

Tom Brennan SC

Tom Brennan practises in commercial, equity, administrative, insurance, regulatory and employment law. He is recognised in Best Lawyers as Australia's leading barrister in civil aviation and as "Lawyer of the Year" in trade law.

Tom appears at trial and appellate level in Federal and State jurisdictions including the High Court of Australia, Full Court of the Federal Court of Australia, Federal Court of Australia and State and Territory Supreme Courts and Courts of Appeal. He also appears in tribunals, such as the Fair Work Commission the Administrative Appeals Tribunal and the NSW Civil and Administrative Tribunal.

Tom's chambers are equipped with high-quality audio-visual conferencing facilities for use in Court appearances, mediations and conferences. He is a member of the NSW Bar's Practice Development Committee.

Prior to joining the Bar in 2006, Tom worked for 9 years as a senior executive in the Federal Government, including as Principal Advisor to a Deputy Prime Minister and for a further 7 years as a Partner at national law firm, Corrs Chambers Westgarth. He is the former Chair of 13 Wentworth Chambers and holds a Bachelor of Laws and Bachelor of Arts from the Australian National University in Canberra. Tom has 10 years' experience as a public company director.

ADMISSIONS TO PRACTICE

- 2020 Appointed Senior Counsel
- 2006 Commenced practice at the Bar
- 1999 Admitted as a Solicitor of the Supreme Court of New South Wales
- 1984 Admitted as a Legal Practitioner of the Supreme Court of the Australian Capital Territory

PROFESSIONAL QUALIFICATIONS

- 1984 Bachelor of Laws: Australian National University
- 1979 Bachelor of Arts: Australian National University
- 1983 Graduate Diploma in Legal Practice: Australian National University

PRINCIPAL AREAS OF PRACTICE

Administrative Law	International Law (Public and Private)
Constitutional Law	Regulatory Matters
Commercial Law	Trade Practices and Competition
Employment Law	Transportation Law
Insurance and Professional Indemnity	(including Aviation and Maritime Law)

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PROFESSIONAL EXPERIENCE

2006 – present Barrister at 13 Wentworth Chambers, Sydney | Senior Counsel from 2020
2000 – 2010 Director, Little Company of Mary Health Care Ltd (and Chair from 2007)
1997 – 2006 Partner, Corrs Chambers Westgarth
1994 – 1997 Assistant Secretary, Legal Branch and First Assistant Secretary, Vocational Education and Training Division, Department of Employment, Education and Training
1993 – 1994 Self Employed, Social Policy Consultants
1987 – 1993 Ministerial Consultant / Principal Adviser, The Hon Brian Howe MP AO
1985 – 1986 Lecturer in Law (Family and Administrative), University of Canberra
Research Officer, Access to Justice Project, Administrative Review Council
Consultant, Child Support Secretariat
1982 – 1984 Founder and Project Officer, Welfare Rights and Legal Centre
Commissioner, Legal Aid Commission of the ACT
President, ACT Council of Social Services
1980 – 1982 Founder and General Manager, Ainslie Village

APPOINTMENTS

Former Chair, 13 Wentworth Chambers
Former Chair, Little Company of Mary Healthcare Ltd

PROFESSIONAL MEMBERSHIPS

Member, New South Wales Bar Association
Member, Law Council of Australia, Trade Practices Committee
Member, Law Council of Australia, Civil Litigation Section
Member, Law Council of Australia, International Law Section
Member, Australian Institute of Administrative Law

PUBLICATIONS AND PRESENTATIONS

Aviation Regulation and Work Health and Safety: Aviation Law Association of Australia and New Zealand: May 2023
The High Court Construes the Cape Town Convention: March 2022
Guide to Preparing and Sending an Electronic Brief: September 2020
Unlawful Termination of Employment must not be confused with unfair termination – a note on Pezzimenti v Rotary International: 13 February 2020
The Ups and Downs of Aviation Litigation: Aviation Law Association of Australia and New Zealand: October 2019
Recent Developments in Employment Disputes: Emphasising the Law of Contract: 18 March 2016
Australia Owns its History: 11 November 2015

