

# LOCAL COUNCIL CAPABILITY STATEMENTS

How Bartier Perry can work with you

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**Bartier Perry has worked with NSW councils for over 70 years**

**Bartier Perry teams have acted for over 25 local councils in this time**

**These councils represent approximately over 40% of the NSW population**

# WELCOME TO BARTIER PERRY LOCAL GOVERNMENT LEGAL SERVICES

Local councils face serious challenges in today's regulatory environment. Navigating successfully through them requires specialist legal expertise coupled with a nuanced appreciation of the social and commercial imperatives inherent in local government.

Local governments also deal with:

- Revenue measures and decision making continuing to come under greater scrutiny.
- Increasing State Government intervention through planning controls and infrastructure funding, which threaten to curtail councils' role and can add some uncertainty.

Tensions between those imperatives mean that solutions which are legally effective in the private sector or simply correct at law may not always translate to the most appropriate answer for local government.

Bartier Perry has worked with NSW councils for 70 years, and in that time has acted for over 25 local councils who cumulatively represent approximately 40% of the NSW population. Being a Sydney-based firm, we pride ourselves in our NSW local government experience.

Areas in which we add value to local government clients include:

- Balancing a commitment to transparency, efficiency and cost effectiveness with increasing ratepayer demands for improved and new services.
- Complying with strict public sector legislation while operating in a complex commercial environment.
- Costly disputes which are often over-litigated, diverting funds away from essential services.

In this brochure, we provide an overview of our expertise in the local government sector.

We suggest you use this document to understand what areas we can assist you with, who is the right person to contact and how we go about our business of working with councils.



“

Because we work with a variety of government and commercial clients, we understand the different drivers and needs of each ”

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## CORPORATE AND COMMERCIAL

Our Corporate & Commercial team helps clients to maximise opportunities and achieve commercial and community objectives efficiently, with minimal exposure to risk and without sacrificing quality.

### Our clients:

- Have long standing relationships with us.
- Are confident to consistently put us up against any legal challenge they face.
- Consistently provide us with repeat business even when we are not on a panel.

Because we work with a variety of government and commercial clients, we understand the different drivers and needs of each. Our aim is always to gain the optimal outcome for each client, given their specific circumstances.

That requires an understanding of the variables and risks that can be at play in a given situation. It also demands a deep knowledge of the law and its application, and practical approaches to get results that work for council.

### TALK TO US ABOUT:

#### Risk management

We help government and corporate clients identify commercial and legal risks in their functions and activities. We focus on the appropriate allocation of risk in commercial agreements, securing the right balance between prudence and ability to achieve results.

#### Contracts

We prepare, review and advise clients on contracts such as consulting and contractor agreements, supply agreements, distribution agreements, IT and IP agreements, confidentiality agreements, sub-contract arrangements and licence arrangements.

#### Corporate Governance

We advise officials, council administrators, officers and directors on good governance practices, risk management, processes for convening and holding meetings, decision making, and their duties and obligations as officers.

#### Data Protection & Privacy

We advise public and private sector clients about their obligations under the Australian Privacy Principles, the *Government Information (Public Access) Act 2009* (NSW) and other NSW legislation dealing with the collection, storage, use and disclosure of personal information. We also conduct privacy workshops for clients who want a deeper understanding of this important area.

#### Finance & Capital

Talk to us about all forms of financial and security transactions including asset finance, property finance, project finance, cross border lending, corporate and business lending, mortgage-related litigation and debt recovery.

#### Intellectual Property

We can help you protect, manage and commercialise all types of Intellectual Property, including trademarks, copyright, designs and patents.

#### Information Technology

We assist in drafting and negotiating IT licences, distribution agreements, reseller arrangements, and transfers on major transactions for governing bodies, businesses and universities.

#### Competition & Consumer

We can advise you on how competition and consumer law applies to council at every stage of a commercial transaction – from drafting terms and conditions through to advertising your product or service. We can also advise you on negotiating with suppliers and customers, acquiring businesses and companies and dispute resolution.

#### Mergers and Acquisitions

Bartier Perry acts for a broad range of clients in the acquisition and sale of shares, businesses and other commercial assets, and provides advice on restructuring corporate enterprises.

#### Personal Property Securities Act 2009 (PPSA)

From registering your property interests, advising you on your rights, drafting security clauses or agreements, representing you in disputes to assisting you to develop a strategy for enforcing, we have extensive experience in PPSA matters.

#### Public/Private partnerships

We advise on appropriate joint venture and alliance structures and documentation between government and public enterprises.

