

Resume

Name Tom Brennan

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Tom Brennan is a barrister specialising in the following areas:

- Administrative Law
- Economic regulation
- Aviation and logistics
- General commercial
- Government administration

Educational and Professional Qualifications

Legal Practitioner, ACT 1984

Solicitor, NSW 1999

Barrister, NSW 2006

Bachelor of Arts, Australian National University (1979)

Bachelor of Laws, Australian National University (1983)

Graduate Diploma in Legal Practice, Australian National University (1984)

Relevant experience

Administrative Law

Telstra Corporation v Minister for Communications [2007] FCA 1567; (2008) 166 FCR 64– appeared for Telstra – led by Gleeson SC

Gerhardt v APRA – appeared for the Chief Executive of Paris Re restraining APRA from disqualifying Mr Gerhardt – led by Gleeson SC

McKinnon v Secretary, Department of the Treasury (2006) 80 ALJR 1549 – appeared for the appellant – led by Griffiths SC

McKinnon v Secretary, Department of Prime Minister and Cabinet (2007) 46 AAR 136 – acted for applicant

McKinnon v Secretary, Department of Finance and Deregulation – [2011] AATA 469 – appeared for applicant

Dunne v Secretary, Department of Education and Training [2007] ACTAAT 26 – appeared for applicant

Vasta and another v Civil Aviation Safety Authority (2008) 110 ALD 401; [2009] AATA 398– appeared for applicants

NSW Council for Civil Liberties v Classification Review Board and Ruddock (No1) (2006) 236 ALR 313 – appeared for applicant – led by Bozic SC

NSW Council for Civil Liberties v Classification Review Board and Ruddock (No2) (2007) 159 FCR 108 – appeared for applicant – led by Bozic SC

Minister for Education Science and Training ats Eagle Academy– appeared for Minister in proceedings concerning imposition of conditions on a licence to operate a college for overseas students

Minister for Education Science and Training ats Australia Tasmania College of Technology– appeared for Minister in proceedings concerning the cancellation of a licence to operate a college for overseas students

Australian Prawn Farmers Association – acted in relation to import protocols for prawns from China

Apple and Pear Australia Ltd – acted in relation to the proposal to permit importation of apples from New Zealand; and in the WTO Disputes Settlement Body for the Australian industry as intervener; acted on the administrative appeal against the importation of apples from China

Australian Banana Growers Council - acted in relation to proposals by quarantine regulator concerning bananas from the Philippines

Wong v Commonwealth; Selim v Lele (2009) 236 CLR 573; (2008) 167 FCR 61 – drafted the Stated Case in a constitutional challenge to the validity of the Medicare scheme.

Willcock and ors ats Do (2008) 166 FCR 251 – appeared for the various Respondents in Judicial Review proceedings

Re Secretary, Department of Families, Housing, Community Services and Indigenous Affairs and Dianne Harvey (2009) 112 ALD 216 – appeared for the respondent to the appeal

Australian Pork Ltd v Director of Quarantine (2005) 216 ALR 549; 146 FCR 368 – acted as solicitor for Australian Pork Limited on the conduct of the import risk analysis for pig meat and the subsequent litigation

Re U and the Public Guardian – acted for the applicant in obtaining discharge of guardianship order made in the context of the Ombudsman’s investigation into Mr U’s protracted detention at Villawood detention centre

As a barrister, administrative law advisings have included:

- Advising major manufacturer on quarantine and customs issues
- Advising a transnational computer hardware manufacture on importation and occupational health issues

- Advising a principal party on liability issues arising out of the equine influenza outbreak the subject of the report by the Hon Ian Callinan AC
- Advised CrimTrac on corporate governance issues
- *Murray Darling Basin Commission* – advised the Commission on various issues that arose on the Commission being subsumed within a Commonwealth Statutory Authority
- Advising a statutory authority on the scope of its functions and cost recovery issues.

