

curriculum vitae

PERSONAL DETAILS

Name: Mark Gerard Higgins

Nationality : Australian

British

Contact Details:

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Date of Birth: 7th November 1963

Professional Qualifications Master of Laws (LLM) 1993
Bachelor of Laws (LLB) 1988

Education

Tertiary

1990 – 1993 University of NSW
Master of Laws – LLM

January –
June 1988 College of Law

Admitted: Solicitor of Supreme Court of NSW – 1988
Solicitor of High Court of Australia - 1988
Barrister of Supreme Court of ACT – 1992
Barrister of Supreme Court of NSW – 2000
Barrister of Supreme Court of Nauru – 2017

1982 – 1987 University of Sydney

Bachelor of Laws – LLB

Secondary

Higher School Certificate, 1981
Waverley College

Foreign Jurisdiction

Admissions

Supreme Court of Nauru – 2017 - 2019

International Work

Nauru – 2017 – 2019
Appearances in Court of Appeal of Supreme Court of Nauru as defence counsel.
Appearances in Supreme Court of Nauru as defence counsel
Appearances in District Court of Nauru as defence counsel

Appointments

Environmental Counsel to the Board of the NSW Environment Protection Authority (EPA) under s 17 of the *Protection of the Environment Administration Act 1991*.

Founding Judge (2019 – to date)
Prospera Zone for Economic Development and Education (ZEDE)
Prospera Arbitration Centre LLC
Republic of Honduras

Trustee and Secretary (March 2020 – to date)

Standing Competence and Ethics Committee (SCEC)
Próspera Zone for Economic Development and Education (“ZEDE”),

Próspera Arbitration Center LLC

Republic of Honduras

List of counsel
International Criminal Court (2018 – to date)
The Hague

Netherlands

Department of Justice – Prequalification Panel
(2016 – 2019)
NSW Department of Justice
Office of General Counsel

RSPCA (NSW)
Panel of Counsel briefed for prosecutions under
Prevention of Cruelty to Animals Act 1979 (NSW),
(2017 – to date)

Glebe House Ltd
Chairman of the Board of Directors (1999 – 2000)
Secretary of the Board of Directors (1998, 2001, 2002,
2003)
Board Member 1997 – 2003
5 Mount Vernon Street
Glebe NSW 2037

Secretary of the Board of Directors (2005 – 2007)
President of the Board of Directors (2009 – 2011)
Board of Directors (2005 – 2016)
Life member
Australian Lawyers Surfing Association

NSW Mentor
Aussie Bigways
Australian Parachute Federation
(2018 – to date)

Publications

1. “ Bail Applications “
Lawyers Practice Manual – New South Wales
Volume 1
Redfern Legal Centre
The Law Book Company Limited
2009 to 2017

2. “ The Philosophy of Care “ ABC FM radio 7 March
1997
(a five part radio program looking at five professionals
in the social welfare system of Australia)

3. Parity – Homelessness And The Law “ The
Linkages Between Homelessness And The Criminal
Justice System “ Council To Homeless Persons ,
Volume 13, Issue 6, June 2000 at p22

Lectureships

University of Technology Sydney (UTS)

Faculty of Law - 2003
 Undergraduate degree – Principles of Evidence
 College of Law – Practical Legal Training Program –
 2000 – 2001

University of Wollongong (UoW)
 Faculty of Law
 Master of Criminal Law
 Guest Lecturer
 2015 - 2019

Selected Cases

- Adam Michael Rossall v Regina [2021] NSWCCA 200
- Belan v Office of the Director of Public Prosecutions (NSW) [2021] NSWCA 96 (20 May 2021)
- DKN20 v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs [2021] FCAFC 97
- Decision restricted [2021] NSWCCA 74 (21 April 2021)
- G v R [2021] NSWCCA 50 (26 March 2021)
- Jesse v Roads and Maritime Services NSW [2019] NSWCCA 176 (2 August 2019)
- Republic v Batsiua [2019] NRCA 2; Criminal Appeal Case 2 of 2018
- Jeremiah v Republic [2018] NRCA 1; Criminal Appeal Case 1 of 2018
- Cecil v Director of Public Prosecutions (Nauru); Kepae v Director of Public Prosecutions (Nauru); Jeremiah v Director of Public Prosecutions (Nauru) [2017] HCA 46

Advocacy Coaching

Office of Environment and Heritage
 Department of Premier and Cabinet
 Advocacy coaching to prosecutors - 2012

NSW Bar Association Bar Practice Course Advocacy coaching:

