

TOM BRENNAN

Senior Counsel

13 WENTWORTH CHAMBERS

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Conducting a commercial and regulatory practice, Tom has particular expertise in equity, administrative law, competition and consumer law, insurance law, employment law and private international law.

The matters in which Tom regularly appears and advises include civil aviation (regulatory, commercial, insurance and civil liability), competition and consumer law, the law governing intelligence and security agencies and operations, public access to government information, employment disputes and anti-suit injunctions. Many of the disputes in which he appears contain a cross-jurisdictional element.

Tom regularly appears, at trial and appellate level in a diverse range of Federal and State jurisdictions including the High Court of Australia, Full Court of the Federal Court of Australia, Federal Court of Australia, New South Wales Court of Appeal and the New South Wales Supreme Court. He also appears in tribunals, such as the Administrative Appeals Tribunal. While he practises primarily in New South Wales, Tom also appears interstate. The nature of Tom's practice also requires him regularly to appear as Counsel in mediations, where he seeks to achieve the most cost effective and efficient outcome for his clients.

Tom's unique practice is characterised by his specialisations, such as in aviation law and government regulatory matters. The scope of his practice and complementary practice areas assist him placed to integrate different legal disciplines to achieve favourable commercial outcomes for his clients. He accepts briefs from solicitors in law firms and in-house legal counsel, providing high-end strategic and legal advice and representation. He is commended by his clients for his detailed knowledge, breadth of experience and attention to detail. He is also highly valued for his creative and strategic abilities, as well as his preparedness to run difficult cases.

Prior to joining the Bar in 2006, Tom acquired considerable experience as a senior executive in the Federal Government and as a public company director, and as a Partner in national law firm, Corrs Chambers Westgarth. Tom is the Chair of 13 Wentworth Chambers and holds a Bachelor of Laws and Bachelor of Arts from the Australian National University in Canberra.

ADMISSIONS TO PRACTICE

- 2020 Appointed Senior Counsel
 - 2006 Commenced practice at the Bar of New South Wales
 - 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
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PROFESSIONAL QUALIFICATIONS

- 1984 Bachelor of Laws: Australian National University
- 1979 Bachelor of Arts: Australian National University

PRINCIPAL AREAS OF PRACTICE

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

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 (Partner and Leader of the National Public Law Practice Group from 1998 and Partner in Charge of Canberra Office from 2003)
- 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

APPOINTMENTS

- 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

- *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: 24 October 2019
- *Recent Developments in Employment Disputes: Emphasising the Law of Contract*: 18 March 2016
- *Australian Owns its History*: 11 November 2015

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SELECT CASES

Administrative Law

[Hocking v Director-General, National Archives of Australia](#) [2020] HCA 19; [2019] FCAFC 12; [2018] FCA 340, 255 FCR 1 – appeared for Professor Hocking – Constitutional and Administrative Law – letters between the Governor-General in his official capacity and the Queen are the “property of the Commonwealth or a Commonwealth institution” and subject to the Archives Act – nature and incidents of the office of Governor-General

[Commonwealth of Australia v Helicopter Resources Pty Ltd](#) [2020] HCA 16; [2019] FCAFC 25, 264 FCR 174; [2018] FCA 595, [2018] FCA 991 – appeared for Helicopter Resources - Judicial Review of decision by Coroner to require employee of company charged with offence to answer questions which may be relevant to the charges – scope of corporation’s right to an accusatory trial – powers of Coroner

[Deqing v Minister for Home Affairs](#) [2019] FCAFC 67 – appeared for the appellant to set aside deportation order – interpretation of legislation – presumption against retrospectivity – denial of natural justice

[FUD18 v Minister for Home Affairs](#) [2020] FCA 48 – appeared for Applicant seeking writ to prohibit cancellation of Visa in reliance on Interpol Red Notice – first judicial consideration of character test provision concerning Interpol notices

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

[BSX15 v Minister for Immigration and Border Protection](#) [2016] FCA 230 – appeared for applicant in challenge to claim of public interest immunity in determination made under the ASIO Act – interaction of public interest immunity and Legislation Act

[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

[Jetstar Airways Pty Ltd v Civil Aviation Safety Authority](#) [2018] AATA 2097 – appeared for Jetstar – obligations of decision maker under Freedom of Information Act to consult with affected third party – scope of third party’s right to oppose release of documents in proceedings in the AAT

[Fitzgibbon v Prime Minister](#) [2017] FCA 968, 72 AAR 431; [2017] AATA 502 – appeared for the Prime Minister – 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