Economic regulation

ACCC v Arnotts – appeared for the ACCC obtaining final orders – Part V

ACCC v ATS All Trades and Services [2009] FCA 647 – appeared for the ACCC at trial – Part V

ACCC v Prouds Jewellery Pty Ltd (Nos 1 and 2) [2008] ATPR 42-217; [2008] ATPR 42-230 and [2008] ATPR 42-268 – appeared for the ACCC at trial and on appeal – Part V – led by White SC

ACCC v StoresOnline Inc [2007] ATPR 42-196; [2009] FCA 717 – appeared for the ACCC at trial – Parts V and VI – led by White SC

ACCC v Link Solutions and others 68 ACSR 561 – acting for the ACCC – Parts IV and V – led by Adamson SC

ACCC v Jutsen and others – acting for the ACCC – Part V – led by White SC

ACCC v Enterprise Finance Solutions & Anor – appeared for the applicant – led by Adamson SC

Weimann v Allphones and others [2011] FCA 537 – appeared for a class of franchisee applicants at trial – Part IV B

Generate Group v SeaTech Pty Ltd (2007) 71 IPR 640 – appeared for the plaintiff in a computer software licensing dispute in the Supreme Court of NSW involving Part IV issues

Refrigerant Reclaim Australia – obtained Authorisation of Product Stewardship Scheme

Advising in the transport and logistics, manufacturing and health care industries on Part IV compliance

As a solicitor:

- Implemented Australia’s first “no gaps” billing arrangement for medical care in private hospitals in areas of neurosurgery, cardiac surgery and cardiology at Melbourne Private Hospital
- Acted for the ACCC in proceedings against a medical practitioner obtaining relief against attempted price fixing through use of provisions in leases of medical rooms

- Acted for a public health system against its anaesthetists in preventing collective boycotts and in obtaining agreement to a contractual framework which underpinned significant reform of clinical practice and management of operating theatres
- Acted for the ACCC in consumer protection proceedings relating to internet marketing of pharmaceuticals
- Advised the ACCC on conduct of an investigation into health claims by the manufacturer and distributors of a consumer beverage
- Obtained for the ACCC extensive declarations, injunctions and orders for compensation against Internet Registrations Australia which was, at the time, a prominent domain name reseller
- Advised the ACCC on the application of collective boycott provisions of the Trade Practices Act to a buyers group of public art galleries
- Advised the Department of Industry, Tourism and Resources on application of third line forcing provisions of the *Trade Practices Act* to the delivery of industry assistance programs
- Advised Airservices Australia on monopoly pricing and access issues in relation to Air Traffic Management services and licensing of intellectual property in aeronautical information
- Acted for Airservices Australia on commercialisation of the Australian Integrated Aeronautical Information Package, including complex interactions between market power issues and international civil aviation regulation.

Aviation and Logistics

Etihad Airways PJSC ats Hanna Farid – appearing for the defendant in Supreme Court proceedings under the Warsaw Convention

Trans Air v Air Services Australia – appearing for the plaintiffs in Queensland Supreme Court proceedings for contributions arising from international litigation concerning an aircraft accident

QBE Insurance (Australia) Limited ats Lambert Leasing Inc – appearing for the defendant in Commercial List proceedings concerning the scope of coverage of an aviation, hull and liability policy

QBE Insurance (Australia) Limited v Hotchin [2011] NSWSC 681 – appeared for the plaintiff to obtain anti-suit injunction restraining conduct of proceedings in Illinois; appearing for the plaintiff seeking declarations as to the scope of an aviation, hull and liability insurance policy – led by Fagan SC

Regional Express ats Ivanos – appeared for defendant in Supreme Court proceedings under the Warsaw Convention

Advising logistics industry participants on Part 4, *Competition & Consumer Act* issues

General Commercial

Australian Hearing Services ats Skillsearch Pty Limited – appeared for the defendant in District Court contract dispute

Rundall ats Billgate Pty Ltd – obtained indemnity cost order for defendant in proceedings concerning a statutory easement

California Stars Entertainment Pty Ltd v Revesby Workers Club Limited – appeared for the plaintiff in District Court contract dispute

Lewis ats TC Communications Pty Ltd – appeared for defendant in restraint of trade proceedings in the Supreme Court

Luen Fook Tong v Lowe – appeared for the plaintiffs in Supreme Court dispute concerning governance of incorporated Association

Portland Investments Pty Ltd ats Abercrombie & Fitch Pty Ltd – appeared for the defendants in caveat dispute

Conduct of investigations pursuant to statute

Extensive experience conducting oral examinations pursuant to s155 of the *Trade Practices Act* and its counterpart in the ASIC Act; and in settling notices issued pursuant to that legislation.

Extensive advisings on the conduct of investigations by the ACCC.

Extensive advisings on the conduct of employment based investigations – both in the public service and in private sector.

Inquired into the performance of its statutory functions by Cape York Land Council pursuant to an appointment under s203AD of the *Native Title Act*.

Advised the Office of Evaluation and Audit on conduct of a major and contentious investigation into the conduct of a high profile indigenous organisation.

Government administration

As a consultant to the Department of Social Security played a leading role, with Meredith Edwards AM in policy and legislative development of the Child Support Scheme.

