

KIERAN SMARK SC

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Background and areas of practice

I was admitted to the Bar in 1991 and was appointed Senior Counsel in 2007.

I practice in three principal areas: media/defamation, commercial/contract and appeals. I also practice in property, administrative law and IP matters. As a result, I am competent in dealing with a range of courts and tribunals and with large volumes of documents.

So far as media work is concerned, I have advised in relation to defamation, injurious falsehood, contempt, injunctions, non-publication orders, privacy, internet and related matters for nearly the whole of the 30 years I have been in practice as a barrister. In that time, I have appeared in many long and short trials involving claims for defamation and injurious falsehood, both for and against media interests, both in NSW and interstate. As a result, I am experienced with appearing before juries.

I regularly advise a large range of clients in relation to the prospect of commencing or defending proceedings for defamation and injurious falsehood (reputational claims).

In relation to commercial matters, I have appeared in, and advised on, a range of commercial and property disputes, including in the franchise area.

I appear in appeals in a wide range of matters, often in circumstances where I did not appear at first instance.

A sample of the recent cases in which I have appeared is:

- *Leyonhjelm v Hanson-Young* (Full Fed Court argued 11 May 2020; judgment reserved)
- *KSMC Holdings Pty Ltd v Bowden* [2020] NSWCA 28 (defamation – qualified privilege)

- *Hanson-Young v Leyonhjelm (No 4)* [2019] FCA 1981 (defamation; parliamentary privilege)
- *DHP 19 v Secretary of Health* [2019] FCA 1451 (Judicial Review – Therapeutic Goods – injunctions)
- *Fairfax Media Publications Pty Ltd v Gayle* [2019] NSWCA 172; 100 NSWLR 155 (defamation – statutory qualified privilege – discharge of jury)
- *TCN Channel Nine Pty Ltd v Pahuja* [2019] NSWCA 166; 371 ALR 691
- *Rush v Nationwide News Pty Ltd (No 8)* [2019] FCA 1382 (Courts – recusal for bias)
- *Rush v Nationwide News Pty Ltd (No 6)* [2018] FCA 1851 (Suppression orders; amendment)
- *Jones v Aussie Networks Pty Ltd* [2018] QSC 219 (Misleading or deceptive conduct; defamation)
- *O'Brien v ABC* [2017] NSWCA 338; 97 NSWLR 1 (defamation; honest opinion)
- *Mayne Pharma International Pty Ltd* [2017] AATA 1622 (administrative law; therapeutic goods).

15 May 2020