

Resume

Name Tom Brennan

Address 13th Floor, Wentworth Chambers, 180 Phillip Street, Sydney

Office 02 9238 0047

Email brennan@selbornechambers.com.au

Tom Brennan has over 20 years' experience as a lawyer, including 13 years as a specialist advocate at the New South Wales Bar. Tom also has extensive experience as a senior executive in the Federal government and as a public company director.

Tom accepts briefs in disputes concerning:

- Administrative Law
- Aviation
- Employment
- Insurance
- International Law
- Trade Practices and Competition

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)

Selected recent cases

Administrative Law

[*Degning 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

[*Helicopter Resources Pty Ltd v Commonwealth of Australia*](#) [2019] FCAFC 25, [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

[*Hocking v Director-General, National Archives of Australia*](#) [2019] FCAFC 12, [2018] FCA 340, 255 FCR 1 – appeared for Professor Hocking – Constitutional and Administrative Law

– are letters between the Governor-General in his official capacity and the Queen the property of the Commonwealth and subject to the Archives Act – nature and incidents of the office of Governor-General – appeal to Full Court listed for November 2018

[*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

[*Parkes Shire Council v South West Helicopters Pty Ltd*](#) [2019] HCA 14, [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

[*Helicopter Resources Pty Ltd v Commonwealth of Australia*](#) [2019] FCAFC 25, [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] 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; [2016] FCAFC 42, (2016) 244 FCR 190; [2014] FCA 1157; (2014) ATPR 42-490 – 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 – appeared for Qantas to obtain order prohibiting VCAT from hearing claim in which Qantas asserted defence under Warsaw Convention

Employment

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

[*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

[*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

Insurance

[*Marketform Managing 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.

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, [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] QCA 77 – 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*](#) [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; [2016] FCAFC 42, (2016) 244 FCR 190; [2014] FCA 1157; (2014) ATPR 42-490 – 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 – acting 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

Tom Brennan – 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 1995)
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