### OUR TEAM

For more information, contact one of our key team members:



**Norman Donato**  
Partner  
P 02 8281 7863  
ndonato@bartier.com.au



**Michael Cossetto**  
Partner, Head of Corporate & Commercial  
P 02 8281 7892  
mcossetto@bartier.com.au



**Karen Wong**  
Senior Associate  
P 02 8281 7959  
kwong@bartier.com.au



**Stephen Sharpe**  
Associate  
P 02 8281 7884  
ssharp@bartier.com.au



**Samantha Harmer**  
Lawyer  
P 02 8281 7829  
sharmer@bartier.com.au

## BUILDING AND CONSTRUCTION

The Building and Construction industry is highly complex, and subject to a multitude of Acts and regulations that are constantly being developed and revised by local, state and federal governments.

Councils across NSW are entering into construction related contracts with consultants, head contractors or subcontractors every day for both small and major works projects of importance to their constituents.

These works and infrastructure projects are subject to a level of scrutiny from other regulatory authorities, the media, from lobby groups and from the community that private development and construction organisations are not.

Our role is to add value to your project – to consider the many stakeholders, project variables and construction risks that need to be looked at when advising you, and to always take approaches and make recommendations that get the results that are required by, and expected of, council.

Combined with our procurement, finance, insurance, workplace and WHS law expertise, we provide comprehensive coverage on all aspects of building and construction law, and associated areas.

### OUR APPROACH

We help our NSW council clients manage the risks involved in construction projects within their acceptable risk profile.

More often than not this involves recommending appropriately drafted contract terms or finding practical solutions from within lengthy construction contracts, including from standard form (Australian Standards or GC 21) contracts which have been heavily amended to reflect council's acceptable level of risk generally or for a specific project.

#### Our focus is to:

- Take a whole of project management approach to disputes, which lets you focus on the 'big picture' while identifying responsibilities, keeping a clear view of the day-to-day completion of tasks, and controlling legal spend.
- Provide clear documented procedures to reduce risk.
- Keep you informed at the most appropriate risk levels.

#### Specifically, we assist councils with:

- Pre-contract and planning advice and documentation preparation for construction and development projects.
- Appropriate methods of project delivery.
- Preparation of construction contracts and tender documents, particularly relating to local government capital works projects.
- Interpretation and application of the *Environmental Planning and Assessment Act 1979*, the *Local Government Act 1993*, the *Local Government (General) Regulation 2005* and related legislation.
- Enforcement and defence of rights and obligations under construction contracts and construction-related insurance policies.
- Contract administration and contractor performance issues and, where necessary, the termination of building contracts (commercial, residential and industrial).
- Advising on the application of the *Building and Construction Industry Security of Payment Act 1999* to reduce risk.
- Defending *Building and Construction Industry Security of Payment Act 1999* claims.
- Resolving construction disputes through negotiation and alternative dispute resolution so that you minimise time and cost.

### OUR TEAM

For more information, contact one of our key team members:



**David Creais**  
Partner  
P 02 8281 7823  
dcreais@bartier.com.au



**Sharon Levy**  
Senior Associate  
P 02 8281 7818  
slevy@bartier.com.au



**Mark Glynn**  
Senior Associate  
P 02 8281 7865  
mglynn@bartier.com.au



**Kate Cormican**  
Lawyer  
P 02 8281 7947  
kcormican@bartier.com.au

“ Given the time and cost pressures involved in construction, the last thing you need is for the law to slow you down, cost you excessive money or to compound any problems on the building site ”



“ Workplace relations is managing people, resolving conflicts and disputes through to protecting business assets ”

## WORKPLACE LAW & CULTURE

As trusted advisors to local councils and other major employers, we understand the need for responsive, context-sensitive and commercial solutions to workplace problems.

Bartier Perry's Workplace Law & Culture team includes three accredited specialists in employment and industrial law, with a combined 100 years' experience advising on the full spectrum of workplace issues, industrial relations, employment law and work health and safety.

Our team works closely with councils to minimise risk exposure, and provide practical and effective solutions to help successfully manage employees and contractors. Most importantly, we do this in a way that aligns with council business and community service delivery expectations.

We deliver astute advice and representation to ensure council maintains functional and productive workplace relationships, cost effectively and sensitive to broader industrial interests.