- 2014
- 2015

- 2016

Papers delivered:

“Competence and the consequence for the statutory presumption under s 97A Evidence Act” – LegalWise CPD - 12 March 2022

“Summer series” – a collection of weekly CPD to the Aboriginal Legal Service in the area of child protection and the care jurisdiction of the NSW Children’s Court

- Risk in Care – CPD - 9 February 2022
- Lessons from *KH v Secretary, Department of Communities and Justice* - CPD - 16 February 2022
- Case Management of care matters and using the Summary of Proposed Plan as a metric for casework – CPD - 23 February 2022
- Appealing Children’s Court decisions - what, where and when? CPD – 9 March 2022

“Constitutional Crisis and the Rule of Law in Nauru”
Campbelltown Macarthur Law Society
Macarthur Grange Country Club
8 March 2019

“Apprehended bias – Principles and case law”
In - House training
Office of General Counsel
NSW Department of Attorney General and Justice
27 August 2018

“Criminal law practice in an administrative law forum”
Master of Laws – Applied Criminal Law Programme
University of Wollongong – 4 May 2018

Judicial Review of Administrative Action in Applications
for Parole
NSW Bar Association
Compulsory Professional Development Seminars
Date: 24 February 2018
Venue: Park Royal Parramatta

Judicial Review of Administrative Action in Applications
for habeas corpus
Office of General Counsel
NSW Department of Justice
Date: 1 November 2017

Venue: Level 1, 20 Lee Street, Sydney

“Criminal law practice in an administrative law forum”
Master of Laws – Applied Criminal Law Programme
University of Wollongong – 6 May 2017

The evolution in NSW of chain of responsibility
offences for heavy vehicles under the National Law
Heavy Vehicle National Law
University of New South Wales
City Campus
LegalWise Seminars
18 March 2016

“Criminal law practice in an administrative law forum”
Master of Laws – Applied Criminal Law Programme
University of Wollongong – 7 May 2016

Outline of Procedural Issues for the Commencement
of Summary Proceedings
Fraser Clancy Lawyers
18 October 2013

“Duties of a Prosecutor”
Master of Laws – Applied Criminal Law Programme
University of Wollongong – June 2012

Aboriginal Access to Advocacy Pilot Project
Aboriginal Legal service of NSW
12 January 2012

Advocacy in Merit Review Appeals
Legal Wise seminars
7 September 2011

“Fitness to be tried”
CPD Seminar
11th Floor Garfield Barwick Chambers
7 March 2011

Fitness to Plead
Australian Lawyers Surfing Association
Latitude Zero, Telos Islands, Nth Sumatra
August 2011

Factors Which Impact Upon Advocacy Before A Merits
Review
University of New South Wales
City Campus
LegalWise Seminars

7 October 2011

“The Great Debate”
Police and Justice Museum
Law Week
May 2003

Professional Practice

Experience

24 February 2000
to date

Barrister

Criminal

Prosecutions

The practice is primarily the advising for the conduct and commencement of criminal prosecutions in regulatory offences within various industries.

- (a) *NSW Director of Public Prosecutions* : currently on the roll of counsel to be briefed to prosecute indictable offences in the District and Supreme Courts of NSW as Crown Prosecutor. The position involves the finding of bills of indictment, advising as to appropriate counts on an indictment, conducting trials before juries, and any consequential sentence proceedings; the position also entails advising as to appellable error.
- (b) *NSW Food Authority*: Prosecutions in the Supreme Court in its summary jurisdiction, and the Industrial Magistrate’s court for breaches of the Food Act.
- (c) *NSW Department of Trade and Investment*:
 - (i) the conduct of prosecutions in the Industrial Relations Commission in Court Session (formerly) and District Court, summary jurisdiction, under Work Health and Safety Act 2011 and Coal Mine Health and Safety Act 2002 and the Mining Act 1992;

