



Resume

Name Tom Brennan
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Tom Brennan is a Sydney barrister specialising in the following areas:

- Trade practices
- Administrative law
- International trade law

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)

Areas of expertise

Administrative Law

Economic regulation

Public sector employment

Senior business leadership in large scale community service delivery

Conduct of investigations pursuant to statute

Government administration

Relevant experience

Administrative Law

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

Gerhardt v APRA – appeared for the Chief Executive of Paris Re restraining APRA from disqualifying Mr Gerhardt.

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

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

Cohen v Health Care Complaints Commissioner – obtained a stay from the Court of Appeal of an order of the Medical Board requiring regular urinalysis

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

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

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

Minister for Immigration and Citizenship – appeared for the Respondent Minister in numerous appeals to the Federal Court against decisions of the Federal Magistrates Court

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 leading to the current review of its corporate structures
- *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

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

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

ACCC v Jutsen and others – acting for the ACCC – Part V

Weimann v Allphones and others – 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

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.

Public sector employment law experience

- Acted for the ACT in numerous applications to the AIRC consequent upon the government's proposed closure of the public sector superannuation schemes – key respondents were CPSU, ANF and CMFEU
- Acted for the ACT in the AIRC on various applications relating to negotiation of nurses and other hospital certified agreements including two s127 applications
- Acted for Airservices Australia, Adecco and Australian Bureau of Statistics in numerous applications in the AIRC, Federal Court and Discrimination Tribunal relating to claims of unlawful and unfair termination of employment and discrimination in employment
- Solicitor for Airservices Australia in s127 applications against Civil Air
- Acted for the Canberra Hospital in negotiation of VMO contracts and in various disputes with VMOs

- Acted in *Falk v Australian Capital Territory* (2006) 155 IR 272 - Public Interest Disclosure Act (whistleblower) proceedings in the Supreme Court of the ACT
- Advised Management and Training Corporation on a greenfields strategy to underpin its bid to operate Australia's immigration detention centres and assisted in negotiations with the ALHMWU
- Acted for Adecco in responding to various applications under Discrimination laws

As Assistant Secretary, Legal, Department of Employment, Education and Training acted for the Commonwealth in numerous complaints of direct and indirect discrimination on the basis of race, sex and disability in Commonwealth employment and student assistance programs – including design and implementation of an approach to minimise indirect discrimination risks in design of new programs.

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.

Senior business leadership in large scale community service delivery

The Little Company of Mary Health Care Group operates the Calvary health and aged care services around Australia. It employs 9100 staff in 4 public hospitals, 11 private hospitals, 3 residential aged care services and Australia's largest home care service. It is among the top 50 employers, public and private, in Australia. As a Director and, more recently, Chair of Little Company of Mary Health Care Ltd and its subsidiaries, Tom Brennan has steered the group to:

- Grow from the base of the heritage services previously conducted by the Sisters of the Little Company of Mary into an integrated operator of Calvary public and private hospitals, residential aged care facilities and home and community care services across six states and territories;
- Be the largest recognized specialist provider of sub acute, palliative, rehabilitation and home care services in Australia;
- Deliver substantial and simultaneous improvements in margin, in the metrics for mission integration, and patient, staff and doctor satisfaction.

As National Practice Group Leader of the Public Law Practice Group and Partner in Charge of the Canberra Office of national law firm Corrs Chambers Westgarth, Tom was accountable for the service quality, growth and profitability of Corrs' business in Canberra and in servicing governments throughout Australia.

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
- Leading the negotiations with state and territory governments for the positioning of Calvary Mater Newcastle and Calvary Healthcare ACT, two major public acute hospitals, and Calvary Health Care Sydney, Calvary Health Care Bethlehem and Clare Holland House, three of Australia's leading hospices and community based palliative care services, within the proposed Local Hospital Networks.

Experience – chronology

2006 - Present	Barrister, NSW Bar
2000 - Present	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

- 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)