### OUR AREAS OF EXPERTISE

**We provide advice on all matters relating to employment and industrial law, including:**

- Interpreting and negotiating industrial instruments – such as awards, enterprise agreements, Council agreements and other 'side agreements'.
- Representation in employment-related litigation, including unfair dismissal, bullying, discrimination and common law-related litigation.
- Managing workplace complaints, commissioning investigations, defending claims and developing strategies to restore normality in the workplace and to comply with award, Local Government statutory, regulatory and other reporting obligations.
- Performance and conduct issues, including preparation of workplace policies, tailored training for managers and assistance with disciplinary action.
- Equal opportunity, discrimination and harassment issues – including advice on strategy, policies and training.
- Pre-termination advice and strategies, as well as assistance with implementation of those strategies.

- Workforce restructuring, including developing strategy, liaising with stakeholders and employees, and strategy implementation.
- The connection between disciplinary action and workers' compensation/psychological injury claims for managing difficult and disruptive behaviour in the workplace.
- Industrial relations law, including right of entry and agreement making, and in defending and resolving industrial disputes.
- Conducting hearings before the New South Wales Civil and Administrative Tribunal and the NSW Industrial Relations Commission and in federal and state courts.
- Managing ill and injured employees' rehabilitation and ongoing employment when a return to work is not foreseeable – as well as advice and strategy on balancing return to work, employment, discrimination, industrial and workers' compensation considerations.

We also provide practical advice on work safety law, and assist clients with developing WHS procedures and policies. We manage critical safety events, deal with Safe Work, protect clients' interests in investigations and prosecutions, and have trained senior staff and officers on their WHS duties.

Sometimes the best defence is prevention. As a result, we provide guidance to clients' legal and human resources personnel, which helps them to self-manage situations. This can translate into significant savings for clients, as once the experience is shared it reduces the need for professional legal advice.

### OUR TEAM

For more information, contact one of our key team members:



**James Mattson**  
Partner, Head of Workplace Law & Culture  
P 02 8281 7894  
jmattson@bartier.com.au



**Darren Gardner**  
Partner  
P 02 8281 7806  
dgardner@bartier.com.au



**Andrew Yahl**  
Associate  
P 02 8281 7870  
ayahl@bartier.com.au



**Jade Bond**  
Lawyer  
P 02 8281 7814  
jbond@bartier.com.au

“In business, commercial and contractual disputes are inevitable. But we don't believe that the best dispute resolution technique is always to rush to court”

## COMMERCIAL DISPUTES

We have a long history of providing comprehensive litigation and dispute resolution services to local government authorities – and while we know that commercial disputes are sometimes inevitable, the best resolution technique is not necessarily to rush to court.

Our approach to commercial disputes is to first try to negotiate a working solution that minimises disruption, maintains relationships and lets you get on with your business.

At the early stages, we explore all avenues for settlement. We assess legal risks, provide practical assessments and outline implications and costs.

However, litigation can sometimes be the only path to dispute resolution. At these times we ensure our clients are advised of their best position for achieving successful results.

### OUR AREAS OF EXPERTISE

Along with years of experience in litigious matters, Bartier Perry team members have a broad range of advocacy skills and often appear in court without the assistance of counsel.

We are adept at handling a wide range of litigation services, from small one-off matters to portfolios of repeat work and large-scale disputes covering:

- Asset damage and recovery
- Commercial contract disputes
- Building contracts
- Debt recovery and insolvency
- Intellectual property and defamation
- Professional indemnity

### Typical work for our council clients includes:

- Advising on required appearances in Local, District, Supreme and Federal Courts, as well as before the NSW Civil and Administrative Tribunal.
- Applying alternative dispute resolution techniques that give you the best chance to settle a claim quickly and informally, and obtain the best commercial outcome.
- Representing you at the mediation and arbitration stages, and in preparing submissions for adjudication applications

and expert determination.

- Acting on your behalf to terminate contracts when needed, or enforce a breach of contract claim where it is in your commercial interests to do so.
- Addressing claims based on false, misleading or deceptive conduct and misrepresentation, both alone and in conjunction with a contract claim.
- Advising on the enforcement of your property rights, such as establishing rights of access and easements, avoiding or enforcing mortgages or guarantees, maintaining or removing caveats and managing conflicts in commercial and retail leases.
- Assisting you with your credit management and debt recovery processes, from inception, through to court proceedings and bankruptcy of natural persons or winding up of companies.
- Advising you on where you stand in regard to unfair preference claims, proofs of debt, retention of title claims, PPSA and other technical insolvency issues.
- Advising on competition and regulatory issues including ASIC investigations and hearings.
- Helping you protect confidential information and enforce restraints and non-competition clauses.
- Advising on the enforcement of intellectual property (IP) rights such as copyright, trademarks, designs and patents, or defend a claim that you're misusing someone else's IP rights.

