

Jenny Firkin KC



Jenny Firkin KC practises in all areas of Industrial, Employment and Discrimination Law

QUALIFICATIONS

Bachelor of Laws (Hons)(Melb)
Bachelor of Science (Monash)
Grad Diploma Labour Relations Law
(Melb)

CORRESPONDENCE

P 03 9225 8558
E jenny_firkin@vicbar.com.au

CHAMBERS

Aickin Chambers
Room 07 Level 16
200 Queen Street
Melbourne VIC 3000

COMMERCIAL LAW

Appellate | Class Actions

EMPLOYMENT & INDUSTRIAL

Appellate | Confidential Information | Discrimination | Employment Contracts | Industrial Disputes | Public Sector Appeals | Restraint of Trade | Statutory Employment Rights | Work Health & Safety

TORT LAW

Class Actions | Major Torts

PUBLIC LAW

Appellate | Civil & Human Rights | Commissions & Inquiries | Discrimination | Judicial Review

Jenny is currently ranked as a leading senior counsel in employment law in the Doyle's Guides for Australia and Victoria. She is recognised in The Legal 500, Best Lawyers 2024, and Who's Who Legal 2023 edition of WWL: Australia & New Zealand (Labour, Employment & Benefits).

Jenny is an experienced appellate advocate, regularly conducting appeals in the High Court of Australia and the Full Federal Court. She is recognised for her specialist expertise in human rights and equal opportunity law and has acted in numerous discrimination and sexual harassment cases.

Jenny has extensive experience in class actions, including representative proceedings concerning employment conditions, discrimination, public law and major torts.

Jenny has also appeared in a number of royal commissions and inquiries.

Jenny is the President of the Victorian Bar's Industrial Bar Association. She is a Member of the Law Council of Australia's Equal Opportunity Committee.

Some of the cases in which she has appeared are set out below.

Liability limited by a scheme approved under Professional Standards legislation

Recent Cases

CLASS ACTIONS AND REPRESENTATIVE PROCEEDINGS

Fisher v Commonwealth of Australia [2023] FCAFC 106, Federal Court representative proceeding claiming race discrimination in relation to the age pension

Kelehear v Stellar Personnel Brisbane Pty Limited & Ors [2019 – ongoing], Federal Court class action regarding casual entitlements

Petersen v WorkPac Pty Ltd [2019 – 2022], Federal Court class action regarding the classification of casual employees

Renyard v WorkPac Pty Ltd [2019 – 2022], Federal Court class action regarding the classification of casual employees

Yasmin v Commonwealth of Australia [2022], Federal Court class action claiming negligence, false imprisonment, misfeasance in public office and race discrimination in relation to people smuggling boat crew

Kamasae v Commonwealth of Australia [2016 – 2017], Supreme Court class action regarding regional processing on Manus Island

Rowe v SPI Electricity Pty Ltd [2013 – 2015], Supreme Court class action arising out of the Murrindindi bushfire on Black Saturday

Matthews v SPI Electricity Pty Ltd [2010 – 2014], Supreme Court class action arising out of the Kilmore bushfire on Black Saturday

EMPLOYMENT, INDUSTRIAL & OTHER COMMERCIAL MATTERS

Dunstan v Orr (No 2) [2023] FCA 1536, Federal Court summary judgment concerning allegations of negligence and

fraud on the Court

Finance Sector Union v Commonwealth Bank Australia [2023], Federal Court proceeding brought by the FSU in its representative capacity in relation to paid tea breaks

Fair Work Ombudsman v University of Melbourne [2023], Federal Court proceeding claiming marking underpayments

Messenger v Commonwealth of Australia (Represented by the Department of Finance) (No 2) [2023] FCA 20, costs in Federal Court trial concerning an adverse action claim by Senator Lambie's former staff

Messenger v Commonwealth of Australia (Represented by the Department of Finance) [2022] FCA 677, Federal Court trial concerning an adverse action claim by Senator Lambie's former staff

Construction, Forestry, Maritime, Mining and Energy Union v Australian Building and Construction Commissioner (The Monash Freeway Widening Case) [2022] FCAFC 59, Full Federal Court appeal concerning contraventions of ss.499 & 500 of the Fair Work Act 2009 (rights of entry)

Australian Federation of Air Pilots v Regional Express Holdings Limited [2021] FCAFC 226, Full Federal Court appeal concerning adverse action, coercion and misrepresentation

Australian Building and Construction Commissioner v Construction, Forestry, Maritime, Mining and Energy Union (The Monash Freeway Widening Case) (No 2) [2021] FCA 1101, Federal Court penalty decision for contraventions of the Fair Work Act 2009

Fair Work Ombudsman v Hu & Ors [2020] HCATrans 11, Special Leave application to the High Court concerning accessorial liability and pieceworker rates

Australian Building and Construction Commissioner v Construction, Forestry, Maritime, Mining and Energy Union (The Monash Freeway Widening Case) [2020] FCA 1727, contraventions of ss.499 & 500 of the Fair Work Act 2009 (rights of entry)

