

Joanna Davidson

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Education

Harvard Law School, LLM, 2007

Menzies Scholarship to Harvard

Landon H. Gammon Fellowship for academic excellence

University of NSW, BA (Hons), LLB, 2003

Dean's Certificate for Placement of 3rd in the Order of Merit at Graduation
(graduating class of 294), 2003

The Michael Pandelis Award for the Most Significant Contribution to the Life of the
Law School at the University of New South Wales, 2002

First Class Honours in Politics and International Relations, 2000

Bar Admissions

Barrister, New South Wales, January 2012

Attorney and Counsellor-at-Law in the State of New York and the United States District Court for
the Southern District of New York, 2008

Professional Background

Barrister, Sixth Floor Selborne Wentworth Chambers

May 2014 – present

Select matters:

High Court

- *Chief Executive, Aboriginal Areas Protection Authority v Director of National Parks* [2023] HCATrans 68 (leading E Dunlop, Crown immunity)
- *Edwards v The Queen* [2021] HCA 28; (2021) 95 ALJR 808 (led by L Babb SC, prosecutorial disclosure)
- *Private R v Cowen* (2020) 271 CLR 316 (led by S Donaghue QC, defence power)
- *Houston v State of NSW*, Bell J, 27 November 2020 (led by J Kirk SC, nature of public interest litigation, maximum costs orders)
- *Minogue v Victoria* (2019) 93 ALJR 1031 (led by M Sexton SC, Ch III)
- *Doctors for Refugees v Commonwealth* M100 of 2016 (led by S Donaghue QC and P Herzfeld, implied freedom)
- *Brown v Tasmania* (2017) 261 CLR 328 (led by S Pritchard SC, implied freedom)
- *Knight v Victoria* (2017) 261 CLR 306 (led by M Sexton SC, *Kable* doctrine)
- *Minister for Immigration and Border Protection v SZSSJ* (2016) 259 CLR 180 (led by S Lloyd SC, procedural fairness, jurisdiction of Federal Circuit Court)
- *North Australian Aboriginal Justice Agency Ltd v Northern Territory* (2015) 256 CLR 569 (led by S Pritchard SC, Ch III)
- *Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia v Queensland Rail* (2015) 256 CLR 171 (led by M Sexton SC, corporations power)

- *Kuczborski v Queensland* (2014) 254 CLR 51 (led by M Sexton SC, *Kable* doctrine)

Federal Court: Full Court

- *Environmental Council of Central Queensland Inc v Minister for the Environment and Water* (reserved February 2024) (led by M Izzo SC, judicial review of decision under EPBC Act)
- *Agrivealth Capital Ltd v Australian Financial Complaints Authority* [2023] FCAFC 128 (leading J Cooper, court-appointed contradictor)
- *Ashby v Commonwealth of Australia* [2022] FCAFC 77 (leading L Howard, act of grace payments, construction of *Fair Work Act*)
- *TX Australia Pty Ltd v ACCC* (2021) 287 FCR 92; [2021] FCAFC 113 (led by S Balafoutis SC, broadcasting services transmitter access)
- *Volkswagen AG v ACCC* [(2021) 284 FCR 24; 2021] FCAFC 49 (led by J Kirk SC, penalties for breach of Australian Consumer Law)
- *Attorney General (Cth) v Ogawa* (2020) 384 ALR 474; [2020] FCAFC 180 (led by M Sexton SC, executive power of mercy, also briefed in special leave application)
- *NWJ v Minister for Immigration* [2020] FCAFC 176 (unled, judicial review of decision of AAT re cancellation of visa)
- *CMU16 v Minister for Immigration and Border Protection* (2020) 277 FCR 201; [2020] FCAFC 104 (led by C Lenehan SC, apprehended bias of FCCJ, tendency and coincidence,)
- *Secretary, Department of Education and Training v Simpson Networks Pty Ltd* (2019) 273 FCR 252 (led by G Kennett SC, payment of child care benefits)
- *CLM18 v Minister for Home Affairs* (2019) 272 FCR 639; [2019] FCAFC 170 (led by S Lloyd SC, procedural fairness, non-compellable statutory powers)
- *Malek Fabd Islamic School Ltd v Minister for Education and Training* (2018) 260 FCR 212 (led by R Lancaster SC, statutory construction; appeal from AAT)
- *Babington v Commonwealth* (2016) 240 FCR 95 (led by M Sexton SC, legislative competence of NSW with respect to fisheries)
- *Technical and Further Education Commission v Pykett* [2015] FCAFC 42 (led by M Sexton SC and M Easton, *Melbourne Corporation* principle)

