

# DANIEL MCINERNEY KC

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## Admissions

- 2015 - Admitted to the Bar (New South Wales)
- 2007 - Admitted to the Bar (Victorian)
- 1997 - Admitted as a solicitor of the Supreme Court of the Australian Capital Territory

## Qualifications & Education

- 2002 - Masters of Taxation: University of New South Wales
- 1995 - Bachelor of Laws: Australian National University
- 1993 - Bachelor of Economics: Australian National University

## Professional Experience

- 2020 – King’s Counsel
- 2007 - Barrister, Victorian Bar
- 2004 - 2007 - Senior Associate, PricewaterhouseCoopers Tax Controversy (Melbourne)
- 2002 - 2004 - Senior Lawyer, Australian Government Solicitor (Sydney, Melbourne)
- 1997 - 2000 - International Taxation Officer (National Office), Senior Litigation Office (Melbourne), Australian Taxation Office

## Areas of Expertise

- Administrative Law
- Appellate
- Corporations
- Equity & Trusts
- Superannuation
- Taxation and Revenue

## Professional Memberships

- President, Tax Bar Association
- Member, The New South Wales Bar Association
- Member, The Victorian Bar Incorporated
- Chartered Tax Adviser, The Tax Institute

## Publications

- “PepsiCo and a broader approach to the characterisation of royalties”, presented at the International Masterclass, The Tax Institute, 20 June 2024
- “Resolving income tax uncertainty”, presented at the Victorian Tax Forum, The Tax Institute, 4 May 2023
- “Developments in relation to capital outgoings – sections 8-1 and 40-880”, presented at the National Resources Tax Conference, The Tax Institute, 10 November 2022
- Co-presenter on the interaction between domestic law and taxation treaties, chaired by Lord Hodge of the United Kingdom Supreme Court, for the Australian Bar Association on 29 July 2021
- “Capital v Revenue – when are we going to work this out?”, presented at the 2021 WA Tax Forum, 18 June 2021
- National transfer pricing conference – “Transfer Pricing Defined/Legal Questions on Interpretation of 815A–815B”, The Tax Institute, 8 August 2018
- “Burden of Proof in Transfer Pricing Matters”, presented at the NSW 9th Annual Tax Forum, The Tax Institute, 2 June 2016
- “Expert Evidence and Valuations – Obtaining Useful Valuations for Corporates”, presented at the Victorian 4th Annual Tax Forum, The Tax Institute, 6 October 2016
- “Current Issues in Cross-border Financing”, presented at the Victorian 3rd Annual Tax Forum, The Tax Institute, 8 October 2015
- “Evidence: Defending your position paper”, presented at the Victorian 1st Annual Tax Forum, The Tax Institute, 10 October 2013

- “Capital Gains Tax and GST on Judgments and Settlements” (2008), co-authored by Michael Y Bearman and presented at the Victorian Tax Bar Association (cited with approval by Gzell J in *Padstow Corporation Pty Ltd v Fleming (No 3)* [2013] NSWSC 24)
- As well as numerous other publications for the Leo Cussen Institute, The Tax Institute and the Victorian Bar

## Selected Cases

- *Bupa HI Pty Ltd v Chief Commissioner of State Revenue* [2024] NSWSC 1105
- *Mussalli v Commissioner of Taxation* S84/2021, special leave application to the High Court regarding the taxation treatment of payments under a lease under s 8-1 of the *Income Tax Assessment Act 1997* (and at trial and on appeal below)
- *Clough Ltd v Commissioner of Taxation* [2021] FCAFC 197, regarding the taxation of payment of employee entitlements under s 40-880 and s 8-1 of the *Income Tax Assessment Act 1997* (and at trial below)
- *Watson (as trustee for the Murrindindi Bushfire Class Action Settlement Fund) v Commissioner of Taxation* (2020) 277 FCR 253 regarding the taxation treatment of outgoings paid in relation to the settlement of a class action under s 8-1 of the *Income Tax Assessment Act 1997* (led by David Bloom KC)
- *Federal Commissioner of Taxation v Sharpcan Pty Ltd* (2019) 269 CLR 370, regarding the taxation treatment of gaming machine entitlements under s 8-1 of the *Income Tax Assessment Act 1997* (led by David Bloom KC and Terry Murphy KC) (and at trial and on appeal below)
- *Fitzpatrick Investments Pty Ltd v DXC Technology Australia Pty Ltd* [2018] VSC 290, regarding the rights of a landlord to recover outgoings under a lease (led by Brendan Sullivan SC)
- *Pintarich v Deputy Commissioner of Taxation* [2018] FCAFC 79, regarding the remission of general interest charge
- *Commissioner of Taxation v Normandy Finance and Investments Asia Pty Ltd & Ors* (2016) 344 ALR 589, regarding taxation of cross border transfers (led by Simon Steward KC)
- *Gadens Lawyers Sydney Pty Limited v Symond* (2015) 89 NSWLR 60 regarding professional negligence relating to taxation advice (led by John de Wijn KC)
- *Howard v Commissioner of Taxation* (2014) 253 CLR 83 regarding the fiduciary duties of directors (led by A H Slater KC) (and on appeal below)
- *Commissioner of Taxation v Noza Holdings Pty Ltd* (2012) 201 FCR 445, regarding the taxation treatment of dividend payments on redeemable preference shares under s 25-90 deduction, declaration of dividends (led by John de Wijn KC and Simon Steward KC) (and at trial below)
- *Federal Commissioner of Taxation v SNF Australia Pty Ltd* (2011) 193 FCR 149 regarding transfer pricing (led by John de Wijn KC) (and at trial below)
- *GE Capital Finance Australasia Pty Ltd v Federal Commissioner of Taxation* (2011) 84 ATR 128, regarding operation of the consolidation provisions and a declaration for rectification (led by Alan Archibald KC and Simon Steward KC)