

STEPHEN McDONALD SC

HANSON CHAMBERS

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Stephen McDonald SC has particular expertise in constitutional and administrative law and statutory construction. Stephen accepts briefs in appeals in all areas of law, both civil and criminal. He has appeared as counsel presenting arguments in the High Court of Australia, the Supreme Court of South Australia, the Federal Court of Australia and other State and federal courts.

As junior counsel, he has appeared in several major cases in the High Court in the areas of constitutional law, administrative law and criminal law. Stephen also has an extensive advice practice.

Prior to commencing practice at the Bar, Stephen was a Senior Solicitor at the South Australian Crown Solicitor's Office. He was previously the Research Assistant to the Solicitor-General for South Australia, Chris Kourakis SC (now Chief Justice of South Australia), and Associate to Justice Richard White of the Supreme Court of South Australia (now a Justice of the Federal Court).

Stephen is also an Adjunct Associate Professor at the University of Adelaide Law School. He is the co-author of a student text on Administrative Law, and has taught in Constitutional Law and Administrative Law.

MAIN PRACTICE AREAS

- » Administrative Law / Judicial Review
- » Choice of Law / Conflict of Laws
- » Commercial Law
- » Constitutional Law
- » Employment / Industrial Law
- » Jurisdictional issues
- » Migration (Judicial Review)
- » Statutory Interpretation

- » Appellate Advocacy (Civil and Criminal)

PROFESSIONAL MEMBERSHIPS

- » South Australian Bar Association
- » Law Society of South Australia (former Chair, Administrative Law Committee)
- » Australian Association of Constitutional Law (SA Chapter Convener; National Vice-President)
- » International Association of Constitutional Law
- » Australian Institute of Administrative Law (SA Chapter Executive)
- » International Law Association (Australian Branch)
- » University of Adelaide Law School Public Law and Policy Research Unit
- » Legal Practitioners Education and Admission Council (SA)
- » South Australian Law Reform Institute Advisory Board
- » Australian Bar Association Ethics Committee
- » Australian Bar Review Editorial Board
- » JusticeNet SA (Management Committee)

QUALIFICATIONS AND ADMISSION TO LEGAL PRACTICE

- » Bachelor of Laws (1st Class Honours, University Medal) — University of Adelaide
- » Bachelor of Commerce — University of Adelaide
- » Graduate Diploma of Legal Practice — Law Society of South Australia
- » Admitted to practice in the Supreme Court of South Australia 2004
- » Admitted to practice in the High Court of Australia 2004
- » Joined the Independent Bar 2011
- » Appointed Senior Counsel 2020

SELECTED CASES AS COUNSEL OR JUNIOR COUNSEL HIGH COURT OF AUSTRALIA

- » *Forge v Australian Securities and Investments Commission* (2006) 228 CLR 45
- » *New South Wales v The Commonwealth (Work Choices case)* (2006) 229 CLR 1
- » *Attorney-General (Vic) v Andrews* (2007) 230 CLR 369
- » *ACCC v Baxter Healthcare Pty Ltd* (2007) 232 CLR 1
- » *Thomas v Mowbray* (2007) 233 CLR 307
- » *Ayles v The Queen* (2008) 232 CLR 410
- » *Befair v Western Australia* (2008) 234 CLR 418
- » *HML v The Queen* (2008) 235 CLR 334
- » *K-Generation Pty Ltd v Licensing Court (SA)* (2009) 237 CLR 501
- » *Pape v Federal Commissioner of Taxation* (2009) 238 CLR 1
- » *Bakewell v The Queen* (2009) 238 CLR 287
- » *John Holland Pty Ltd v Industrial Relations Commission (NSW)* (2009) 239 CLR 518
- » *Kirk v Industrial Relations Commission (NSW)* (2010) 239 CLR 531
- » *Spencer v The Commonwealth* (2010) 241 CLR 118
- » *Dickson v The Queen* (2010) 241 CLR 491
- » *Hogan v Hinch* (2011) 243 CLR 506
- » *AMP Life Ltd v Commissioner of State Taxation* [2013] HCATrans 74 (SL)
- » *Fitzgerald v The Queen* (2014) 88 ALJR 779
- » *NH v Director of Public Prosecutions* (2016) 260 CLR 546
- » *Perara-Cathcart v The Queen* (2017) 260 CLR 595
- » *Eicas v Dawson* [2017] HCATrans 165 (SL)
- » *Re Canavan* (reference to Court of Disputed Returns) (2017) 263 CLR 284
- » *Plaintiff A25A/2017 v Minister for Immigration and Border Protection* [2017] HCATrans 221
- » *Tran v The Queen* [2018] HCATrans 32 (SL)
- » *The Commonwealth v Walker* [2018] HCATrans 122; [2018] HCATrans 135
- » *Bucca v The Queen* [2018] HCATrans 262 (SL)
- » *Return to Work Corporation (SA) v Stephenson* [2019] HCATrans 249 (SL)
- » *KMC v Director of Public Prosecutions (SA)* (2020) 267 CLR 480
- » *Cumberland v The Queen* (2020) 94 ALJR 656
- » *CXXXVIII v The Commonwealth* [2020] HCATrans 102