- (ii) the appearances are in Supreme Court in its summary jurisdiction, Local Court prosecutions and District Court appeals on behalf of the Department for prosecutions and applications for forfeiture under Noxious Weeds Act, Fisheries Management Act, and Stock Diseases Act.
- (d) *National Parks and Wildlife Service*: appearing in Local Court prosecutions on behalf of the Service for breaches of the Act by park users.
- (e) *NSW Police Service* : appearing in the Children's, Local, District and Supreme Courts on behalf of the NSW Police Commissioner for applications against persons who come within the Child Protection (Offender Prohibition Orders) Act 2004 for the application for orders to restrict the movements of those persons; and to represent the interests of NSW Police in response to subpoenas where production and/or access is opposed on the basis of public interest immunity, privilege, oppressive request or no legitimate forensic purpose.
- (f) *Chief Commissioner for State Revenue, Office of State Revenue (NSW)*: appearing in the Local Court and District Court (on appeal) jurisdictions for stamp duty frauds arising under the First Home Owners Grant Scheme, pay roll tax fraud, and land tax fraud.
- (g) *NSW Roads and Maritime Services*: advising on the investigation of offences, advising on the issuing of statutory notices for production of documents or presentation of persons for interviews, advising on the issue of search warrants, advising on the commencement of prosecutions in the summary jurisdiction of the NSW Supreme Court and Local Court, conduct of complex criminal prosecutions against transport corporations for Heavy Vehicle breaches of Mass, Loading and Access provisions, and the Driver Fatigue provisions, and the Speed limiter Compliance obligations in the National Road Transport legislation, and the conduct of any consequential sentencing proceedings.

- Operation Overland – 2012 – 2016
- (h) *NSW Department of Education and Communities*: advice on and the commencement and conduct of prosecutions against Child care services pursuant to the Children (Education and Care Services) National Law (NSW) and Education and Care Services National Regulations.
- (i) *Department of Attorney-General and Justice*: prosecutions of persons in public office on indictment in the District Court of New South Wales, and summarily in the NSW Local Court for corruption in public office.
- (j) *RSPCA (NSW)*: prosecutions of person and corporations under *Prevention of Cruelty to Animals Act 1979 (NSW)* summarily in Local Court of NSW
- (k) *Department of Planning and Environment*: prosecutions under for sale and possession of threatened and protected species of fauna under the *National Parks and Wildlife Act 1974 (NSW)*

Defence

This aspect of the practice is primarily criminal defence appearances in a range of jurisdictions. Principally appearances are in jury trials in the Supreme and District Courts of NSW but extends also to the Local Court for committals and Coronial inquiries for unexplained deaths (usually infants in the care of the Minister for Community Services and his designated agencies and authorised carers).

Coronial Jurisdiction

Appearances are primarily as counsel assisting to the State Coroner and Deputy State Coroners, but also for Government agencies: Department of Family and Community Services in coronial inquiries.

- Inquest into the death of Eve Schwartz – counsel assisting – Glebe Coroners Court – 23 May 2013
- Inquest into the death of Magda Wales – counsel assisting – Glebe Coroners Court – 23 May 2013

- Inquest into the death of Kiara Simon – counsel assisting – Glebe Coroners Court – 22 August 2012
- Inquest into the death of a person known as Hope (pseudonym for a child) – counsel assisting – Glebe Coroners Court – 17 June 2013; 3-7 and 10-14 February 2014; 11-13 June 2014
- Inquest into the death of Melissa Dunn – counsel for Family and Community Services – Glebe Coroners Court – 26 September 2014
- Inquest into the death of Glenn Punch – counsel for Matthew Wynn – Glebe Coroners Court – 8 – 11 October 2013
- inquest into the death of Ian Saunders Gowie – counsel assisting – Glebe Coroners Court – 10 – 15 December 2012
- Inquest into death of Melissa Cook and John Kudrytch - counsel assisting – Glebe Coroners Court – March 2011
- Inquest into the Death of Noel McGrady - counsel assisting – Glebe Coroners Court – 28 – 30 March 2011
- Inquest into the death of (a Child) - counsel assisting – Westmead Coroners Court – 13 – 15 December 2010 (sitting at Parramatta)
- Inquest Into the Death of Grant Willcocks - counsel assisting – Glebe Coroners Court – 10 – 13 May 2010
- Inquest into the death of Robbie-Dean Gillett - counsel assisting – Glebe Coroners Court – 28 February – 9 March 2010

Care and Child Protection Proceedings

NSW Department of Family and Community Services: appearing on behalf of the Secretary of Family and Community Services and the Minister for Community Services in the Supreme Court (Equity Division) in the exercise of its *parens patriae* jurisdiction, and to prosecute applications for the care and protection of

children pursuant to the Children and Young Persons (Care and Protection) Act 1998 in the Children's Court of NSW, and appeals in the District Court of New South Wales.

Administrative Law

NSW Jurisdictions

Counsel Assisting – appearance as Counsel Assisting the NSW Civil and Administrative Appeals Tribunal in relation to open, closed and secret hearings in applications for administrative review by applicants under the Security Industry Act 1997.

Applicant – appearances in the NSW Civil and Administrative Appeals Tribunal and NSW Industrial Relations Tribunal in Court Session for applications pursuant to sections 27 of the Child Protection (Working with Children) Act 2012 and Child Protection (Offenders Registration) Act 2000.