### OUR TEAM

For more information, contact one of our key team members:



**Gavin Stuart**  
Partner

Head of Commercial Disputes  
P 02 8281 7878  
gstuart@bartier.com.au



**David Creais**  
Partner

P 02 8281 7823  
dcreais@bartier.com.au



**Adam Cutri**  
Senior Associate

P 02 8281 7873  
acutri@bartier.com.au



**Sharon Levy**  
Senior Associate

P 02 8281 7818  
slevy@bartier.com.au



**Mark Glynn**  
Senior Associate

P 02 8281 7865  
mglynn@bartier.com.au

## ENVIRONMENT & PLANNING

Our Planning and Environment team have extensive experience advising clients who manage small and large facilities and projects, and deal with stakeholders at all levels of government, as well as community groups and industry players.

Our Planning & Environment and Property teams work closely together on many council matters. We are strong advocates of the Court's objective of achieving the just, quick and cost-effective resolution of proceedings. We embrace each of the Court's alternative dispute resolution processes, including case management, conciliation conferences and mediation.

### Our team's expertise includes:

- Regularly appearing as solicitor advocates in Class 1, 2, 3 and 4 matters in the Land and Environment Court and Local Court prosecutions.
- Interpreting the *Environmental Planning and Assessment Act 1979* and advising on all aspects of town planning, environmental law issues and heritage and enforcement and prosecution actions in appropriate cases.
- Providing advice to councils on issues associated with the *Protection of the Environment Operations Act 1997*, *Biodiversity Conservation Act 2016*, contamination legislation and other similar laws for environmental protection. Under all these statutes the team has extensive experience acting on urgent injunctions at short notice.
- Advising on heritage legislation (*Heritage Act 1977*) including listings at all levels, and appropriate approvals for works and prosecutions.
- Defending pollution prosecutions, appealing conditions on licences to pollute and negotiate a variety of contamination issues with the Environmental Protection Authority (EPA).
- The *Roads Act 1993* including road closures, development applications, section 149 leases, the making of road zone applications and other permits required under that legislation.
- Acting for local government authorities on matters relating to the *Local Government Act 1993*, including interpretation of the Act and its regulations.

- Councils' statutory powers to impound animals under the *Companion Animals Act 1998*, *Impounding Act 1993* and the Office of Local Government Guideline on the Exercise of Functions under the Companion Animals Act.
- Acting for state owned corporations and councils on acquisitions of land and easements under the *Land Acquisition (Just Terms Compensation) Act 1991*. Work in this area includes acting on acquisitions by compulsory process and by agreement as well as on valuation and Land and Environment Court appeals.
- Advising councils on town planning, with our team member, Steven Griffiths, being a former Town Planner. Our team have also advised on interpretation of works-in-kind agreements and developer contributions associated with various residential development applications.
- Managing and responding to *Government Information (Public Access) Act 2009* requests from employees, consumers, objectors and public interest groups. Our work includes advising on reporting obligations, and more generally, the application of GIPA principles.

We strive to get the right result for our council clients. Our focus is very much outcome driven. We are also conscious of the financial burden placed on council as a result of the need to engage in litigation. For one council client, we have not only managed to resolve the vast majority of matters utilising the Court's conciliation process, but we have also successfully obtained costs orders in almost all appeals for that client.

“ There is perhaps no issue that raises as much passion in the community as the environment ”

### OUR TEAM

For more information, contact one of our key team members:



**Dennis Loether**  
Partner  
P 02 8281 7925  
dloether@bartier.com.au



**Mary-Lynne Taylor**  
Special Counsel  
P 02 8281 7935  
mtaylor@bartier.com.au



**Laura Raffaele**  
Associate  
P 02 8281 7943  
lraffaele@bartier.com.au



**Steven Griffiths**  
Associate  
P 02 8281 7816  
sgriffiths@bartier.com.au



**Charlie Parsons**  
Graduate Lawyer  
P 02 8281 7872  
cparsons@bartier.com.au

“ Just as no two properties are the same, no two property transactions give rise to the same issues either ”

## PROPERTY LAW

Our property lawyers are well regarded for providing clear and accurate legal advice, and for navigating councils through complex, transactional processes in a way that achieves excellent outcomes.

