution to the Sydney Law Review.

Bachelor of Civil Laws, Honours - University of Oxford (postgraduate qualification).

Prizes and Scholarships: Oxford University Overseas Student Scholarship;

Balliol College Bursary University of Oxford.

Graduate Diploma in Finance and Investment.

Prize: Cutler, Hughes and Harris Prize – first prize in Securities Industry Law.

Practice Areas:

As a senior counsel I have a broad practice encompassing the following areas:

- Criminal – representing the Crown and accused in trials and in ancillary proceedings dealing with validity of search warrants and other investigative processes;
- Appeals;
- Corruption – including investigations, prevention and prosecutions;
- Inquests and inquiries;
- Summary prosecutions in areas such as Work Health and Safety; Heavy Vehicle National Law and Environment protection offences;
- Judicial review of planning and infrastructure decisions;
- Applications under the Crimes (High Risk Offenders) Act 2006 and Terrorism (High Risk Offenders) Act 2017;
- Common law – including malicious prosecution, false arrest and misfeasance in public office;
- Pecuniary penalty proceedings including under the Fair Work Act;
- Disciplinary proceedings including against liquidators;
- Administrative law including extradition proceedings;
- Sports law;



- Employment law; and
- Commercial disputes.

I have strengths in written and oral advocacy across a range of different legal fields and I have appeared in trials and appeals in the District and Supreme Court of NSW, the Supreme Court of Victoria, District Court and Court of Appeal of Queensland and the Federal Court of Australia.

### Professional Experience:

My criminal law practice has concentrated on:

- Commonwealth offences;
- Offences against the Work Health and Safety Act;
- Environmental protection offences.

I have appeared as counsel prosecuting for the Commonwealth Director of Public Prosecutions and other agencies in summary hearings in the Local, District and Supreme Court and in jury trials in the District and Supreme Court. The proceedings included prosecutions for offences against Crimes Act 1914 (Cth), Criminal Code Act 1995 (Cth), Corporations Act, Bankruptcy Act, Crimes Act 1900 (NSW) and in areas such as fraud, tax evasion, breach of director's duties, proceeds of crime and terrorism. I have appeared for the Director in trials involving large importations of commercial quantities of border-controlled drugs.

In 2009 I appeared as junior counsel to the Commonwealth Solicitor General, Stephen Gageler SC in *R v LK; R v RK* (2010) 266 ALR 399 on behalf of the Commonwealth Attorney General.

In 2021 I appeared for the Commonwealth Director of Public Prosecutions in resisting special leave in *Parker v R* – special leave was refused and in 2022 in *Sigalla v R* – special leave was refused.

I have appeared and advised in ancillary criminal matters such as applications for stay of prosecution based on the judgments of the High Court in *X7 v ACC* and *Lee v R*. These proceedings included *MAC v R* [2017] NSWCCA 219 and appearing for the NSW Attorney General of NSW in *R v Hill, Mewing & Ors* (District Court per McClintock SC DCJ); this matter raised issues from the use of compulsory powers by the Police Integrity Commission when investigating police officers who were subsequently charged with criminal offences.

### Selected Recent Trials in the District and Supreme Courts.

- *R v Alqudsi* – Supreme Court jury trial before Rothman J; Mr. Alqudsi was found guilty of an offence of directing the activities of a terrorism organization. Sentence judgment is [2023] NSWSC 355.
- *R v Chalabian* – Supreme Court jury trial before Johnson J. Proceeds of crime prosecution of a solicitor using solicitor's trust account; prosecution arose from Operation Elbrus being the investigation into the Plutus payroll tax fraud. Sentence