SELECT CASES

INTERNATIONAL DISPUTES

[*Nautilus Aviation Pty Ltd ats Future Systems \(Aust\) Pty Ltd*](#) [2023] WASC 204 – Appeared for the operator seeking summary dismissal – the operation of the “exclusivity principle” under the Warsaw and Montreal Conventions on liability of civil aviation operators and the incorporation of that operation into the Australian domestic Civil Aviation (Carriers Liability) acts

[*DHI22 v Qatar Airways Group OCSC and others*](#) [2023] FCA 616 – Appearing for the Qatar Civil Aviation Authority on its claim to Foreign State Immunity from proceedings for personal injury alleged to have occurred at an airport in Qatar

CALC Global Leasing Ltd v Bamboo Airways Ltd – Appeared for the Irish lessor under a lease governed by English law to obtain orders in Australia “arresting” two Boeing 787 Dreamliners on the Vietnamese register, including pursuant to the Cape Town Convention on Interests in Mobile Equipment and its Aircraft Protocol. Issues included construction of the Convention, the content of English law on chattel leases and Vietnamese insolvency and corporate law

Virgin Australia Holdings Ltd ats Wells Fargo Trust (on the remitter from [*VB Leaseco Pty Ltd \(administrators appointed\) ats Wells Fargo Trust Company*](#) [2022] HCA 8) – Appeared in the Federal Court for the administrators of the Virgin Group to obtain orders in dispute with aircraft lessor that enabled completion of the administration. The underlying legal issues, which were appealed to the High Court of Australia, concern the interaction of domestic insolvency law with the Cape Town Convention on Interests in Mobile Equipment

[*South West Helicopters Pty Limited ats Parkes Shire Council*](#) [2019] HCA 14; 266 CLR 212; [*South West Helicopters Pty Ltd v Stephenson*](#) [2017] NSWCA 312; 98 NSWLR 1 – Appeared for the operator on appeals raising the scope and operation of the Warsaw and Montreal Conventions on liability of civil aviation operators and the incorporation of that operation into the Australian domestic Civil Aviation (Carriers Liability) acts.

[*Mackellar Mining Equipment Pty Ltd v Thornton*](#) [2019] HCA Trans 188; [2019] QCA 77, 367 ALR 171 – Appeal against refusal of anti-suit injunction – whether continuation of foreign proceeding becomes vexatious upon resolution of claims against foreign parties

[*Australian Defence Apparel Pty Ltd v Graham & Anor*](#) [2019] NSWSC 1162 – Appeared for the former CEO in post-employment restraint dispute. This case was significant in its consideration of the operation of the Australian restraint of trade doctrine in the context of international corporate groups

[*PT Garuda Indonesia ats ACCC*](#) [2017] HCA 21, 262 CLR 207; [2016] FCAFC 42, (2016) 244 FCR 190; [2014] FCA 1157; (2014) ATPR 42-490; [2019] FCA 786, 370 ALR 637; [2020] FCA 685 – Appeared for Garuda in Australia’s largest ever competition law enforcement proceedings concerning the alleged international air cargo cartel on liability questions at trial, on the regulator’s appeal to the Full Court and Garuda’s appeal to the High Court of Australia. Continued to act on the remittal of the proceedings for determination of

penalty and Garuda's appeal against penalty. There are more than 20 published judgments in the proceeding dealing with numerous significant legal issues concerning foreign state immunity, extraterritorial reach of competition law and its intersection with public international civil aviation law (in particular, the laws of Indonesia, Hong Kong and Australia were considered)

[*Lambert Leasing Inc v OBE Insurance \(Australia\) Ltd*](#) [2016] NSWCA 254, 93 NSWLR 166 – Appeared for QBE in double insurance dispute – conflict of laws on double insurance between the law of one policy, Australia and the law of the other, Sweden