Applicant – appearances before stewards inquiries of Controlling Authorities from NSW Greyhound Racing and Harness racing NSW, and appeals to the Racing Appeals Tribunal for veterinarians, trainers, owners, riders, drivers and jockeys arising from sport.

Respondent – advice and appearance in the NSW Civil and Administrative Appeals Tribunal briefed by the Crown Solicitors Office on behalf of:

- (a) The Commissioner of the Office of Children's Guardian for applications pursuant to Child Protection (Working with Children) Act 2012 and Child Protection (Offenders Registration) Act 2000.
- (b) Chief Commissioner for State Revenue in relation to objections to assessments of land tax by landowners
- (c) Medical Council of NSW arising from applications for re-registration and disciplinary proceedings for health practitioners under the Health Practitioner Regulation National Law (NSW) 2009.
- (d) Secretary, NSW Department of Family and Community Services for administrative review of decisions by the Department to remove children

from foster placements pursuant to Chapter 16
Children and Young Persons (Care and Protection)
Act 1998.

Federal Jurisdictions

Applicant – advice, commencement and appearance in the Administrative Appeal Tribunal and the Federal Court in relation to administrative review of decisions under the Australian Sports Anti-Doping Act 2006 for professional sports persons.

14 June 1994 to
24 February 2000

Solicitor Advocate – Grade V – Legal Aid
Commission of NSW

Indictable Section – Advocacy Unit

This position involved :

- Predominantly, the preparation and personal conduct of criminal trials in the District Court jurisdiction in New South Wales and occasionally in the Supreme Court and Local Court (Coroner's Court) jurisdictions.
- Drafting and submitting written submissions on interlocutory matters and complex sentence matters
- the training and supervision of solicitors in conduct of criminal matters for the particular regional office to which the advocate is allocated.
- preparation and personal conduct of homicide committal proceedings in the Local Court
- the preparation and conduct of sentence proceedings and related matters in the District Court jurisdictions
- the provision of advice on management and policy issues related to the Commission's Criminal Law Practices where appropriate.
- Liaising with local non-english speaking community groups as to the provision of social welfare needs for accused persons.
- Providing advice in relation to No Bill Applications to the Director of Public Prosecutions
- Liaising with Crown authorities on averments in bills of indictment and potential demurrers to those indictments

- Presentation of lectures to solicitors both in the public and private sector in New South Wales at annual Continuing Legal Education conferences
- Providing advice to criminal solicitors employed by the Legal Aid Commission of New South Wales

12 July 1993

Legal Officer Grade I-III – Legal Aid Commission of NSW, Inner City Local Courts (Newtown Local Court)

to 14 June 1994

Criminal Duty Solicitor

This position involved daily appearances in the local court jurisdiction for the purpose of bail applications, seeking interlocutory orders, receiving and perusing briefs of evidence from the Crown, pleas in mitigation, advising custodial and non-custodial clients in relation to pleas prior to hearings, preparation and appearance at hearings in the local court jurisdiction for matters of summary jurisdiction and those indictable matters from which summary jurisdiction is granted. The position also involved the taking of instructions from defendants in custody together with appearances in the District Court for appellants from the local court jurisdiction on appeal.

16 December 1992

Legal Officer Grade V – Legal Aid Commission of NSW Parramatta Branch Office

to 12 July 1993

Indictable Section – Solicitor-in-Charge

This position, in addition to incorporating all of the duties of a Legal Officer Grade I-III, also involved the supervision and allocation of trials and sentence matters to the Solicitor Advocate of the office and the briefing of the Public Defender by subordinate solicitors. The position also entailed negotiating Bills of Indictment with Crown Prosecutors on arrangement and advising on the appropriate plea as well as supervision and training of Grade I-III solicitors.

Parramatta District was also the pilot court for the Sentence Indication Scheme, which involved negotiating Bills of Indictment, researching and advising on relevant principles of law pertaining to defence and sentence and appearing on the sentence indication.