We consider many variables and risks that need to be looked at when advising you - and not only just show application and knowledge of the law. Knowledge of the law only goes part way when seeking optimum results that satisfy the community and other stakeholders. We always take a holistic approach to get the results that work for Council.

The team works with our planning law specialists, when appropriate, to guide clients through everything from the initial planning and consent stages to the development and sale of the property.

### TALK TO US ABOUT:

#### Clients with significant property interests include:

- 20+ local councils
- State government departments including statutory corporations – Endeavour Energy, Sydney Water Corporation, Ausgrid, Western Sydney University, Western Sydney Parklands Trust and Sydney Harbour Federation Trust
- Private developers
- Property owners and tenants (commercial, retail and industrial)
- High net-worth private clients

#### Our property team regularly advises on:

- Conveyancing - acquisitions and disposals and direct negotiations.
- Commercial, industrial and retail property leasing and licensing.
- Plans of management and dealings with land classified as community land under the *Local Government Act 1993*.
- Crown land, native title and Aboriginal land claims.
- Easements, public positive covenants and restrictions on the use of land.
- Joint ventures, voluntary planning agreements and public private partnerships.
- Local Government Act tendering.
- Compulsory acquisitions.
- Sale of land for unpaid rates.
- Subdivision of land, including strata, non-strata and stratum parcels.
- Land tax.
- All aspects of the *Roads Act 1993* including road closures, section 149 leases, permits and dedications.
- Advice in relation to the occupation of land by a telecommunication carrier and particular advice relating to carriers' powers and immunities under Schedule 3 of the *Telecommunications Act 1997* (Cth).

### OUR TEAM

For more information, contact one of our key team members:



**Melissa Potter**  
Partner  
Head of Property  
P 02 8281 7952  
mpotter@bartier.com.au



**Peter Barakate**  
Partner, Accredited Specialist -  
Property Law  
P 02 8281 7970  
pbarakate@bartier.com.au



**Jack Gordon**  
Special Counsel  
P 02 8281 7850  
jgordon@bartier.com.au



**Irene Horan**  
Senior Associate  
P 02 8281 7968  
ihoran@bartier.com.au



**Kristie Carlile**  
Senior Associate  
P 02 8281 7874  
kcarlile@bartier.com.au



**Stella Sun**  
Associate  
P 02 8281 7817  
ssun@bartier.com.au



**Julia Yassa**  
Lawyer  
P 02 8281 7904  
jyassa@bartier.com.au



“ We work to resolve workers compensation disputes through negotiation, mediation and other alternative dispute resolution techniques ”

## WORKERS' COMPENSATION

Would you know where you stood legally if you had an employee injured at work? We do. Workers' Compensation is a key practice area for Bartier Perry, acting solely for employers.

In workers' compensation cases, prevention and minimisation of injury, as well as supporting recovery at work, are critical. Early medical, rehabilitation and injury management intervention supports injured workers to recover at work while maintaining their dignity and independence.

### OUR APPROACH

We work closely with employers and their insurers to resolve workers' compensation issues effectively and enable business to continue uninterrupted.

Our approach includes negotiation, mediation and other dispute resolution techniques. Court is a last resort, as it is expensive and often leaves both parties dissatisfied.

When contesting claims for clients, we employ 'model litigant' practices which focus on the issues, prevent escalation of disputes and litigation, and save cost. Contentious and unsubstantiated claims are thoroughly investigated and challenged in an evidence-based manner to narrow issues and encourage resolution.

We don't just focus on liability and cost of claim, but strive to identify the cause of the claim. This can include workplace system failure and dysfunction, as well as cultural reasons for claim types, clusters and trends. We feed this information back to clients and help them develop solutions.

We currently:

- Act for one quarter of the 60 self-insurers in NSW including 11 self-insured Councils.
- Act for StateCover Mutual Limited, the specialised insurance mutual pooling arrangement for local government.
- Hold appointment on the icare Workers Insurance legal panel for whom we represent the NSW Workers Compensation Nominal Insurer on instructions from EML, GIO and Allianz.
- Are appointed to the legal panel of the NSW Self Insurance Corporation (now icare Insurance for NSW) which administers the Treasury Managed Fund for the NSW Government.

### What we do

We help clients investigate and assess claims for statutory benefits including weekly payments, lump sums for permanent impairment, medical costs, home and vehicle modification, and domestic assistance.

We also defend higher-cost work injury damages (common law) and dust disease claims.

The claims we handle encompass all type of injuries, including complex psychiatric injury, physical and catastrophic injury.