REGULATORY DISPUTES

Brindabella Christian Education Limited v Minister for Education – Acted for an approved authority of an independent school in AAT proceeding concerning continued registration

Coulson Aviation v Civil Aviation Safety Authority – Acted for the operator of NSW aerial firefighting fleet in application to AAT concerning transition to Civil Aviation Safety Regulations Parts 119 and 138 – approval of Head of Flying Operations

Company B v Saddler [2023] FCFamC2F 114 – Acted for an expert witness in the family law jurisdiction to obtain summary dismissal of claim by a national media organisation for orders permitting the media to name the witness in media reports – federal jurisdiction – “matter” under the Constitution

Waterco Ltd v Australian Pesticides and Veterinary Medicines Authority NSD 1335/2020 – Appeared for registrants under the Agricultural and Veterinary Chemical Code to obtain orders setting aside decisions to cancel various registrations of pool and spa sanitisers. Orders sought made by consent following the first day of expedited trial

[*Commonwealth of Australia v Helicopter Resources Pty Ltd*](#) [2020] HCA 16; [2019] FCAFC 25, 264 FCR 1; [2018] FCA 595, [2018] FCA 991 – Appeared for Helicopter Resources at trial and on appeal – application to restrain a Coroner from examining operator's Chief Pilot on safety standards of air operations in the Antarctic when the operator has been charged with offences under Work Health and Safety law

[*Work Health Authority v Outback Ballooning Pty Ltd*](#) [2019] HCA 2, 93 ALJR 212; [2017] NTCA 7, 326 FLR 1 – Appeared for Outback Ballooning in this High Court matter which established the law with respect to work, health and safety laws in the civil aviation field (in which approximately 15 counsel appeared). This matter concerned constitutional law, whether the Civil Aviation Act, Regulations and Orders covers the field of the prescription and enforcement of safety standards in civil aviation and the exclusion of application of Work Health and Safety laws to safety of civil air operations

[*PT Garuda Indonesia ats ACCC*](#) [2017] HCA 21, 262 CLR 207; [2016] FCAFC 42, (2016) 244 FCR 190; [2014] FCA 1157; (2014) ATPR 42-490; [2019] FCA 786, 370 ALR 637; [2020] FCA 685 – Appeared for Garuda in Australia's largest ever competition law enforcement proceedings concerning the alleged international air cargo cartel on liability questions at trial, on the regulator's appeal to the Full Court and Garuda's appeal to the High Court of Australia. Continued to act on the remittal of the proceedings for determination of penalty and Garuda's appeal against penalty. There are more than 20 published judgments in the proceeding dealing with numerous significant legal issues concerning foreign sovereign immunity, extraterritorial reach of competition law and its intersection with public

international civil aviation law (in particular, the laws of Indonesia, Hong Kong and Australia were considered)

ADMINISTRATIVE LAW

[CCU21 v Minister for Home Affairs](#) [2023] FCAFC 87; [2022] FCA 28 – Appeared for the Applicant/Appellant having set aside a decision to refuse to revoke a visa cancellation following the issue of an adverse security assessment by ASIO

[Clearview AI Inc v Australian Information Commissioner](#) [2023] AATA 1069 – Appeared for the Applicant – extraterritorial application of the Australian Privacy Act – is the creation of a database of images sourced from the open web on servers located outside of Australia and using crawlers operating from those servers the carrying on of a business in Australia

[Warren ats Services Australia](#) [2022] AATA 4191 – Appeared for the Respondent to appeal by Services Australia – Cabinet documents exemptions under FOI Act – business cases for the robodebt scheme

[Mosaic Brands Ltd v Australian Communication and Media Authority](#) [2022] FCAFC 79; [2021] FCA 669 – Appeared for the Applicant/Appellant seeking a declaration that a notice issued under s522 of the *Telecommunications Act 1997* (Cth) was not authorised by the Act and involved an error of law

