

JOHN McKENNA QC

Barrister-at-Law

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PRACTICE

John McKenna QC has been in practice at the commercial bar in Queensland for over 30 years, including over 18 years as senior counsel. He has a particular interest in appellate and legally complex matters.

Mr McKenna QC is also a Nationally Accredited Mediator, with over 15 years of experience in the mediation and expert determination of commercial disputes.

Mr McKenna QC was educated at the Anglican Church Grammar School, the University of Queensland and as a Rhodes Scholar at the University of Oxford. He is a Fellow of the Australian Academy of Law, an Adjunct Professor of Law at the University of Queensland, the President of the University of Queensland Law Alumni Association, the Chairman of the Incorporated Council of Law Reporting for the State of Queensland, a member of the Supreme Court of Queensland Library Committee, a member of the statutory Legal Practice Committee and the National Secretary of the Association of Rhodes Scholars in Australia.

PROFESSIONAL QUALIFICATIONS

- Admission to the Bar: 17 September 1984 (Supreme Court of Queensland)
- Appointed SC/QC: 20 November 2002 (Supreme Court of Queensland)

BACKGROUND

Mr McKenna QC was born and educated in Brisbane. He attended the Anglican Church Grammar School (1974-78), where he graduated as dux. He then commenced an Arts-Law degree at the University of Queensland (1978-83), where he graduated with a Bachelor of Arts (majoring in Economics) and a Bachelor of Laws (Hon 1).

In his final year of studies, he was awarded the Rhodes Scholarship for Queensland. Prior to taking up this scholarship, Mr McKenna worked in the banking and finance section of the Brisbane firm of Feez Ruthning (later Allens) and was admitted as a barrister of the Supreme Court of Queensland (17 September 1984).

With the support of both a Rhodes Scholarship and a University of Queensland Travelling Scholarship, Mr McKenna undertook a period of postgraduate study at Magdalen College at the University of Oxford (1984-89). He graduated with a Bachelor of Civil Laws (Hon 1) and undertook a number of years of research into the history and modern expression of the doctrines of estoppel.

In 1989, Mr McKenna returned to Brisbane and commenced practice at the commercial bar. After completing his pupillage, he became one of the founding members of a new set of chambers which was established at Level 16, Quay Central. The other founding members of this group were Judge David Andrews QC, Justice Roger Derrington, Russell Hanson QC, Christopher Hughes QC, John Sheahan QC, Sandy Thompson QC, and Chief Judge Patsy Wolfe. As junior counsel, Mr McKenna appeared in a number of notable trials and appeals, including *Ainsworth v Criminal Justice Commission* (1992) 175 CLR 564; *Wik Peoples v State of Queensland* (1996) 187 CLR 1; *HA Bachrach Pty Ltd v State of Queensland* (1998) 195 CLR 547; *SGH Ltd v Commissioner of Taxation* (2002) 210 CLR 51; *I & L Securities Pty Ltd v HTW Valuers (Brisbane) Pty Ltd* (2002) 210 CLR 109; *Interchase Corporation Ltd (in liq) v Grosvenor Hill (Queensland) Pty Ltd* [2000] QSC 13; [2003] 1 Qd R 26 (trial and appeal); *JL Holdings Pty Ltd v State of Queensland* [1998] FCA 220 (trial); and *Bond University Limited v Limgold Pty Ltd* [1997] QSC 227; [1998] QCA 214 (trial and appeal).

On 20 November 2002, Mr McKenna was appointed to the rank of Senior Counsel for the State of Queensland.

Since this appointment, the primary focus of his practice has been on commercial matters involving legal issues of some complexity. These have arisen from many aspects of commercial activity in Queensland, including from the mining, gas, rail, port, electricity, water, sugar, finance, building, property, education and government sectors.