Federal Court: single judge

- *Environmental Council of Central Queensland Inc v Minister for the Environment and Water (No 2)* [2023] FCA 1608 (led by J Emmett SC, judicial review of decision under EPBC Act)
- *Environmental Council of Central Queensland Inc v Minister for the Environment and Water* [2023] FCA 1117 (led by J Emmett SC, expert evidence)
- *Knowles v Commonwealth of Australia* [2022] FCA 741 (leading C Tran, ss 51(xxiiiA) and 92, COVID-19 restrictions and public health measures)
- *Houston v State of NSW (No 2)* (2021) 289 FCR 425 (led by J Kirk SC, s 51(xxxi), statutory construction)
- *Ashby v Commonwealth* (2021) 386 ALR 23; [2021] FCA 40 (leading L Howard, judicial review of decision to refuse act of grace payment)
- *Ashby v Commonwealth (No 2)* [2021] FCA 830 (leading L Howard, construction of *Fair Work Act*)
- *Jin v Commissioner, Australian Federal Police* NSD 1065 of 2020 (unled, judicial review of decision of Magistrate)
- *Secretary, Dept of Health v Evolution Supplements Australia Ltd* [2021] FCA 74 (led by A Mitchelmore SC, therapeutic goods advertising)

- *Secretary, Dept of Health v Evolution Supplements Australia Ltd (No 2)* [2021] FCA 872 (unled, therapeutic goods advertising, penalty)
- *ZAA Ventures Pty Ltd v Australian Community Pharmacy Authority* [2020] FCA 1227 (unled, judicial review of decision of ACPA)
- *Guild Insurance Ltd v Chief Executive Medicare* [2020] FCA 1170 (led by S Lloyd SC, judicial review of decision under high-cost claims indemnity scheme)
- *ASIC v Vocation Pty Ltd (in liq)* (2019) 140 ACSR 382 and (2019) 136 ACSR 339 (led by J Halley SC and A Mitchelmore, continuous disclosure and directors' duties)

Multiple unled appeals from decisions of the Federal Circuit Court in migration cases, eg: *Chandra* [2020] FCA 966; *EIJ20* [2020] FCA 1429; *ACL17* [2019] FCA 753.