[FUD18 v Minister for Home Affairs](#) [2021] FCAFC 132; 285 FCR 505; [2020] FCA 48 – Appeared for Applicant/Appellant seeking writ to prohibit cancellation of Visa in reliance on Interpol Red Notice – first judicial consideration of character test provision concerning Interpol notices

[Hocking v Director-General, National Archives of Australia](#) [2020] HCA 19; [2019] FCAFC 12; [2018] FCA 340, 255 FCR 1 – Appeared for the eminent Australian historian Professor Hocking at trial and on appeal in the Federal Court of Australia and High Court of Australia in which the High Court decided that correspondence between the Queen and the Australian Governor-General is subject to the public access provisions of the *Archive Act 1983*. In doing so, the Court set at nought a “convention” of Royal secrecy said to apply across 15 Commonwealth realms

[Deigning v Minister for Home Affairs](#) [2019] FCAFC 67 – Appeared for the appellant to set aside deportation order. The matter also concerned the interpretation of legislation, presumption against retrospectivity and the denial of natural justice

[BSX15 v Minister for Immigration and Border Protection](#) [2017] FCAFC 104, 249 FCR 1; [2016] FCA 1432 – Appeared for the applicant at trial and on appeal in a matter setting aside ASIO’s adverse security assessment for denial of procedural fairness

[El Ossman v Minister for Immigration and Border Protection](#) [2017] FCA 636, 248 FCR 491 – Appeared for Mr El Ossman to obtain first ever writ quashing ASIO’s adverse security assessment – denial of procedural fairness

[Fitzgibbon v Prime Minister](#) [2017] FCA 968, 72 AAR 431; [2017] AATA 502 – Appeared for the Prime Minister in a matter concerning the scope of application of provisions of the *Freedom of Information Act* and *Administrative Appeals Tribunal Act* when documents in the possession of the Prime Minister are claimed to be private documents of the Prime Minister

[*Qantas Airways v Lustig*](#) [2015] FCA 253, 228 FCR 148 – Appeared for Qantas in a proceeding establishing that State consumer tribunals that are not Courts cannot hear consumer claims with federal law elements

COMMERCIAL DISPUTES

CALC Global Leasing Ltd v Bamboo Airways Ltd – appeared for the lessor to obtain orders “arresting” two Boeing 787 Dreamliners

[*Creak ats Ford Motor Company of Australia Ltd*](#) [2022] NSWSC 83 – Acted for respondent seeking to avoid enforcement of settlement deed consequent upon franchising dispute with car dealer – restraint of trade in agreement settling litigation

Virgin Australia Holdings Ltd ats Wells Fargo Trust (on the remitter from [*VB Leaseco Pty Ltd \(administrators appointed\) ats Wells Fargo Trust Company*](#) [2022] HCA 8) – Appeared in the Federal Court for the administrators of the Virgin Group to obtain orders in dispute with aircraft lessor that enabled completion of the administration. The underlying legal issues, which were appealed to the High Court of Australia, concern the interaction of domestic insolvency law with the Cape Town Convention on Interests in Mobile Equipment

[*Hills Ltd ats Rauland Australia Pty Ltd*](#) [2019] FCA 1174, [2019] FCA 1175, [2020] FCA 516, [2020] FCA 1400 – Acted for Hills Ltd in disputes concerning claims of misuse of confidential information of a competitor supplier of nurse call systems to hospitals

AerCap Ireland v Beijing Capital Airlines (2019) – Appeared for an aircraft lessor in the first (ex-parte) application in Australia to “arrest” an aircraft under the Cape Town Convention

[*Marketform Managing Agency Ltd ats Amashaw Pty Ltd*](#) [2018] NSWCA 70, 97 NSWLR 306 – Appeared for an insured on a claim for indemnity for rectification of service station petrol leak under environmental liability risks policy