Notable recent cases in which Mr McKenna has appeared, include *Wagners Cement Pty Ltd v Boral Resources (Qld) Pty Limited* [2020] QCA 289; *Gladstone Ports Corporation Limited v Murphy Operator Pty Ltd & Ors* [2020] QCA 250; *Aurizon Network Pty Ltd v Glencore Coal Queensland Pty Limited & Ors* [2020] QCA 182, 211; *Orb Holdings Pty Ltd v WCL (Qld) Albert St Pty Ltd* [2020] QCA 198; *TRG v The Board of Trustees of the Brisbane Grammar School* [2020] QCA 190; and *Adani Abbot Point Terminal Pty Ltd v Lake Vermont Resources Pty Ltd & Ors* [2020] QSC 260. In recent years, Mr McKenna has also been acting in the liquidations of the Octaviar, LM and Queensland Nickel groups of companies.

Since taking silk, Mr McKenna has also maintained a busy practice as a mediator of commercial disputes. He has been a Nationally Accredited Mediator since 2014.

Mr McKenna's practice is based in Brisbane and focuses upon:

- appellate matters, before the Queensland Court of Appeal, the Full Federal Court and the High Court of Australia.
- mediation and expert determination of commercial disputes.
- the conduct of commercial litigation, including trials of limited duration.
- advisory work.

RANKINGS

Mr McKenna QC has been ranked by the following independent guides to the legal profession in Queensland:

Best Lawyers (www.bestlawyers.com)

- Lawyer of the Year – Commercial Law, Brisbane (2013, 2020)
- Bet-the-Company Litigation – Queensland (since 2014)
- Commercial Law – Queensland (since 2012)
- Litigation – Queensland (since 2012).

Doyle's Guide (www.doylesguide.com)

- Leading Commercial Litigation and Dispute Resolution Senior Counsel (Australia) 2015, 2020
- Leading Commercial Litigation and Dispute Resolution Senior Counsel (Queensland) 2015-20
- Leading Insolvency and Restructuring Senior Counsel (Queensland) 2015-20
- Leading Mediators – Queensland 2019-20

PRACTICE AREAS - SIGNIFICANT MATTERS

Mr McKenna has appeared in significant matters in the following practice areas:

- Administrative Law – eg *DBCT Management Pty Ltd v Treasurer and Minister for Infrastructure and Planning* (No 7058 of 2020 – Davis J); *Burrabungba v Minister for Natural Resources* [2018] 2 Qd R 93 (QCA); *Waratah Coal Pty Ltd v Mitchell* [2013] 1 Qd R 90 (QCA); *Ainsworth v Criminal Justice Commission* (1992) 175 CLR 564.
- Agency – eg *Queensland Nickel Pty Ltd (in liq) v Queensland Nickel Sales Pty Ltd* [2018] 3 Qd R 133 (QCA).
- Arbitration – eg *AGL Wholesale Gas Ltd v Origin Energy Ltd* [2009] 1 Qd R 305 (QCA); *Australian Granites Ltd v Eisenwerk Hensel Bayreuth Dipl-ING Burkhardt GmbH* [2001] 1 Qd R 461 (QCA); *re Independent State of Papua New Guinea* [2001] 2 Qd R 162.
- Auditor's Negligence: eg *LM Investment Management Limited (in liq) v EY (No 5)* [2020] QSC 264.
- Banking and financial institutions – eg *Australia & New Zealand Banking Group Ltd v Menzel & Anor* [2015] QSC 127; *Mac Developments (Gold Coast) Pty Ltd v Rams Financial Group Pty Ltd* [2010] QSC 477; *SGH Ltd v Commissioner of Taxation* (2002) 210 CLR 51; *Scott v Partnership Pacific Limited* [1993] QCA 181.
- Civil Procedure – eg *LM Investment Management Limited (in liq) v EY (No 5)* [2020] QSC 264; *Queensland Nickel Pty Ltd (in liq) v Queensland Nickel Sales Pty Ltd* [2018] 3 Qd R 133 (QCA); *Gallagher v Boylan* [2013] 1 Qd R 204 (CA); *Artahs Pty Ltd v Gall Standfield & Smith (a firm)* [2013] 2 Qd R 202 (QCA); *Mango Boulevard Pty Ltd v Spencer* [2010] QCA 207; *Legal Services Commissioner v Wright* [2012] 2 Qd R 360 (QCA); *Mango Boulevard Pty Ltd v Spencer* [2010] QCA 207; *Tsui v Westpac Banking Corporation* [2002] 2 Qd R 335 (QCA); *re Independent State of Papua New Guinea* [1999] 2 Qd R 365; *re Devine Erby Mazlin (Qld) Pty Ltd* [1998] 1 Qd R 592 (QCA); *re Cochran Consulting Inc v Uwatec USA Inc* [1998] 2 Qd R 137; *re Cameron* [1996] 2 Qd R 218 (QCA); *GSA Industries (Aust) Pty Ltd v Tully* [1995] 1 Qd R 607 (QCA).
- Class Actions – eg *Adeva Home Solutions Pty Ltd v Queensland Motorways Management Pty Ltd* (No 13643/20); *Dodd v Shine Corporate Ltd* [2018] QSC 40; *Gladstone Ports Corporation Limited v Murphy Operator Pty Ltd* [2019] 3 Qd R 255; [2020] QCA 250.
- Constitutional Law – eg *John Holland Pty Ltd v Victorian Workcover Authority* (2009) 239 CLR 518; *Energex Ltd v Elkington* [2003] QCA 430; *SGH Ltd v Commissioner of Taxation*