Aviation

[Work Health Authority v Outback Ballooning Pty Ltd](#) [2019] HCA 2, 93 ALJR 212; [2017] NTCA 7, 326 FLR 1 – appeared for Outback Ballooning – Constitutional Law – do the Civil Aviation Act, Regulations and Orders cover the field of the prescription and enforcement of safety standards in civil aviation – exclusion of application of Work Health and Safety laws to safety of civil air operations

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[*Parkes Shire Council v South West Helicopters Pty Ltd*](#) [2019] HCA 14, 93 ALJR 607; [2017] NSWCA 312, 356 ALR 63 – appeared for South West – application and effect of the Civil Aviation (Carriers Liability) Act and the Warsaw Conventions for liabilities arising from death of charterer’s employee during charter flight – negligence of employer, carrier and power line operator in wire strike case – Warsaw Conventions govern nervous shock claims by family members of deceased passenger

[*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

[*Mackellar Mining Equipment Pty Ltd v Thornton*](#) [2019] HCATrans 188; [2019] QCA 77 – appeared on appeal by aircraft owner seeking to restrain continuation of proceedings in Missouri arising out of Australian air crash following finalisation of all claims against American parties

[*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 the prosecution for civil penalties concerning an alleged international air cargo cartel. Public international civil aviation law, and the operation and effect of the civil aviation and competition laws of Indonesia, Hong Kong and Australia considered

[*Qantas Airways v Lustig*](#) [2015] FCA 253, 228 FCR 148 – appeared for Qantas to obtain order prohibiting VCAT from hearing claim in which Qantas asserted defence under Warsaw Convention

Employment

[*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

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

[*Isaac v Darqan Financial Pty Ltd*](#) [2018] NSWCA 163 – appeared for Mr Isaac – restraint of trade in contract for conduct of mortgage broking business

[*Avenia v Railway and Transport Health Fund Ltd*](#) [2017] FCA 859 – appeared for Dr Avenia – 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 – appeared for Mr Bartlett on dispute concerning termination of employment – qualification of contractual powers and discretions by requirements of good faith and reasonableness- principles for resolving conflicts in expert evidence

Insurance

[*Marketform Manaqing Agency Ltd ats Amashaw Pty Ltd*](#) [2018] NSWCA 70, 97 NSWLR 306 – appeared for insured on 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 s.45 Insurance Contracts Act.

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International 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 – extent of operation of the Chicago Convention on Civil Aviation – effect on construction of the Civil Aviation Act and Regulations

[Parkes Shire Council v South West Helicopters Pty Ltd](#) [2019] HCA 14, 93 ALJR 607; [2017] NSWCA 312, 356 ALR 63 – appeared for South West – scope and operation of the Warsaw Conventions on the liability of civil aviation carriers for nervous shock to third parties

[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

[Woodsford v Range International Ltd](#) [2018] FCA 1007 – appeared for Ms Woodsford – extraterritorial application of Fair Work Act

[Lambert Leasing Inc v QBE Insurance \(Australia\) Ltd](#) [2017] HCATrans 57; [2016] NSWCA 254, 93 NSWLR 166 – appeared for QBE – double insurance – conflict of laws – Swedish policy and Australian policy – Australian double insurance clause effective

[Australian Competition and Consumer Commission v P.T. Garuda Indonesia \(No 9\)](#) (2013) 212 FCR 406 – appeared for Garuda - admissibility of expert evidence concerning the content and effect of public international law (customary and conventional) where it had effect as an incident of the domestic law of Indonesia and Australia

[QBE Insurance \(Australia\) Ltd v Thornton](#) [2012] NSWSC 217 – appeared for QBE – obtained injunctions restraining the conduct of proceedings in Illinois

[QBE Insurance \(Australia\) Ltd v Hotchin](#) [2011] NSWSC 681 – appeared for QBE – obtained injunctions restraining the conduct of proceedings in Illinois

Trade Practices and Competition Law

[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 – appeared for Garuda in air cargo cartel proceedings

[Phoenix Institute of Australia Pty Ltd v Australian Competition and Consumer Commission](#) [2017] FCAFC 155; [2016] FCA 190 – appeared for Phoenix Institute in enforcement proceeding in which ACCC seeks to avoid the Commonwealth's statutory liability to pay VET FEE-HELP

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

[Breastcheck Pty Ltd ats ACCC](#) [2014] FCA 190, (2014) ATPR 42-479; [2014] FCA 1068 – appeared for respondent at trial of Part V proceeding

[ACCC v Renegade Gas & Ors](#) [2014] FCA 1135, (2014) ATPR 42-485 – appeared for ACCC in gas cartel proceeding