NSW Court of Appeal and Court of Criminal Appeal

- *Corliss v Director of Public Prosecutions (NSW)* [2023] NSWCA 263 (unled, statutory construction, judicial review of decision of District Court)
- *Yenuga v Attorney General (NSW)* [2023] NSWCA 227 (unled, judicial review of decision under s 78 of the *Crimes (Appeal and Review) Act*)
- *Wass v Director of Public Prosecutions (NSW)* [2023] NSWCA 71 (unled, statutory construction)
- *Rahman v Director of Public Prosecutions (NSW)* [2023] NSWCA 1 (unled, judicial review)
- *R v Kinghorn* (2021) 106 NSWLR 322; [2021] NSWCCA 313 (led by S Donaghue QC, accusatorial principle and companion rule)
- *Kassam v Hazqard* (2021) 106 NSWLR 520; [2021] NSWCA 299 (unled, s 51(xxiiiA), COVID-19 public health orders)
- *Yenuga v Director of Public Prosecutions (NSW)* [2021] NSWCA 293 (unled, judicial review, refusal to state a case)
- *Hariz v Director of Public Prosecutions (NSW)* [2021] NSWCA 264 (unled, judicial review)
- *Dacich v Commissioner of Corrective Services* [2020] NSWCA 359 (unled, habeas corpus)
- *Dacich v Director of Public Prosecutions (NSW)* [2020] NSWCA 297, 298, 313 and 346 (unled, judicial review of District Court decision, procedural fairness)
- *Jones v State of NSW* [2020] NSWCA 202 (led by D Kell SC, high risk offenders)
- *GAR v Attorney General for NSW (No 3)* [2020] NSWCA 179 (unled, judicial review of decision on application for inquiry into conviction)
- *Forrest v Director of Public Prosecutions (NSW)* [2020] NSWCA 179 (unled, stated case procedure in District Court, statutory construction)
- *Randren House Pty Ltd v Water Administration Ministerial Corporation* (2020) 246 LGERA 1; [2020] NSWCA 14 (unled, appeal from Land and Environment Court)
- *El Saeidy v Director of Public Prosecutions (NSW)* [2019] NSWCA 289 (unled, judicial review)
- *Lazarus v Kane* [2019] NSWCA 194 (unled, judicial review, challenge to issue of warrants)
- *Armand-Iskak v Attorney-General of New South Wales* [2019] NSWCA 145 (unled, judicial review)
- *Lazarus v Director of Public Prosecutions (NSW)* [2019] NSWCA 125 (unled, judicial review)
- *Lewis v Sergeant Riley* [2017] NSWCA 272 (led by D Kell SC, statutory construction and appellate jurisdiction)
- *4Nature v Centennial Springvale Inc* (2017) 224 LGERA 301 (led by N Williams SC, statutory construction)
- *Hamilton v New South Wales* [2017] NSWCA 112 (led by N Williams SC, privilege)
- *GAR v Attorney General (NSW)* [2017] NSWCA 47 (unled, bias, substantive judgment seeking judicial review of application for inquiry into conviction reserved)
- *Lazarus v Independent Commission Against Corruption* (2017) 341 ALR 483 (led by D Kell SC, Ch III, *Kable* doctrine)

- *Macdonald v The Queen; Maitland v The Queen* (2016) 93 NSWLR 736 (led by N Williams SC, criminal procedure; accusatorial principle)
- *Obeid v The Queen* (2016) 91 NSWLR 226 (led by P Neil SC and S Beckett, exclusive jurisdiction of Parliament; misconduct in public office)
- *AQO v Minister for Finance and Services* (2016) 93 NSWLR 46 (unled, privacy; statutory construction)
- *Buttrose v Attorney General for NSW* (2015) 324 ALR 562 (led by N Adams SC, judicial review of Supreme Court decision on application for inquiry into sentence)

Supreme Court of NSW (post 2020 cases only)

- *Perpetual Trustee Co Ltd v Attorney General for the State of NSW* (reserved February 2024, unled, charitable trusts)
- *Blooms the Chemist Management Services Ltd v Pharmacy Council of NSW* (reserved November 2023, led by S Free SC, pharmacy regulation)
- *McKenzie v Attorney General for NSW* [2023] NSWSC 1639 (unled, judicial review of decision of State Parole Authority)
- *NSW Minister for Mental Health v Paciocco (No 3) (Final)* [2023] NSWSC 587 (leading J Cooper, forensic patient status)
- *Attorney General of NSW v Williams (by his tutor Ainsworth)* [2023] NSWSC 1 (unled, forensic patient status)
- *Commissioner of Police, NSW Police Force v Meehan* [2022] NSWSC 1592 (unled, serious crime prevention order)
- *Application by Maksimilian Bebic, Mile Nekic and Vjekoslav Brajkovic pursuant to s 78 of the Crimes (Appeal and Review) Act 2001 (NSW)* [2022] NSWSC 1153 (led by D Kell SC, application for judicial review of convictions of the “Croatian Six”)
- *TM v Commissioner of NSW Police* [2022] NSWSC 337 (unled, statutory construction)
- *Kassam v Hazzard* (2021) 393 ALR 664; [2021] NSWSC 1320 (unled, s 51(xxiiiA), COVID-19 public health orders)
- *Commissioner of Police, NSW Police Force v Zabed* [2021] NSWSC 1606 (unled, serious crime prevention order)
- *Hosseini v Genea Ltd* [2021] NSWSC 1568 (unled, human tissue legislation, statutory construction)
- *O’Connell v Director of Public Prosecutions (NSW)* [2021] NSWSC 1519 (unled, appeal from Local Court)
- *Commissioner of Police v Deputy State Coroner for NSW* [2021] NSWSC 398 (led by D Kell SC, public interest immunity and non-publication orders)
- *Burton v Director of Public Prosecutions (NSW)* [2021] NSWSC 1230 (led by D Kell SC, implied freedom of political communication)
- *Samandi v State Parole Authority (NSW)* [2021] NSWSC 1037 (unled, judicial review, procedural fairness, s 194 material)
- *Mawas v State Parole Authority (NSW)* [2021] NSWSC 652 (unled, judicial review, unreasonableness)
- *Solomon v Commissioner of Police (NSW)* [2021] NSWSC 236 (unled, judicial review of decision re firearms prohibition order)
- *Attorney General (NSW) v Doolan bbt Thompson (Preliminary)* [2021] NSWSC 57 (unled, extension of forensic patient status)
- *Dacich v Picton Local Court* [2020] NSWSC 1714 (unled, habeas corpus)
- *Noone v Genea Ltd* [2020] NSWSC 1860 (unled, human tissue legislation)
- *Selkirk v DPP (NSW)* [2020] NSWSC 1590 (unled, claim of right)
- *King v Attorney General for NSW* [2020] NSWSC 629 (unled, charitable trusts)