SELECTED CASES (CONTINUED)

FEDERAL COURTS AND TRIBUNALS

- » *Racing New South Wales v Sportsbet Pty Ltd* (2010) 189 FCR 448 (FC)
- » *AZABC v Minister for Immigration and Citizenship* [2011] FCA 1179
- » *Ms A v The Commonwealth (Centrelink)* [2011] FWAFB 6612
- » *Parker & Parker* (2012) 260 FLR 284 (Full Family Court)
- » *AZABM v Minister for Immigration and Citizenship* [2012] FCA 860
- » *Barker v Commonwealth Bank of Australia* [2012] FCA 1076
- » *Kokatha Uwankara (Part A) Native Title Claim v South Australia* [2013] FCA 856
- » *Sekhon v Director of Quarantine* (2013) 278 FLR 100; (2013) 218 FCR 48
- » *BHFC v Minister for Immigration and Border Protection* [2014] FCAFC 25
- » *Angelos v Minister for Health* (2014) 226 FCR 275
- » *Coderre v Minister for Immigration and Border Protection* (2014) 143 ALD 675
- » *Director, FWBII v Robko Construction Pty Ltd* [2014] FCCA 2257; [2015] FCCA 177
- » *Singh v Minister for Immigration and Border Protection* (2015) 231 FCR 573
- » *CKI Utilities Development Pty Ltd v Australian Energy Regulator* [2016] FCA 17
- » *Dwyer v Broken Hill Musicians Club Ltd* [2016] FCCA 95
- » *ABAR15 v Minister for Immigration and Border Protection (No 2)* (2016) 242 FCR 11
- » *The Wilderness Society Inc v Department of the Environment* [2016] AATA 653
- » *AZAFX v Federal Circuit Court of Australia* [2016] FCCA 500; (2016) 244 FCR 401
- » *AXU15 v Minister for Immigration and Border Protection* [2016] FCCA 2646
- » *EAB16 v Minister for Immigration and Border Protection* (2017) 319 FLR 382; [2017] FCA 380
- » *Ibrahim v Minister for Immigration and Border Protection* [2017] FCA 1140; (2017) 256 FCR 50
- » *Singh v Minister for Immigration and Border Protection* (2017) 159 ALD 442
- » *The Commonwealth v Okwume* [2016] FCA 1252; [2016] FCA 1539; (2018) 263 FCR 604 (FC)
- » *FJM18 v Minister for Immigration and Border Protection* [2018] FCCA 3559
- » *Ibrahim v Minister for Home Affairs* [2018] FCA 1592; (2019) 270 FCR 12 (FC)
- » *Nguyen v Minister for Immigration and Border Protection* [2018] FCCA 3790; (2019) 166 ALD 376
- » *FER17 v Minister for Immigration* (2018) 342 FLR 167; (2019) 269 FCR 580 (FC)
- » *AXH15 v Minister for Home Affairs* [2019] FCA 1025
- » *Luppino v Fisher* [2018] FCA 2106; (2019) 278 A Crim R 550
- » *Burgess v Assistant Minister for Home Affairs* [2019] FCA 34; (2019) 271 FCR 181 (FC)
- » *Choice Pharmacy Vincentia Pty Ltd v Australian Community Pharmacy Authority* [2020] FCA 93
- » *Hedari v Minister for Immigration and Border Protection* [2020] FCA 298
- » *Hernandez v Minister for Home Affairs* [2020] FCA 415
- » *CXXXVIII v Justice White* (2020) 274 FCR 170 (FC)
- » *Burgess v Commonwealth of Australia* (2020) 276 FCR 548
- » *FDL17 v Minister for Home Affairs* (2020) 352 FLR 377
- » *CMA19 v Minister for Home Affairs* [2020] FCA 736
- » *BCT18 v Minister for Home Affairs* [2020] FCCA 1542
- » *Minister for Immigration v BFW20* [2020] FCA 562; [2020] FCA 615; (2020) 279 FCR 475
- » *ENJ17 v Minister for Immigration* [2020] FCA 1079
- » *FAK19 v Minister for Home Affairs* [2020] FCA 1124
- » *BVZ16 v Minister for Immigration* [2020] FCA 1803
- » *Minister for Immigration v LJTZ* [2021] FCA 92
- » *Commissioner of the Australian Federal Police v Luppino* [2021] FCAFC 43