As an adviser, ministerial consultant and Principal Adviser to the Hon Brian Howe MP AO as Minister for Social Security and Minister for Health, Housing and Community Services and Assisting the Prime Minister on Commonwealth State Relations, and for a time, Deputy Prime Minister:

- Oversaw initial implementation of the Child Support Scheme
- Developed the Jobs Education and Training Scheme for sole parents
- Managed the rewriting of the Social Security Act

- Converted the Social Security Appeals Tribunal to a determinative first tier review body
- Participated in the establishment of the Special Premiers' Conferences and their conversion to COAG and numerous policy development processes
- Managed the development of, and negotiated, the first Community Pharmacy Agreement
- Led the initial development and funding of Divisions of General Practice
- Led the Commonwealth's re-engagement with urban development policies and the development and implementation of the Better Cities Program
- Led and supported the conduct of the National Housing Strategy Review by Dr Meredith Edwards AM and National Health Strategy Review by Ms Jenny Macklin – each of which spawned policy directions which are being implemented by the current government.

As Principal of Social Policy Consultants:

- With Dr John Deeble AO conducted the consultations, developed the policy and drafted the legislation for the recovery of compensable medical and pharmaceutical benefits
- Conducted the consultations across industry sectors and disability groups for, and drafted, the first National Disability Strategy.

As Assistant Secretary, Legal Branch of the Department of Employment Education and Training:

- Established the Branch
- Managed the integration of the Students Assistance Review Tribunal into the SSAT
- Led the legislative policy development and drafting for the outsourcing of employment services, including the first provision for Ombudsman investigation and external merits review consideration of decision making by outsourced providers
- Brought together and managed the privacy, security, freedom of information, external review and litigation functions of the Department (which, at the time, included the Commonwealth Employment Service and Student Assistance Office networks).

As First Assistant Secretary, Vocational Education and Training Division:

- Managed the implementation of Netforce (lead by Lindsay Fox AC and Bill Kelty AC) and its later conversion to the New Apprenticeship Scheme
- Managed the Commonwealth Minister's stake in the Australian National Training Authority (led by Terry Moran AO)
- Managed development of the Australian Student Traineeship Foundation (later the Enterprise and Career Education Foundation)
- Negotiated and implemented the National Training Wage Award involving amendments to every Federal and State award (and enactment of special legislation in Victoria).

As Chair of Little Company of Mary Health Care:

- Led the acceptance and implementation of the redeveloped Calvary Mater Newcastle, a specialist tertiary cancer care facility – the first Public Private Partnership for the redevelopment of a non government operated public hospital in Australia
- Leading the negotiations with the ACT Government, the Medical Staff Council and the Catholic Archdiocese of Canberra and Goulburn together with the Bishops of NSW/ACT for reconfiguration of the ownership, governance and management of Calvary Public Hospital, Canberra

Experience – chronology

2006 - Present	Barrister, NSW Bar
2000 - 2010	Little Company of Mary Health Care Ltd Director Chair (from 2007)
1997 - 2006	Corrs Chambers Westgarth Partner (from 1998) Leader, National Public Law Practice Group (from 1998) Partner in Charge, Canberra Office (from 2003)
1994 - 1997	Department of Employment Education and Training Assistant Secretary, Legal Branch First Assistant Secretary, Vocational Education and Training Division (from 2005)
1993- 1994	Social Policy Consultants Self employed
1987 - 1993	The Hon Brian Howe MP AO Ministerial Consultant / Adviser Senior / Principal Advisor (from 1990)
1986	Child Support Secretariat Consultant
1986	University of Canberra Lecturer in Law
1985	Administrative Review Council Research Officer, Access to Administrative Review
1983 - 1985	ACT Council of Social Services President Founder Welfare Rights and Legal Centre

Publications

- Loss of Client Legal Privilege (2011)
- The Australian Consumer Law (2011)
- Dealing with Regulators (College of Law, 2009)
- Waiver of Legal Professional Privilege (College of Law 2008)
- Freedom of Information and the Public Interest (APLA 2006)
- The Model Litigant Principle and the Legal Services Directions (ACLA, 2006)
- Australia – China FTA : Implications for Resources Trade (JB Were, 2005)
- The US FTA – Impacts on Government Procurement (2004)
- Undertakings of Confidence by the Commonwealth – Are there Limits? (AIAL Forum, 2000)
- The Annotated Social Security Act (First three editions, with Peter Johnson) (Welfare Rights Centre)