Multiple unled applications under high risk offender legislation, eg: *GJO* [2020] NSWSC 1412; *Davis* [2020] NSWSC 754; *Aslett* [2020] NSWSC 692.

Land and Environment Court

- *Bushfire Survivors for Climate Action Inc v Narrabri Coal Operations Pty Ltd* [2023] NSWLEC 69 (led by S Free SC, judicial review of consent to mine extension)
- *Upper Hunter Sustainable Industries Association Inc v MACH Energy Australia Pty Ltd (No 2)* [2017] NSWLEC 87 (led by J Kirk SC, lapse of development consent)
- *Secretary, Department of Planning and Environment v Charbon Coal Pty Ltd* [2016] NSWLEC 106 (unled, sentencing for disturbance of Aboriginal cultural heritage site)
- *Southern Highlands Coal Action Group Pty Ltd v Hume Coal Pty Ltd* (2015) 209 LGERA 347 (led by S Lloyd SC, judicial review of consent to coal exploration licence)

NSW Coroner's Court

- *Inquest into the death of Malcolm Brown* (hearings concluded December 2023, Counsel Assisting the Coroner)
- *Inquest into the death of Robert Phair* (ongoing, Counsel Assisting the Coroner)
- *Inquest into the deaths of into the deaths of William Cousins, Richard Cousins, Edward Cousins, Emma Bowden, Heather Bowden-Page and Gareth Morgan* (findings handed down 26 May 2023; led by S Callan SC, Counsel Assisting the Coroner)
- *Inquest into the deaths at Newmarch House* (for the Commonwealth, led by G Furness SC)
- *Inquest into the death of Gavin Ellis* (findings handed down 2 September 2022, Counsel Assisting the Coroner (unled))
- *Inquest into the death of Xavier Burke*, findings handed down 25 July 2019, Counsel Assisting the Coroner (unled)
- *Inquest into the death of Paigh Bartholomew*, findings handed down 25 July 2017, Counsel Assisting the Coroner (unled)

Independent Commission Against Corruption – Operation Hector (ongoing, hearings 2023)
Counsel Assisting the Commission (with P English)

Special Commission of Inquiry into Healthcare Funding (ongoing, hearings 2024)
Briefed for NSW Health (led by L Gyles SC)

Special Commission of Inquiry into offending by former Corrections Officer Wayne Astill, 2023-24
Counsel assisting the Commissioner (led by D Lloyd SC)

Special Commission of Inquiry into the Ruby Princess, 2020

Briefed (led by R Higgins SC, with M Sherman) to draft voluntary statement on behalf of the Commonwealth

Federal Circuit Court

More than 30 unled applications for judicial review from decisions of the AAT, RRT and delegates of the Minister

