

JOSHUA P. PEMBERTON

BARRISTER - AT - LAW

Curriculum Vitae

Year of Call: 2020

Joshua was called to the Bar in 2020, following more than eight years practice as a lawyer in senior positions (including Principal) in the Litigation Branch of the Queensland Department of Environment and Science.

Joshua has a keen interest in the areas of white-collar and regulatory crime and administrative law, specifically judicial and merits review, having developed significant expertise in these areas throughout his career. In this space, Joshua's deep insight into in-house Government regulatory authorities, and their processes, places him in a unique position to achieve successful outcomes, both negotiated and in Court, for government and private clients.

Since coming to the Bar, Joshua has maintained a broad Public Law and Commercial practice as well as regularly taking briefs in Judicial and Merits reviews, Criminal & Quasi-Criminal, Planning and Environment, Land and Property, and Commercial matters, often with a significant Public Law aspect. Joshua regularly advises and appears for government and private sector clients across all Queensland and Federal jurisdictions.

Areas of practice

- Appellate
- Public Law
 - Environmental
 - Regulatory
 - Human Rights
 - Safety
 - Judicial and Merits review
 - Native title and Cultural heritage
 - Constitutional
 - Disciplinary
 - Taxation (Federal and State)
- Commissions of inquiry
- Criminal & Quasi-Criminal (White Collar Crime and Regulatory Crime)
- Land and Property
- Commercial and Equity
- Resources and Energy
- Land Court (Land valuations and Mining objections)
- Succession
- Planning and Environment

Examples of work as a barrister

Public law matters

Advised and appeared for public and private clients on a broad spectrum of matters across the public law sphere in all Queensland Courts, including on appeal. These matters often involve complicated questions of law and, more frequently, involve the application of the *Human Rights Act 2019* (Qld).

Some recent examples of public law matters include:

- Advised and appeared (led by Horton KC) for the former Public Trustee of Queensland in the successful appeal in the Queensland Court of Appeal against the Queensland Crime and Corruption Commission (CCC), followed by successfully resisting an appeal to the High Court of Australia.

Citations:

Carne v Crime and Corruption Commission [2022] QCA 141.

Crime and Corruption Commission v Carne [2023] HCA 28; (2023) 97 ALJR 737; (2023) 302 A Crim R 417.

- Advised and appeared (led by Horton KC and P Hay) for Chemist Warehouse owners seeking a declaration that the *National Health Legislation Amendment (Conditions of Approval for Approved Pharmacists) Instrument 2023 (PB17 of 2023)* issued by the Federal Minister for Health was ultra vires in the Federal Court. This matter is now the subject of a Full Federal Court appeal.

Citation:

Koutsouroupas v Minister for Health and Aged Care [2024] FCA 677.

- Advised and appeared (led by Horton KC) for the Queensland Department of Science and Innovation, successfully resisting a merits review appeal in the Land Court of Queensland involving the proper application of the ‘properly made’ provisions of the *Environmental Protection Act 1994* (Qld) and how they intersect with ‘imposed conditions’ made by the Coordinator General in the *State Development and Public Works Organisation Act 1971* (Qld).

Citation:

MacMines Austasia Pty Ltd v Chief Executive, Department of Environment, Science and Innovation [2024] QLC 16.

- Advised and appeared (led by Horton KC) for Agforce Queensland in a Judicial Review in the Federal Court against a decision of the Minister for the Environment to treat the proposed carbon capture and storage facility at Moonee as not a ‘proposed action’ under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth). This matter involved complex considerations of the environmental impacts of the proposed project to the Great Artesian Basin. This matter was settled and withdrawn.
- Jointly advised (led by Hindman KC and B McMillan) the State of Queensland in an aspect of Judicial review proceedings challenging the Covid-19 ‘High-risk setting’

directive. The matter involved extensive, unconventional Judicial review grounds, including a constitutional aspect and a significant human rights component.

- Jointly advised (with Horton KC and A Hellewell) the Officer of Liquor and Gaming Regulation (OLGR) on discrete matters falling from the recent inquiry in the Star Casino operations in Queensland.
- Advised and appeared (unled) for a building certifier client in a disciplinary matter against QBCC in the Queensland Civil and Administrative Tribunal (the matter remains ongoing).
- Advised and appeared (unled) for Wilson Security in an antidiscrimination matter in the Queensland Civil and Administrative Tribunal (the matter remains ongoing).
- Advised and appeared (unled) for the Brisbane City Council in an antidiscrimination matter, including seeking the matter be struck out in the Queensland Civil and Administrative Tribunal (the matter remains ongoing).
- Advised and appeared (unled) for a private client against the Office of State Revenue challenging a Land Tax assessment on the basis of the ‘principal place of residence’ provisions of the *Land Tax Act 2010 (Qld)* in the Queensland Civil and Administrative Tribunal (the matter remains ongoing).
- Advised and Appeared (led by Horton KC) for the Department of Environment and Science against Adani in a merit review appeal under *the Environmental Protection Act 1994 (Qld)* in the Planning and Environment Court (the matter remains ongoing).
- Advised and appeared (unled) for the Queensland Police Service in an appeal to the Queensland Civil and Administrative Appeal Tribunal in relation to the cancellation of a firearms licence (the matter remains ongoing).