7 August 1991 - **Legal Officer Grade I-III** – Legal Aid Commission of
NSW Parramatta Branch Office

16 December 1992

Indictable Section – Duty Solicitor

This position primarily involved representation in the District Court jurisdiction on a daily basis in the following capacities:

- . *Sentencing*
- . *Interlocutory Applications*
- . *Mental Health (Criminal Procedure) Act*
- . *Trial Experience*
- . *Bail Applications*

21 January 1991- **Legal Officer Grade I-III** – Legal Aid Commission of
NSW

7 August 1991 Parramatta Branch Office Division

Criminal Duty Solicitor

This position involved daily appearances in the local court jurisdiction for the purpose of bail applications, seeking interlocutory orders, receiving and perusing briefs of evidence from the Crown, pleas in mitigation, advising custodial and non-custodial clients in relation to pleas prior to hearings, preparation and appearance at hearings in the local court jurisdiction for matters of summary jurisdiction and those indictable matters from which summary jurisdiction is granted. The position also involved the taking of instructions from defendants in custody together with appearances in the District Court for appellants from the local court jurisdiction on appeal.

1 July 1990 –
21 January 1991

Legal Officer Grade III-IV - Legal Aid Commission of
NSW Parramatta Branch Office Division
Solicitor-in-Charge

Civil/Family Litigation

This position in addition to incorporating all of the duties of a Legal Officer Grade I-III of the branches' division, also involved the supervising of day-to-day court appearances, file management and public interviews by nominated Legal Officers under my supervision, support and secretarial staff. The position also involved the supervision and training of Grade I-III solicitors, the establishment and maintenance of an effective and workable Civil Litigation practice for three solicitors; liaising with members of the private legal profession regarding referred matters; Equal Employment Opportunity responsibilities which involved ensuring tasks were allocated to legal Officers under my supervision and support staff on a non-discriminatory basis, to ensure that staff are given equal opportunity to act in higher graded positions, to ensure that staff in lower graded positions are given courses, opportunities to undertake more challenging work and encouragement to seek promotions, and monitor attitudes and behaviour of staff that in inconsistent with the E.E.O. objectives.

13 November 1989 – **Legal Officer Grade I-III** – Legal Aid Commission of
NSW
30 June 1990 Parramatta Branch Office Division

The above position involved the following types of matters:

Civil Litigation

- . Supreme court
 - Professional negligence – Breach Fiduciary Duty by Solicitors
 - Breach copyright
 - Personal Injury – Death & Injury

- Medical Negligence – Obstetricians, Gynaecologists & Paediatricians
- Local Government/Environmental Law.

- . District Court
 - Employment Contracts – Wrongful Dismissal
 - Personal Injury
 - Occupier's Liability
 - Property Damage
 - Insurance
 - Public Liability

.Local Court

- Tenancy
- Property Damage
- Occupier's Liability
- Contractual Disputes
- General Litigation
- Breach Insurance Contracts
- Fraudulent Misrepresentation.

. Victims Compensation Tribunal

. Administrative Appeals Tribunal

2 July 1988 - **Solicitor** – Somerville & Co, Solicitors
10 November 1989 North Sydney, New South Wales

This position involved assisting a senior partner with the preparation and running of Superior Court jurisdiction matters, as follows:

Civil Litigation

- . Personal Injury
 - District Court
 - Supreme Court
- . Workers Compensation
 - Administrative Appeals Tribunal re: Comcare Appeals of Commonwealth employees
 - Compensation Court of NSW
 - Workers Compensation Commission.
- Insurance Property Damage
 - Motor Property claim arbitrations

- Insurance contracts

Criminal

This position involved the taking of instructions in relation to a wide range of criminal matters of summary jurisdiction, advising and appearing before magistrates in relation to matters for the purpose of bail applications, interlocutory orders and pleas.

Family

- Maintenance and Custody Applications
- Order 24 Conferences.

Property & Commercial

- Registration of foreign companies in NSW
- Purchase of shelf companies
- Registration of business names in other states
- Advices on Environmental Planning & Assessment Act, 1979 (NSW).

April – June 1984

Para-Legal – Mildren & Sylvester, Solicitors
Darwin, Northern Territory

Assistant to Litigation Partners

This position was devised to obtain proofs of evidence from plaintiffs and applicants in common law and worker's compensation claims, respectively, and from witness. It involved researching relevant case law, liaising with union officials as to work practices and safety standards prescribed by Industrial Awards, providing written reports to partners, preparing briefs for Counsel, and instructing counsel at hearings.

1982 –1983

Volunteer Legal Assistant – Marrickville Legal Centre

This position involved interviewing members of the public and obtaining statements for referral to volunteer legal officers for free legal advice. The work involved consultations with people of varying ethnic origins, in the presence of interpreters, and required an understanding and appreciation of multi-cultural issues. Subjects covered included discrimination, probate applications, civil liability, guardianship, criminal law, credit finance and trusts. The position

required an understanding of Legal Aid policy and completion of Legal Aid applications.