Lecturer, Administrative Law, University of NSW

July 2009 – March 2019

Centre Fellow, Gilbert and Tobin Centre of Public Law

2015 – present

Counsel Assisting the NSW Solicitor General and Crown Advocate January 2012 – April 2014

Select matters (as counsel):

High Court

- *Lee v R* (2014) 88 ALJR 656 (criminal law, led by N Adams SC and H Roberts)
- *Magaming v R* (2013) 87 ALJR 1060 (constitutional law, led by M Sexton SC)
- *Lee v NSW Crime Commission* (2013) 87 ALJR 1082 (statutory interpretation; constitutional law, led by M Sexton SC and N Adams SC)
- *State of NSW v Kable* (2013) 87 ALJR 737 (constitutional law, federal jurisdiction, tort, led by M Sexton SC and M Leeming SC)

NSW Court of Appeal

- *Director of Public Prosecutions v Kboury* (2014) 306 ALR 86 (judicial review (bench of 5), construction of *Mental Health (Forensic Provisions) Act* 1990, led by N Adams SC)
- *Lodhi v Attorney General of NSW* [2013] NSWCA 433 (availability of judicial review; led by N Adams SC)
- *Petroulias v The Hon Justice McClellan* (2013) 306 ALR 210 (availability of judicial review of decision of Supreme Court judge, jury irregularities; led by N Adams SC)
- *Jenkins v Director of Public Prosecutions* [2013] NSWCA 406 (judicial review, availability of prerogative relief; led by N Adams SC)
- *Patsalis v Attorney General for NSW* (2013) 303 ALR 568 (appellate and supervisory jurisdiction in respect of applications for post-conviction inquiries; led by N Adams SC)
- *Prott v Munro* [2013] NSWCA 241 (construction of the *Crimes (Forensic Procedures) Act* 2000; led by N Adams SC)
- *Re McDermott* (2013) 303 ALR 143 (application of *Crimes (Appeal and Review) Act* 2001, 1947 murder conviction; led by N Adams SC)

NSW Court of Criminal Appeal

- *R v Burton* [2013] NSWCCA 335 (assessment of probative value for the purposes of s 137 of the *Evidence Act* 1995; led by N Adams SC)
- *Kaddour v R* [2013] NSWCCA 243 (availability of certificate pursuant to s 128 of the *Evidence Act* 1995; led by N Adams SC) (special leave refused 16 May 2014)
- *Fairfax Digital Aust and NZ Pty Ltd v District Court of NSW* (2012) 83 NSWLR 52 (construction of *Court Suppression and Non-Publication Orders Act* 2010; implied freedom of political communication; led by M Sexton SC SG and A Mitchelmore)

Senior Solicitor and Solicitor, Crown Solicitor's Office March 2009 – December 2011

Administrative and Constitutional Law practice groups
Solicitor Assisting the Special Commission of Inquiry into the NSW Crime Commission,
September – November 2011

Associate, Debevoise & Plimpton LLP, New York September 2007 – February 2009
Litigation group; acted in antitrust, commercial, white collar crime and regulatory litigation

Solicitor, Mallesons Stephen Jaques February 2005 – August 2006
Intellectual Property and Technology Litigation group

Research Director/Tipstaff to Chief Justice JJ Spigelman AC, Supreme Court of NSW
January 2003 – December 2004

Boards and Committees

Board Member, Anti-Discrimination NSW 2020 – present
Appointed to the statutory Anti-Discrimination Board pursuant to the *Anti-Discrimination Act 1977*

Member, NSW Bar Association Inquests and Inquiries Committee 2021 – present

Director, Inner City Community Legal Centre (Co-Chair 2016-2019) 2009 – 2019

Select publications and papers

“Substantive Fairness: a case for reconsidering the breach between English and Australian Law” in M Groves and G Weeks (eds), *Legitimate Expectations in the Common Law World* (2017)

The Laws of Australia, Subtitle 2.4 *Judicial Review of Administrative Action* (updating author)

“*Magaming v The Queen*: The Constitution, Judicial Process and Sentencing” (Paper delivered at Gilbert + Tobin Centre Constitutional Law Conference, February 2014)