SELECTED CASES (CONTINUED)

SUPREME COURT OF SOUTH AUSTRALIA

- » *Mountford v Magistrates Court of South Australia* (2006) 95 SASR 103 (FC)
- » *R v W, PR (No 2)* [2006] SASC 236 (FC)
- » *Hirst v Police* (2006) 95 SASR 260 (FC)
- » *R v Weetra* [2006] SASC 275 (FC)
- » *R v Lam* [2006] SASC 278 (FC)
- » *R v Hollitt* [2006] SASC 280 (FC)
- » *Police v A, TG* [2006] SASC 299 (FC)
- » *R v Randylle* (2006) 95 SASR 574 (FC)
- » *Osenkowski v Magistrates Court of South Australia* (2006) 96 SASR 456 (FC)
- » *R v Smith* (2007) 97 SASR 302 (FC)
- » *Southern Adelaide Health Service Inc v C* (2007) 97 SASR 556 (FC)
- » *R v Martin* (2007) 99 SASR 213 (FC)
- » *R v Curran* (2008) 100 SASR 71 (FC)
- » *Director of Public Prosecutions v George* (2008) 102 SASR 246 (FC)
- » *Hitchin v Labourforce Solutions Pty Ltd* (2009) 184 IR 262 (FC)
- » *R v Modra* (2009) 103 SASR 383
- » *R v Ironside* (2009) 104 SASR 54 (FC)
- » *Police v Betts* (2009) 104 SASR 442
- » *Auzora Pty Ltd v Commissioner for Consumer Affairs* (2009) 105 SASR 378 (FC)
- » *Praniess v Police* [2010] SASC 275
- » *Watson v South Australia* (2010) 208 A Crim R 1; 278 ALR 168 (FC)
- » *Public Service Association (SA) v Industrial Relations Commission (SA)* (2011) 109 SASR 223 (FC)
- » *Manpower Services (Aust) Pty Ltd v WorkCover Corporation (SA)* [2011] SASC 107
- » *WorkCover Corporation v Davey* (2011) 110 SASR 173 (FC)
- » *R v Duong* (2011) 110 SASR 296 (FC)
- » *NMLA, ANZ, ING and AMP v Commissioner of State Taxation* (2011) 110 SASR 536 (FC)
- » *Mintech Resources Pty Ltd v Russell-Taylor* [2011] SASC 238; (2012) 113 SASR 80 (FC)
- » *Police v Murray* (2013) 116 SASR 422 (FC)
- » *Attorney-General (SA) v Bell* (2012) 117 SASR 456; (2013) 117 SASR 482 (FC)
- » *Harrington v Coote* (2013) 119 SASR 152 (FC); [2014] SASCFC 39
- » *Palace Gallery Pty Ltd v Liquor & Gambling Commissioner* (2014) 118 SASR 567; 120 SASR 299 (FC)
- » *Palace Gallery Pty Ltd v WorkCover Premium Review Panel* (2014) 119 SASR 408 (FC)
- » *Kirkham v Industrial Relations Commission (SA)* (2015) 121 SASR 471 (FC)
- » *Deans v Anangu Pitjantjatjara Yankunytjatjara* [2015] SASC 54; (2015) 122 SASR 339
- » *A v C (ICAC)* [2015] SASC 35; (2015) 123 SASR 477 (FC)
- » *Case Stated on Acquittal No 1 of 2015; R v Stakaj* (2015) 123 SASR 523 (FC)
- » *Chief Executive, Dept of Health and Ageing v Coroners Court (SA)* (2015) 124 SASR 132 (FC)
- » *Tyler v Raven* [2015] SASC 171
- » *Goldus Pty Ltd v Australian Mining Pty Ltd* [2015] SASC 32; [2015] SASCFC 193; [2016] SASCFC 35
- » *Martin v Electoral Districts Boundaries Commission* (2017) 127 SASR 362; (2017) 224 LGERA 190 (FC)
- » *Toth v Return to Work Corporation (SA)* [2017] SASCFC 83
- » *R v Tran* [2017] SASCFC 99
- » *Construction Industry Training Board v Transfield Services (Aust) Pty Ltd* (2017) 128 SASR 475 (FC)
- » *R v Cecchin* [2017] SASCFC 109
- » *R v Zefi* (2017) 129 SASR 161 (FC)