Criminal and Quasi-Criminal Matters

Advised and appeared for the State (as a prosecutor) and private clients in criminal matters (both summary and indictable) in all Queensland Courts. Joshua has significant experience in complex regulatory matters involving statutory offences and, in particular, involving environmental offences. While he appears in all criminal and quasi-criminal cases, his practice focuses on regulatory and white-collar crime matters.

Some recent examples of criminal and quasi-criminal matters include:

- Advised and appeared (led by Devlin KC and Keim SC) as a prosecutor for the Crown in a significant prosecution under the *Environmental Protection Act 1994 (Qld)* of four executive officers for indictable offences. This matter involved an extensive brief of evidence and many expert witnesses.
- Advised and appeared for two police officer defendants against private prosecutions brought by a self-represented litigant under the *Justices Act 1886 (Qld)*, successfully having those matters struck out or permanently stayed. Both matters involved

preliminary questions as to the sufficiency of evidence as well as matters that attended an abuse of process of the Court.

Citations:

Ward v Saleh [2023] QMC 18.

WH v CK [2023] QMC 19.

- Acting for police officer defendants in an appeal to the Supreme Court from the decisions of the Magistrates Court to strike out complaints and successfully resisting that appeal.
- Advised and appeared (unled) as a prosecutor for Queensland Fire and Emergency Services (QFES) in a trial for 19 offences under the *Fire and Emergency Services Act* 1990 (Qld) and the *Building Fire Safety Regulation* 2008 (Qld).
- Advised and appeared (unled) for QFES as the respondent to a section 222 of the *Justices Act* 1886 (Qld) appeal against conviction in the District Court. This matter was advanced on the ground of apprehended bias. The respondent was successful in resisting the appeal.
- Advised and appeared (unled) for a private client in a criminal prosecution brought by the Brisbane City Council for planning offences (the matter remains ongoing).

Civil matters

Advised and appeared for private clients in civil disputes in all Queensland Courts. These matters involve contract disputes, planning and environment, property and land, corporate law, succession, and torts.

Some recent examples of civil, property and equity matters include:

- Advised and appeared (led by de Jersey KC) for a large pastoral client in a successful Supreme Court application regarding the interpretation of a ‘give and take’ agreement and ss 53 and 55 of the *Property Law Act* 1975 (Qld) and successfully resisting an Appeal to the Queensland Court of Appeal.

Citations:

Consolidated Pastoral Company Pty Ltd v Bellevue Station Pty Ltd [2023] QSC 202.

Bellevue Station Pty Ltd v Consolidated Pastoral Company Pty Ltd & Anor [2024] QCA 47.

- Advised and appeared (led by D Favell) for the State of Queensland in a malicious prosecution and misfeasance in public office suit against the State of Queensland and others.
- Advised and appeared (unled) for a private client in a claim for private nuisance and trespass to land in relation to a failed retaining wall (the matter settled out of Court).

- Advised and appeared (led by D Favell) for a private client defendant in a large civil action regarding building certification works undertaken on a childcare centre which involved a complex intersection of the *Building Act 1974* (Qld) and federal childcare legislation (the matter settled out of Court).
- Advised and appeared (unled) for a private client seeking a declaration of a common intention constructive trust over a property held in his brother's name but for which they both contributed financial and non-financial improvements (the matters settled out of Court).
- Advised and appeared (unled) for a de facto partner of a deceased in a family provision application in the Supreme Court of Queensland (the matter settled out of Court).
- Advised and appeared (unled) for a private client seeking a declaration for a constructive trust over an estate held as tenants in common on the title of Property, including advising with respect to the lodging of a caveat. This matter is complicated by the fact that many of the witnesses are now deceased (this matter remains ongoing).
- Advised a private client on commencing proceedings against a vendor under a Contract of sale of a Property to seek damages for repudiating the contract.
- Advised a private client on seeking summary judgment against a family provision application brought in the Supreme Court of Queensland (this matter remains ongoing).

Career history

- 2020 Called to the Bar
- 2020 Principal Lawyer at the Department of Environment and Science (Qld)
- 2017 Senior Lawyer at the Department of Environment and Science (Qld)
- 2014 Lawyer at the Department of Environment and Heritage Protection (Qld)
- 2012 Clerk at Legal Aid Queensland

Education

Bachelor of Laws, July 2011
Queensland University of Technology

Graduate Diploma of Legal Practice, November 2013
College of Law