(2002) 210 CLR 51; *Kangaroo Point East Association Inc v Balkin* [1995] 2 Qd R 135 (QCA); *HA Bachrach Pty Ltd v State of Queensland* (1998) 195 CLR 547; *re Pudig* [1990] 2 Qd R 551 (QFC).

- Contract - eg *Wagners Cement Pty Ltd v Boral Resources (Qld) Pty Limited* [2020] QCA 289; *Aurizon Network Pty Ltd v Glencore Coal Queensland Pty Limited* (2019) 1 QR 392; [2020] QCA 182, 211; *AJ Lucas Operations Pty Ltd v Gladstone Area Water Board* [2015] QCA 287; *Mango Boulevard Pty Ltd v Mio Art Pty Ltd* [2013] QCA 271; *Thiess Pty Ltd v Arup Pty Ltd* [2013] QCA 65; *Mac Developments (Gold Coast) Pty Ltd v Rams Financial Group Pty Ltd* [2010] QSC 477; *AMCI Investments Pty Ltd v Rio Doce Australia Pty Ltd* [2008] QCA 387; *JV Property Syndicates Pty Ltd v Croakybill Ltd* [2005] QCA 479; *THL Robina Pty Ltd v The Glades Golf Club Pty Ltd* [2005] 2 Qd R 186; *Hope Island Resort Holdings Pty Ltd v Jefferson Properties (Qld) Pty Ltd* [2005] QCA 315; *Harpur v Ariadne Australia Ltd* [1996] QCA 483; *Hyatt Australia Ltd v LTCB Australia Ltd* [1996] 1 Qd R 260 (QCA); *Mackintosh Contractors Pty Ltd v Coochin Nominees Pty Ltd* [1994] QCA 234; *Snowlife Pty Ltd v Robina Land Corporation (No 2)* [1992] 1 Qd R 564 (QFC).
- Corporations Law – eg *Trojan Equity Pty Ltd v CMI Ltd* [2009] 2 Qd R 591; *Energex Ltd v Elkington* [2003] QCA 430; *Southern Cross Airlines Holdings Ltd (in liq) v Arthur Anderson & Co* (1998) 84 FCR 472; *Jalmoon Pty Ltd (in liq) v Bow* [1997] 2 Qd R 62 (QCA).
- Crown Land – eg *Wik Peoples v State of Queensland* (1996) 187 CLR 1; *JL Holdings v State of Queensland* [1998] FCA 220.
- Damages – eg *Hutchinson v Equitour Pty Ltd* [2011] 2 Qd R 99 (QCA); *I & L Securities Pty Ltd v HTW Valuers (Brisbane) Pty Ltd* (2002) 210 CLR 109; *Astonland Pty Ltd v HTW Valuers (Central Qld) P/L* [2002] QCA 302.
- Duties and State Taxes: *Sojitz Coal Resources Pty Ltd v Commissioner of State Revenue* [2016] 1 Qd R 75; *Orica IC Assets Pty Ltd & Anor v Commissioner of State Revenue* [2011] QSC 1; *Westpac Banking Corporation v Commissioner of State Revenue* [2005] QCA 327; *Mercantile Mutual Health Ltd v Commissioner of Stamp Duties* [2003] 2 Qd R 515 (QCA); *Broken Hill Proprietary Co Ltd v Commissioner of Stamp Duties* [1998] 1 Qd R 452 (QCA); *re Australian and Overseas Telecommunications Corporation Ltd* [1994] 2 Qd R 350 (QCA).
- Elections and Political Parties – *Carroll v Electoral Commission of Queensland* [2001] 1 Qd R 117, 164; *Baldwin v Everingham* [1993] 1 Qd R 10.
- Electricity Industry – eg *AGL Energy Ltd v Queensland Competition Authority* [2009] QSC 116.