SELECTED CASES (CONTINUED)

SUPREME COURT OF SOUTH AUSTRALIA (CONTINUED)

- » *Return to Work Corporation (SA) v Watkins* [2017] SASCF 149
- » *R v Becirovic* [2017] SASCF 156
- » *Amaca Ltd v Pfeiffer* (2017) 129 SASR 258 (FC)
- » *Commissioner of Police v Coroners Court (SA)* (2018) 130 SASR 321 (FC)
- » *Return to Work Corporation (SA) v Robinson* (2018) 130 SASR 394 (FC)
- » *R v Bucca* [2018] SASCF 42
- » *Corporation of the City of Adelaide v India Pty Ltd* [2018] SASC 154
- » *Williams v Minister for Aboriginal Affairs and Reconciliation* [2018] SASC 163
- » *R v Tran* (2019) 276 A Crim R 175 (FC)
- » *Return to Work Corporation (SA) v Renfrey* (2019) 133 SASR 31 (FC)
- » *Return to Work Corporation (SA) v Mitchell* (2019) 135 SASR 315 (FC)
- » *Onody v Return to Work Corporation (SA)* (2019) 133 SASR 109 (FC)
- » *R v M, DV* (2019) 133 SASR 470 (FC)
- » *Attorney-General (SA) v Raschke* (2019) 133 SASR 215 (FC)
- » *Fitzpatrick v Lifetime Support Authority* (2019) 134 SASR 305 (FC)
- » *Anangu Pitjantjatjara Yankunytjatjara v Ombudsman* [2019] SASC 162; [2019] SASC 173
- » *Lorke v The Queen* (2019) 135 SASR 334 (FC)
- » *Le Cornu v Thomas* (2019) 134 SASR 421 (FC)
- » *Zheng v Commissioner, Australian Federal Police* (2019) 136 SASR 303 (FC)
- » *Giameos v Return to Work Corporation (SA)* [2019] SASCF 161
- » *Stephenson v Return to Work Corporation (SA)* (2019) 134 SASR 141 (FC); [2020] SASCF 20
- » *Director of Public Prosecutions v Jaunay* (2020) 136 SASR 112 (FC)
- » *Southdale Stud Pty Ltd v RJR Trading Pty Ltd* [2020] SASC 106
- » *Commissioner of Police v Coroners Court (SA)* [2020] SASCF 64
- » *Schroeder v Return to Work Corporation (SA)* [2020] SASCF 77
- » *Return to Work Corporation (SA) v Agnew* [2020] SASCF 79
- » *Dallimore v Return to Work Corporation (SA)* [2020] SASCF 115
- » *Viscariello v Legal Practitioners Disciplinary Tribunal* [2021] SASCF 18; [2021] SASCF 29

SELECTED CASES (CONTINUED)