[*Lambert Leasing Inc v QBE Insurance \(Australia\) Ltd*](#) [2016] NSWCA 254, 93 NSWLR 166 – Appeared for QBE in double insurance dispute – scope and operation of s45 of the *Insurance Contracts Act*

[*Mackellar Mining Equipment Pty Ltd v Thornton*](#) [2019] HCATrans 188; [2019] QCA 77, 367 ALR 171 – Appeal against refusal of anti-suit injunction – whether continuation of foreign proceeding becomes vexatious upon resolution of claims against foreign parties

EMPLOYMENT AND INDUSTRIAL DISPUTES

[*Dietitians Association of Australia ats Sager*](#) [2021] NTSC 94 – Appeared for national professional association successfully defending the imposition of disciplinary sanctions by domestic tribunal

Dorber ats CFMMEU NSD 1329/2019 – Appeared in this significant industrial case in the Federal Court of Australia for Mr Dorber who was sued by Australia’s largest union, the CFMMEU, for contraventions of the Fair Work Act in his capacity as an employer bargaining representative. Proceeding resolved in 2020 by CFMMEU consenting to judgment against it with an order that it pay Mr Dorber’s costs

Qube Ports Pty Ltd ats CFMMEU C2020/4469 – Appeared in the Fair Work Commission successfully resisting application by CFMMEU concerning calculations of wages for irregular employees for whom employer received Jobkeeper. The application was the first in the Commission in which a union sought to exploit the Jobkeeper rules to achieve a change of terms and conditions

Australian Defence Apparel Pty Ltd v Graham & Anor [2019] NSWSC 1162 – Appeared for the former CEO in post-employment restraint dispute. This case was significant in its consideration of the operation of the Australian restraint of trade doctrine in the context of international corporate groups

Wang v Sceats NSD2377/2018 – Appeared for an employee in appeal heard in 2020 against dismissal of claim for compensation for unlawful dismissal constituting adverse action. Appeal allowed by consent

Pezzimenti v Rotary International (2019) 290 IR 219; [2020] FCCA 95 – Appeared for Mr Pezzimenti obtaining compensation and penalties for his unlawful dismissal as Chief Executive of Rotary in Australia. This case is now the leading authority concerning chief executives of organisations succeeding in recovering substantial damages for breaches of the adverse action provisions of the legislation, with implications for international employers

Tran v Kodari Securities Pty Ltd [2019] FCA 968 – Appeared for employer responding to a claim by a senior employee of unlawful dismissal

Woodsford v Range International Ltd [2018] FCA 1007 – Appeared for Ms Woodsford in this matter concerning the extraterritorial application of *Fair Work Act*

Isaac v Dargan Financial Pty Ltd [2018] NSWCA 163 – Appeared for Mr Isaac in this matter concerning a restraint of trade in a contract for conduct of mortgage broking business

Avenia v Railway and Transport Health Fund Ltd [2017] FCA 859 – Appeared for Dr Avenia in this matter concerning a general protections claim following termination of transaction involving sale of dental practice and employment of the practitioner

Bartlett v Australian and New Zealand Banking Ltd [2016] NSWCA 30, 92 NSWLR 639 – An often-cited case in employment and contract law. Appeared for Mr Bartlett on a dispute concerning termination of employment. The matter also concerned qualification of contractual powers and discretions by requirements of good faith and reasonableness and principles for resolving conflicts in expert evidence

CRIMINAL LAW

Environment Protection Authority v Charlotte Pass Snow Resort Pty Ltd [2021] NSWCCA 289; 250 LGERA 362; [2021] NSWLEC 37 – Appeared for the defendant with respect to duplicity of a pollute waters offence and breach of licence offence. This matter is presently on appeal by the prosecution to the Court of Criminal Appeal for hearing in November 2021

Commonwealth Director of Public Prosecutions v Emirates – Successfully defended Emirates in the Magistrates Court against charges of breach of the Sydney Airport curfew and obtained an order that the prosecution pay Emirates' costs on one of those charges