- Estoppel – eg *JL Holdings Pty Ltd v State of Queensland* (1998) 85 FCR 1; *Bond University Ltd v Limgold Pty Ltd* [1998] QCA 214.
- Expert Determinations – *Northbuild Construction Pty Ltd v Discovery Beach Project Pty Ltd* [2007] QSC 206.
- Forestry Industry – eg *Yarraman Pine Pty Ltd v Forestry Plantations Queensland* [2009] QCA 102.
- Gas Industry - eg *AGL Sales (Qld) Pty Ltd v Westside Corporation Ltd* [2015] QSC 70; *AGL Wholesale Gas Limited v Origin Energy Limited* [2009] 1 Qd R 305; *Sykes v Queensland Gas Company* [2009] QCA 163; *Xstrata Queensland Ltd v Santos Ltd* [2005] QSC 323.
- Insolvency – eg *re Octaviar Ltd* [2020] QSC 353; *Colefax v National Australia Bank Ltd* [2019] 2 Qd 449 (QCA); *LM Investment Management Limited v Whyte (No 3)* [2018] 2 Qd R 475; *Queensland Nickel Pty Ltd (in liq) v Queensland Nickel Sales Pty Ltd* [2018] 3 Qd R 133; *Williams v Peters* [2010] 1 Qd R 475 (QCA); *State of Queensland v Walter Construction Group Ltd* [2006] 1 Qd R 376; *Emanuel Management Pty Ltd v Foster's Brewing Group Ltd* [2003] QSC 205; *re World Expo Park Pty Ltd (in liq)* [1999] 1 Qd R 566; *Daydream Island International Resort Pty Ltd v Cushway Blackford & Associates Pty Ltd* [1995] 2 Qd R 128.
- Insurance – eg *Australian Securities and Investment Commission v Youi Pty Ltd* [2020] FCA 1701; *Delta Pty Ltd v Team Rock Anchors Pty Ltd* [2018] 1 Qd R 564; *Mattress Innovations Pty Ltd v Suncorp Metway Insurance Ltd* [2013] QCA 377; *The Barclay MIS Group of Companies Pty Ltd v Australian Securities and Investments Commission* (2002) 125 FCR 374.
- Joint Ventures – eg *Sanrus Pty Ltd v Monto Coal 2 Pty Ltd* [2014] QSC 23; *Mango Boulevard Pty Ltd v Mio Art Pty Ltd* [2013] QCA 271.
- Leasing - eg *400 George Street (Qld) Pty Ltd v BG International Ltd* [2012] 2 Qd R 302 (CA); *Boss v Hamilton Island Enterprises Limited* [2010] 2 Qd R 115 (QCA); *Ballymaloe Pty Ltd v Retail Shop Lease Tribunal* [2004] 1 Qd R 600.
- Legal Profession – eg *Gregory v Queensland Law Society Inc* [2002] 2 Qd R 583 (QCA); *Hyland v Campbell* (1995) Aust Torts Rep 81-352 (CA) *re Pudig* [1990] 2 Qd R 551 (QFC).
- Limitation Periods – eg *TRG v The Board of Trustees of the Brisbane Grammar School* [2020] QCA 190; *Hutchinson v Equitour Pty Ltd* [2011] 2 Qd R 99 (QCA).
- Litigation Funding – eg *Gladstone Ports Corporation Limited v Murphy Operator Pty Ltd* [2020] QCA 250; *Elfic Ltd v Macks* [2003] 2 Qd R 125 (QCA).