OTHER STATE COURTS AND TRIBUNALS

- » *ISS Health Support Services Pty Ltd v Duthie* (2007) 169 IR 83
- » *Kosmas v Legislative Council* [2007] SAIRC 86; (2008) 175 IR 269
- » *Dept of Premier and Cabinet v SA Salaried Medical Officers' Assoc* (2010) 194 IR 453
- » *Nelson v Department for Correctional Services* (2011) 203 IR 285
- » *Clavell v Central Northern Adelaide Health Service* [2011] SAIRC 12
- » *Chief Executive, Dept of Premier and Cabinet (Dept of Health) v Pala* [2012] SAIRComm 5
- » *Hillman v Astec Paints Australasia Pty Ltd* [2012] SAIRC 12
- » *Little Miss Miami and Little Miss Mexico* [2014] SALC 41
- » *Marksman Training Systems Pty Ltd v Registrar of Firearms* [2014] SADC 150; [2015] SADC 5
- » *Catford v WorkCover Corporation (SA)* [2015] SAWCT 7
- » *Chiropractic Board of Australia v Marin* [2015] SAHPT 1; [2015] SADC 119
- » *Amalgamated ASU (SA) State Union v City of Port Adelaide Enfield* [2016] SAIRC 34
- » *Robinson v Return to Work Corporation (SA)* [2017] SAET 27
- » *Coroner's Inquest into the death of Brenton McConnal* (28 June 2017) (Inquest No 25/2016)
- » *Vilcins v Registrar of Firearms* [2017] SADC 42
- » *Stephenson v Return to Work Corporation (SA)* [2018] SAET 132
- » *Australian Nursing and Midwifery Federation (SA) v CE, Dept of Premier and Cabinet* [2019] SAET 44
- » *Coroner's Inquest into the death of Alexander Peter Kuskoff* (14 August 2019) (Inquest No 38/2015)
- » *Coggins v Trebilcock* [2019] SAET 183
- » *McPhail v Return to Work Corporation (SA)* [2017] SAET 150; [2020] SAET 53
- » *Return to Work Corporation (SA) v Dowden* [2020] SAET 54
- » *Terramin Exploration Pty Ltd v Kelly* [2020] SAERDC 46
- » *United Workers Union v CE, DTF* [2019] SAET 186; [2020] SAET 7; [2020] SAET 222; [2020] SAET 229
- » *Cooper v Return to Work Corporation of (SA)* [2021] SAET 41
- » *Wagenfeller v Return to Work Corporation (SA)* [2021] SAET 52

PUBLICATIONS

Major publications include:

- » “Territory Courts and Federal Jurisdiction” (2005) 33 *Federal Law Review* 57
- » “Involuntary Detention and the Separation of Judicial Power” (2007) 35 *Federal Law Review* 25
- » “Aboriginal Representation in Government” (with C J Kourakis SC) in E F Johnston QC, M G Hinton QC and D Rigney (eds), *Indigenous Australians and the Law* (2nd ed, 2008)
- » “The Ramifications of *Pape v Federal Commissioner of Taxation* for the Spending Power and Legislative Powers of the Commonwealth” (with G J Appleby) (2011) 37 *Monash University Law Review* 162
- » “Looking at the Executive Power through the High Court’s New Spectacles” (with G J Appleby) (2013) 35 *Sydney Law Review* 253
- » “Disqualification of Judges and Pre-Judicial Advice” (with G J Appleby) (2015) 43 *Federal Law Review* 201
- » “Defining Characteristics and the ‘Forgotten Court’” (2016) 38 *Sydney Law Review* 207
- » “*Uther’s Case* (1947): Justice Dixon and the Troubled Legacy of the Commonwealth Immunity Doctrine” (with A C Carter) in A Lynch (ed), *Great Australian Dissents* (2016)
- » “Pride and Prejudice: A Case for Reform of Judicial Recusal Procedure” (with G J Appleby) (2017) 20 *Legal Ethics* 89
- » Comment: “State Tribunals, Judicial Power, and the Constitution: Some Practical Responses” (with A Olijnyk) (2018) 29 *Public Law Review* 104
- » *Government Accountability: Australian Administrative Law* (with J Bannister and A Olijnyk) (2nd ed, 2018)
- » “The High Court’s Decision in *Burns v Corbett*: Consequences, and Ways Forward, for State Tribunals” (with A Olijnyk) (2019) 95 *AIAL Forum* 10
- » “Punishment and Chapter III of the Constitution” (with G J Appleby) in J Griffiths and J Stellios (eds), *Current Issues in Australian Constitutional Law* (2020)

Steve has also written several blog posts for the AUSPUBLAW blog, and has presented papers at local and national conferences and seminars, including in relation to the following topics:

- » Anti-terrorism control orders and the judicial power of the Commonwealth
- » Applications for special leave to appeal to the High Court
- » Authorisation and delegation under the *Aboriginal Heritage Act 1988* (SA)
- » Facts and evidence relevant to constitutional law and statutory construction
- » Judicial review of migration decisions and jurisdictional error in refugee cases
- » Judicial review of decisions concerning non-compellable statutory powers
- » Judicial review of decisions of the Federal Circuit Court
- » Legal professional privilege and waiver of privilege
- » Limitations on State legislative power with respect to State Courts and tribunals
- » State privative clauses and jurisdictional error in inferior courts
- » The *Same Sex Marriage Act 2013* (ACT)
- » The ‘no evidence’ ground of judicial review
- » The proposed referendum concerning constitutional recognition of local government