- judgment is reported as *R v Chalabian* No 14 [2022] NSWSC 829 (subject to non-publication order due to associated trial currently before Payne JA);
- *R v Barrett* – Supreme Court jury trial before Johnson J. Trial involved blackmail prosecution arising from Operation Elbrus being the investigation into the Plutus payroll tax fraud. The jury could not reach a verdict, retrial is set down for 2023;
  - *R v Kannan and Kannan* – Supreme Court of Victoria trial before Champion J before a jury for slavery offences under the Criminal Code;
  - *R v Taleb* – Supreme Court of NSW (Hamill J) trial before a jury for terrorism offences;
  - *R v Elmir* – Supreme Court of NSW (Davies J) terrorism offences, sentence hearing;
  - *R v Pender* – Supreme Court of NSW (Harrison J) terrorism offences, pretrial argument and sentence hearing;
  - *R v Khaja* – Supreme Court of NSW (Fagan J) terrorism offence, pretrial argument and sentence hearing;
  - *R v Merity* – District Court of NSW, offences against the Corporations Act;
  - *R v Alexandre* – District Court of NSW, trial before a jury for offences against the Corporations Act;
  - *R v Jayawerra* – District Court of Queensland, trial before a jury for fraud offences against a financial adviser;
  - *R v Sigalla* – Supreme Court of NSW (Adamson J) trial before a jury of 24 counts under s184(2) of the Corporations Act 2001 (Cth) which arose from an extensive investigation by ASIC. Mr. Sigalla was found guilty of the 24 counts which alleged over the period December 2006 to March 2009 he dishonestly used his position as a director of TZ Ltd with the aim of gaining an advantage for himself amounting to over \$8m;
  - *R v Moubarak* – District Court, pretrial issues and then plea of guilty to offences by an accountant to 34 counts under s134.2(1) of the Criminal Code of obtaining a financial advantage by deception; 1 count under s400.4(1) of the Criminal Code, dealing with proceeds of crime; 10 counts under s1178BA(1) Crimes Act 1900 (NSW) of obtaining money by deception and 4 counts under s192E(1) Crimes Act 1900 (NSW) dishonestly obtaining a financial advantage by deception.
  - *R v Gazall and Georges* - prosecution for money laundering offences against s400.9(1) of the Criminal Code 1995 (Cth);
  - *R v Long* – District Court appeared in pretrial argument seeking exclusion of evidence based on High Court judgments in *X7 v ACC* and *Lee v R* and subsequently an application for a permanent stay of the prosecution;
  - *R v Enright* – prosecution of 9 offences including child pornography (s474.19(iv) of the Criminal Code), grooming offences (s474.27(1) of the Criminal Code) and using a carriage service in a menacing way (s474.17(1) of the Criminal Code);
  - *R v Alamaddine* – importation of commercial quantities of heroin and pseudoephedrine;
  - *R v Nguyen and Ream* – importation of commercial quantities of cocaine and methamphetamine;



- *R v Rundle* – prosecution of 2 fraud offences arising from the collapse of the Westpoint Group;
- *R v Ariff* – prosecution of a liquidator for 13 counts of fraud and 6 counts under the Corporations Act.

I have also appeared for the Commonwealth Director in appeals to the NSW Court of Criminal Appeals, the Queensland Court of Appeal.

- *Jayaweera v R* [2022] QCA 103;
- *Khan v R* [2022] NSWCCA 47;
- *Sigalla v R* [2021] NSWCCA 22;
- *Elmir v R* [2021] NSWCCA 19;
- *Pratten v R* [2021] NSWCCA 251;
- *Gregg v R* [2020] NSWCCA 245;
- *Castagna and Agius v R* [2019] NSWCCA 114;
- *PC v R* [2016] NSWCCA 137;
- *R v Blackman & Jomaa* [2014] NSWCCA 90;
- *Rundle v R* [2013] NSWCCA 200;
- *Bangaru v R* [2012] NSWCCA 204;
- *Camilleri v R* – conviction appeal by offender, withdrawn on the day of the hearing before the Court of Criminal Appeal;
- *Zhang v R* [2011] NSWCCA 233;

#### Other Appeals

- *Will v Brighton* (2020) 104 NSWLR 170; [2020] NSWCA 355 – represented the RSPCA in an appeal concerning the statutory construction of s530(2) of Crimes Act 1900 (NSW);
- *State of New South Wales v Avery* (2016) NSWLR 141.