- Mining Industry– eg *Burrabungba v Minister for Natural Resources* [2018] 2 Qd R 93 (QCA); *Waratah Coal Pty Ltd v Mitchell* [2013] 1 Qd R 90 (QCA); *Sanrus Pty Ltd v Monto Coal 2 Pty Ltd* [2014] QSC 23; *AMCI Investments Pty Ltd v Rio Doce Australia Pty Ltd* [2008] QCA 387; *Gonzo Holdings No 50 Pty Ltd v McKie* [1996] 2 Qd R 240 (QCA).
- Queensland Competition Authority – *DBCT Management Pty Ltd v Treasurer and Minister for Infrastructure and Planning* (No 7058 of 2020, Davis J); *AGL Energy Ltd v Queensland Competition Authority* [2009] QSC 116.
- Rail and Port Services – eg *Aurizon Network Pty Ltd v Glencore Coal Queensland Pty Limited & Ors* [2020] QCA 182, 211; *Adani Abbot Point Terminal Pty Ltd v Lake Vermont Resources Pty Ltd & Ors* [2020] QSC 260; *Gladstone Ports Corporation Limited v Murphy Operator Pty Ltd & Ors* [2020] QCA 250.
- Schemes of Arrangement – eg *re Queensland Professional Credit Union Ltd (No 2)* [2016] QSC 105; *re Suncorp Metway Limited* (unreported); *re Magna Pacific (Holdings) Limited* [2007] QSC 289; *re Golden Circle Limited* [2008] QSC 341; *re Pioneer Permanent Building Society Limited* (unreported); *re Pipe Networks Limited* (unreported).
- Stockbroking - eg *Securities Exchange Guarantee Corporation Ltd v Samuel Holdings Pty Ltd* [2012] 1 Qd R 377 (QCA).
- Sugar Industry – eg *Mackay Sugar Ltd v Sugar Australia Pty Ltd* [2012] QSC 38; [2013] QSC 233.
- Takeovers – eg *Energex Limited v Elkington* (2003) 47 ACSR 442.
- Telecommunications – eg *Gold Coast City Council v Satellite & Wireless Pty Ltd* [2014] FCAFC 51.
- Torrens Land– eg *Orb Holdings Pty Ltd v WCL (Qld) Albert St Pty Ltd* [2020] QCA 198; *Colefax v National Australia Bank Ltd* [2019] 2 Qd 449 (QCA); *Keddell v Regarose Pty Ltd* [1995] 1 Qd R 172 (QCA).
- Torts - eg *Astonland Pty Ltd v HTW Valuers (Central Qld) Pty Ltd* [2002] QCA 30; *Interchase Corporation Limited (in liq) v Grosvenor Hill (Queensland) Pty Ltd (No 3)* [2003] 1 Qd R 262 (QCA); *Hill v Van Erp* [1995] QCA 10 ;
- Trade Practices – eg *Adani Abbot Point Terminal Pty Ltd v Lake Vermont Resources Pty Ltd* [2020] QSC 260; *Lanai Unit Holdings Pty Ltd v Mallesons Stephen Jacques (No 1)* [2017] 2 Qd R 456; *I & L Securities Pty Ltd v HTW Valuers (Brisbane) Pty Ltd* (2002) 210 CLR 109; *McKnulty v South East Queensland Electricity Board* [1992] 2 Qd R 517; *State of Queensland v Pioneer Concrete (Qld) Pty Ltd* (1999) ATPR 41-691.

- Trusts and Superannuation Funds – eg *Colefax v National Australia Bank Ltd* [2019] 2 Qd 449 (QCA); re *Bundaberg Sugar Superannuation Pty Ltd* [2014] QSC 118; *Thiess Watkins White Ltd v Equiticorp Australia Ltd* [1991] 1 Qd R 82.
- Universities and Schools – eg *TRG v The Board of Trustees of the Brisbane Grammar School* [2020] QCA 190; *Tang v Griffith University* [2003] QCA 571.
- Valuer's Negligence - eg *Astonland Pty Ltd v HTW Valuers (Central Qld) Pty Ltd* [2002] QCA 30; *Interchase Corporation Limited (in liq) v Grosvenor Hill (Queensland) Pty Ltd (No 3)* [2003] 1 Qd R 262 (QCA).
- Vendor and Purchaser– eg *Boylan v Gallagher* [2012] 1 Qd R 420 (QCA); *Gallagher v Boylan* [2013] 1 Qd R 204 (QCA); *Zhang v South Sky Investments Pty Ltd* [2011] QSC 367. *JV Property Syndicates P/L v Croakybill Ltd* [2005] QCA 479 *Goldtaper Pt Ltd v Berela* [2001] QCA 564; *Bluestone Pty Ltd v Wilispa Pty Ltd* [1994] QCA 528.