We are adept at identifying suspect or fraudulent claims for targeted action.

Typical work for our council clients includes:

- Helping develop claim management strategy that integrates workers' compensation with work health and safety (WHS), employment and industrial relations considerations.
- Assembling factual and medical evidence to enable clients to respond to and contest claims in a compliant fashion.
- Recovering compensation costs from negligent third parties.
- Contesting high-cost work injury damages claims.
- Advising on workers' compensation regulatory requirements, particularly relating to self-insurance.
- Containing and resolving unexpected dust disease claims.
- Briefings and training for management on NSW Government legislative reforms (particularly major reforms in 2001, 2005, 2012, 2015 and 2016).
- Briefings and training for management on WHS compliance, workplace diversity and privacy.
- Briefing General Managers and council on contentious, sensitive or high-cost claims and providing tailored advice to help councils resolve both liability and employment issues.
- Establishing precedent letters and forms for workers' compensation claims and injury management.
- Providing advice on processes for claim investigations, determinations and management, including disputation.
- Representing councils on disputed claims for weekly payment, medical expenses and lump sum compensation and common law claims.
- Providing expert court representation.

### OUR TEAM

For more information, contact one of our key team members:



**Mick Franco**  
Partner, Head of  
Workers Compensation  
P 02 8281 7822  
mfranco@bartier.com.au



**Mark Underwood**  
Partner  
P 02 8281 7824  
munderwood@bartier.com.au



**Will Murphy**  
Partner  
P 02 8281 7819  
wmurphy@bartier.com.au



**Stephen Marsh**  
Senior Associate  
P 02 8281 7833  
smarsh@bartier.com.au



**Amanda Malouf**  
Associate  
P 02 8281 7849  
amalouf@bartier.com.au



## VALUE ADDED SERVICES

We spend significant time looking at ways we can assist councils outside of just providing legal advice. We have at times sought your feedback to clarify what is of importance to you and what else we can do to simply help you do your role.

### HOW WE HELP

#### Articles

We distribute electronic articles on a weekly basis which detail legislative and case law changes and industry developments as they occur, and often before they occur.

We encourage our clients to re-publish our articles across their internal communication platforms, as appropriate.

#### Council Connect

Published twice yearly, Council Connect focusses on issues and trends affecting councils and is distributed as an added value service to all our council contacts. Each issue carries articles across all areas, and investigates legal issues of particular relevance to councils, with advice on how to prevent them emerging in the first place.

To subscribe to receive our articles or Council Connect, email [events@bartier.com.au](mailto:events@bartier.com.au)

#### Support of industry and community

Educating and being involved with our relevant industries is important both to us and to councils. It means together we are always current in an often changing environment – not only with the law but with industry experts, current trends and broader industry information. We work with the various players in the industry to ensure we bring value back to councils.

Bartier Perry regularly sponsors and provides speakers to council-related conferences, including the LGNSW Property Professionals Conference, LGNSW Human Resources Conference and the Australian Property Institute (API) Public Sector Conference.

In 2018 we partnered with Planning Institute of Australia (PIA) to bring together expert speakers on the NSW Planning System for a series of evening seminars. Council clients have the opportunity to network with leaders of industry.

Bartier Perry also sponsors, attends and hosts training events for Urban Development Institute of Australia (UDIA) and Australian Institute of Urban Studies (AIUS).

#### CLE, training and education

We provide councils with tailored seminars, workshops and executive briefings for senior management on current legislative changes and regulatory issues. A highlight is our September 2018 *Operating in the public eye: Local Council Managers & Officers Forum*. Other recent seminars we've held include:

- Perspectives on Termination and Settlements – a panel discussion
- Site Acquisition and Planning Proposals
- Combustible cladding
- Drafting a compliant and effective s74 Notice
- Compulsory acquisitions – valuation approaches, tips and traps

Seminars are captured via webcast for regional clients and footage then uploaded to our website, as demonstrated by our recent seminar on sexual harassment.

For any enquiries, feel free to contact us at [LocalCouncilTeam@bartier.com.au](mailto:LocalCouncilTeam@bartier.com.au)

**BARTIER PERRY PTY LTD**

Level 10, 77 Castlereagh Street Sydney NSW 2000

T + 61 2 8281 7800

F + 61 2 8281 7838

**Bartier.com.au**

ABN 30 124 690 053

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Bartier Perry



@BartierPerryLaw



Bartier Perry

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**[www.bartier.com.au/subscribe](http://www.bartier.com.au/subscribe)**

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