#### Inquests, Inquiries and Royal Commissions:

As senior counsel I appeared for the Salvation Army in the Royal Commission into Institutional Responses to Child Sexual Abuse.

I have appeared as counsel assisting in several inquests and for interested parties.

For example, I appeared for a manager of Connell Wagner in the *Inquest into the Death of Ronald Shores*, known as the cross-city tunnel inquest. I appeared for the City of Sydney Council in the *Inquest into the death of Thomas Hwee Hsen Lee* and as senior counsel for Road Maritime Services in the *Inquest into the death of Catherine Scott*.



As junior counsel I appeared as counsel assisting in several inquests including:

- *Inquest into the death of Cassandra Vaicekonis;*
- *Inquest into the death of Peter Wilson;*
- *Inquest into the death of Carmel Giannasca;*
- *Inquest into the death of Jehan Nassif.*

Prosecutions before the Land and Environment Court:

I have appeared for defendants in prosecutions brought in the Land and Environment Court which include the following:

- *EPA v Patrick Distribution Pty Ltd* (2005) NSWLEC 533 (Prosecution under Dangerous Goods Act – unsuccessful application for a stay);
- *EPA v Patrick Distribution Pty Ltd* (2006) NSWLEC 123;
- *EPA v Hochties AG and Thiess Pty Ltd* (2007) NSWLEC 177 (Prosecution under s120(1) of the Protection of the Environment Operations Act 1997).

Judicial Review of planning and infrastructure decisions and other environmental instruments:

I have advised and appeared for Infrastructure NSW in Land and Environment Court proceedings (expedition was ordered for hearing and I was unavailable) and in the Court of Appeal concerning the Powerhouse Parramatta development; [2021] NSWCA 128.

I appeared for the State of NSW in *Snowy Mountains Brumby Sustainability and Management Group Incorporated v State of NSW* [2020] NSWLEC 92.

Prosecutions in the summary jurisdiction of the Supreme Court:

I have appeared for the Regulator in prosecutions under the Road Transport Act by RMS in which compensation orders for over \$1m, were obtained; *Endycott v Griffiths Garage Pty Ltd* [2012] NSWSC 1131 and *Endycott v Rapid Access Australia Pty Ltd* [2012] NSWSC 1132.

Though not being heard in the Supreme Court, I am appearing for 2 defendants in summary prosecutions under the Heavy Vehicle National Law No 42A (NSW) – National Heavy Vehicle Regulator v Connect Logistics Pty Ltd and National Heavy Vehicle Regulator v Corey Matthews.



## Prosecutions under the Work Health and Safety Act:

I have appeared in several prosecutions for offences under the Work Health and Safety Act for the regulator SafeWork NSW, for the designated inspector in mining prosecutions and for defendants.

I have appeared for the Prosecutor in the following recent prosecutions:

- *McColm v Moolarben Coal Operations* – defended prosecution under the Work Health and Safety Act currently Scotting DCJ is reserved;
- *SafeWork NSW v Qantas Ground Services Pty Ltd* – trial listed for November 2022;
- *McAndrew v Simmons* – judgment of Scotting DCJ on 3 April 2020;
- *SafeWork NSW v Wollongong Glass Pty Ltd* (2016) NSWDC 58;
- *WorkCover Authority v Romanous Contractors Pty Ltd and John Romanous*;
- *WorkCover Authority v White’s Plumbing Pty Ltd and Robert White*.

I have represented defendants in Work Health and Safety prosecutions; examples of these matters include the following:

- *Lendlease ats R* – defended prosecution by Commonwealth Director of Public Prosecutions under the Commonwealth Act in Western Australia;
- *Punchbowl Buses ats SafeWork NSW* – prosecution settled by defendant entering into an unenforceable undertaking;
- *Rawson Homes ats SafeWork NSW* – defendant acquitted [2016] NSWDC 237;
- *NMK Pty Ltd ats SafeWork Authority*;
- *CoilCoaters Pty Ltd ats WorkCover Authority of NSW* – judgment of Scotting DCJ 2015.