PUBLICATIONS

Mr McKenna is the author of a history of the Supreme Court of Queensland: *Supreme Court of Queensland: A Concise History* (UQP, 2012).

Since 2014, he has been the Queensland contributor to the *Australian Law Journal* (Thomson Reuters).

Between 2012-17, he was the Editor of the *Queensland Legal Yearbook* (SCLQ).

His published articles include:

- “The Griffith Opinion Books” published in *Queensland Legal Yearbook 2013* (SCLQ, 2014)
- “The Emergence of an Australian Common Law in Colonial Queensland” published in *The Idea of Legal History: A Tribute in Honour of Dr Michael White QC* (SCLQ, 2014).
- “The Courthouse in Operation – A Perspective from the Bar” published in *Queensland Legal Yearbook 2012* (SCLQ, 2013)
- “Evolution of the Queensland Constitution” published in *Queensland’s Constitution: Past, Present and Future* (SCLQ, 2010).
- “Remedies in Estoppel” published in *Justice According to Law: A Festschrift for the Honourable Mr Justice BH McPherson CBE* (SCLQ, 2006).



UNIVERSITY OF QUEENSLAND - TC BEIRNE SCHOOL OF LAW

Mr McKenna QC has taught in both the LLB and LLM programmes at the Law School since 2013:

- Adjunct Professor of Law (from 2013).
- Course Co-Ordinator and Lecturer (with GN Williams QC) – LLM Subject “Advanced Civil Litigation” (from 2013).
- Course Co-Ordinator and Lecturer (with David O’Brien) – LLM Subject “Interpretation of Statutes and Instruments” (from 2021).
- Visiting Lecturer (Pleadings) – LLB Subject “Civil Procedure” (from 2013).

AUSTRALIAN ACADEMY OF LAW

In 2019, Mr McKenna was elected a Fellow of the Australian Academy of Law (www.academyoflaw.org.au).

UNIVERSITY OF QUEENSLAND LAW ALUMNI ASSOCIATION

Mr McKenna QC has served as the President of the UQLA since its foundation in 2016. The UQLA is a registered charity, which seeks to organize alumni support for the educational endeavours of the UQ Law School, including by providing scholarships for students in need (www.uqla.org.au).

INCORPORATED COUNCIL OF LAW REPORTING FOR THE STATE OF QUEENSLAND

Mr McKenna QC has served as the Chairman of the ICLRQ since 2011. The ICLRQ is a registered charity which publishes the authorized reports of the Supreme Court of Queensland (*Queensland Reports*) and an online database of Queensland Judgments (www.queenslandjudgments.com.au).



SUPREME COURT OF QUEENSLAND LIBRARY

Mr McKenna QC has served as a member of the Supreme Court of Queensland Library Committee since 2005. The Committee is a statutory body which is responsible for the provision of library and other information services to the courts and the legal profession in Queensland (www.sclqld.org.au). Mr McKenna served for a number of years as Chair of the History and Publications Sub-Committee of the Library (2013-2019).

LEGAL PRACTICE COMMITTEE

Mr McKenna QC has served as a member of the Legal Practice Committee since its foundation in 2004. The LPC is a statutory committee which is responsible for hearing disciplinary proceedings brought against legal practitioners (www.lpccommittee.qld.gov.au).

RHODES SCHOLARS IN AUSTRALIA

Mr McKenna has served on the National Executive of the Association of Rhodes Scholars in Australia, and as the Queensland State Secretary, since 2012.

He has also served as a Director of Rhodes Scholarships in Australia Pty Ltd, a body which seeks to raise funds to support the Rhodes Scholarships, since 2014.