## Terrorism (High Risk Offenders) Act 2017 (NSW)

I have appeared for the Attorney General in the following applications for Extended Supervision Orders and Extended Detention Orders under the Terrorism (High Risk Offenders) Act 2017:

- *State of NSW v Mustapha* [2022] NSWSC 87;
- *State of NSW v Taleb* [2022] NSWSC 1392; and
- *State of NSW v Taleb (Final)* [2022] NSWSC 1748.

## Common Law:

I have appeared and advised parties in common law matters involving tortious conduct such as malicious prosecution, false arrest and misfeasance in public office; these matters have included *Hastings v State of NSW* (2015 – settled). I am briefed in a number of matters involving claims arising from child abuse.



Proceedings for pecuniary penalty and disciplinary proceedings:

I have appeared before the AAT in disciplinary proceedings against a liquidator – *Joubert* [2018] AATA 94.

I have been briefed to advise and appear in Federal Court and Federal Circuit Court proceedings by the Fair Work Ombudsman; see *FWO v Toyota Material Handling Pty Ltd* (2012) FCR 428 and [2012] FMCA 122.

I have appeared for the *Commissioner of Australian Building and Construction Commission proceedings; Commissioner ABCC v Hall & Ors* [2020] FCCA 2352.

As junior counsel I appeared in disciplinary proceedings before the Medical Tribunal, Nurses and Midwives Tribunal, Dental Board for the Health Care Complaints Commission in professional misconduct proceedings.

Administrative Law:

I have appeared, briefed by the Commonwealth Attorney General in extradition proceedings. In respect of the following matters, I appeared in the initial determination under s19 of the Extradition Act by a Magistrate, in the review under s21 of the Extradition Act before a single judge of the Supreme or Federal Court, the appear to the Full Federal Court and in some cases resisting special leave applications.

*Republic of South Africa v Dutton; Dutton v O’Shane* (2003) 132 FCR 352 – the citation is for the Full Federal Court judgment in which I was led by Peter Neil SC. I appeared for the applicant country briefed by the Commonwealth Attorney General in all stages of the extradition proceedings.

*Hermanowski v United States of America* (2006) 149 FCR 93.

*Griffith v United States of America* (2005) 143 FCR 182 – I appeared for the applicant country which was seeking the extradition of Mr. Griffith for copyright piracy.

In *Rivera v United States of America* (2004) FCAFC 154, I appeared unled, for the applicant country at all stages of the extradition – before the Magistrate for the determination under s19, the review by Bell J in the NSW Supreme Court and in the appeal before the Full Federal Court.

In *Brock v United States of America* (2007) 157 FCR 121, I appeared for the applicant country before the Magistrate, before Jacobson J on review and before the Full Federal Court.

I also appeared un the Federal Court in proceedings challenging the issue of search warrants under the Crimes Act 1914 (Cth) and for the Australian Securities and Investment Commission in disputes about privilege claims and public interest immunity in documents sought by the Subpoena.





### Sports Law:

I have an interest in sports law which was generated when I was junior counsel to Henric Nicholas QC when we appeared for Canada in the Court of Arbitration for Sport as part of the NSW Bar Association's pro bono scheme for the 2000 Olympics. During the Olympics I appeared as junior to Mark Williams SC (now Williams Sc DCJ) for the United States of America before the Court of Arbitration for Sport.

I have appeared before the Court of Arbitration for Sport for an affected party Joanne Carter in Appeal by Miriam Manzano re Ice skating Australia Inc; these proceedings concerned the selection of Australia's representative in the woman's ice-skating competition at the Winter Olympics.

From 2010 to 2020 I was a member of the NSW/ACT AFL appeal committee.

### Professional Activities:

I was a member for over 10 years and then Chair of the Equal Opportunity Committee of the NSWBar Association.

I was a mentor to Merinda Dutton an Indigenous law student throughout her studies at the University of NSW. Merinda is now employed as a solicitor by the Legal Aid Commission.

I was previously on the board of the Tristen Jepson Foundation, an organization concerned with issues of mental health in the legal profession.