Fair Work Ombudsman v Construction, Forestry, Maritime, Mining and Energy Union (MV Portland Case) (No 2) [2020] FCA 1138, construction of an enterprise agreement

The Hon. Christian Porter MP, Attorney General and Minister for Industrial Relations v Metropolitan Fire and Emergency Services Board [2019] FWCFB 6255, Appeal concerning the statutory construction of the term 'discrimination' in s.195 of the Fair Work Act 2009

Metropolitan Fire and Emergency Services Board [2019] FWC 1922, application for referral to the Federal Court

Minister for Jobs and Industrial Relations; Minister for Women – Application for review of a decision [2019] FWC 1228, application for a stay

Application by the Metropolitan Fire and Emergency Services Board [2019] FWC 106, opposing approval of enterprise agreement containing discriminatory terms

Australian Manufacturing Workers' Union v Paper Australia Pty Ltd T/A Australian Paper [2018] FWCFB 2011, Appeal from order under s.425 of the Fair Work Act 2009 (suspended protected industrial action)

Ezy Accounting 123 Pty Ltd v Fair Work Ombudsman [2018] FCAFC 134, Full Federal Court Appeal concerning accessorial liability

Godfreys Employee Collective Agreement [2018] FWCA 6804, termination of enterprise agreement

Australian Building and Construction Commissioner v Construction, Forestry, Maritime, Mining and Energy Union (The Parliament Square Case) (No 2) [2018] FCA 1201, Federal Court penalty decision for contraventions of s.500 of the *Fair Work Act 2009*

Australian Building and Construction Commissioner v Construction, Forestry, Mining and Energy Union (The Parliament Square Case) [2018] FCA 1080, Federal Court trial concerning contraventions of s.500 of the *Fair Work Act 2009* (rights of entry)

Application by the Metropolitan Fire and Emergency Services Board [2018] FWC 3220, Fair Work Commission application to intervene

Fair Work Ombudsman v Construction, Forestry, Maritime, Mining and Energy Union (MV Portland Separate Question Case) [2018] FCA 956

Regional Express Holdings Limited v Australian Federation of Air Pilots (2017) 262 CLR 456; [2017] HCATrans 178, High Court Appeal concerning the statutory construction of s.540(6) of the *Fair Work Act 2009* (union standing to pursue civil penalties)

Regional Express Holdings Limited v Australian Federation of Air Pilots [2017] HCATrans 105, Special Leave application to the High Court

Australian Manufacturing Workers' Union v Boeing Australia Component Repairs Pty Ltd [2017] FWC 2392, dispute arising under enterprise agreement regarding the proper construction of the re-classification clause

Nel v Western Health [2016] FWC 3666, opposing extension of time for general protection proceedings

Regional Express Holdings Ltd v Australian Federation of Air Pilots (2016) 244 FCR 344, Full Federal Court Appeal concerning the statutory construction of s.540(6) of the *Fair Work Act 2009*

Regional Express Holdings Ltd v Australian Federation of Air Pilots [2016] FCA 367, Federal Court Application for Leave to Appeal

Hegarty v Commonwealth of Australia [2016] FWC 117, dispute arising under enterprise agreement with respect to the *Superannuation Act 1990 (Cth)*

Fair Work Ombudsman v Quest South Perth Holdings Pty Ltd & Ors (2015) 256 CLR 137, High Court Appeal regarding the statutory construction of s.357 of the *Fair Work Act 2009* (sham contracting)

Fair Work Ombudsman v Quest South Perth Holdings Pty Ltd & Ors [2015] HCATrans 193, High Court Special Leave Application

Pepe v Platypus Asset Management Pty Ltd (2013) 46 VR 694; [2013] VSCA 38, Supreme Court Appeal regarding an executive contract dispute

Pepe v Platypus Asset Management Pty Ltd (2011, unreported), Supreme Court application for a Mareva Injunction

Pepe v Platypus Asset Management Pty Ltd (No 2) [2011] VSC 2, Supreme Court executive contract dispute (costs)

Pepe v Platypus Asset Management Pty Ltd [2010] VSC 603; (No 2) [2011] VSC 21, Supreme Court executive contract dispute

Quinn v Overland [2010] FCA 799, Federal Court application for an interlocutory injunction to restrain suspension of employment

Forbes v The Secretary to the Department of Education and Early Childhood Development (2010, unreported),

Appeal to the Disciplinary Appeals Board under the *Education and Training Reform Act 2006*

The Australian Workers' Union v Western Port Pipe and Mechanical Services Pty Ltd [2010] FWA 2864, statutory construction of the Commission's power to compel production of documents

Nash v HyGain (2005, unreported), Supreme Court application for an interlocutory injunction to enforce restraint of trade

Shark Fin Burwood Pty Ltd v Ducgo Pty Ltd [2003] VSCA 20, Supreme Court Appeal regarding damages for breach of contract

De Angelis v De Angelis (2003) 7 VR 331; [2003] VSC 83, Supreme Court application to strike out family testator maintenance claim

Abiye v General Motors Acceptance Corporation Australia [2003] VCAT 1170, Consumer Code application

Raschilla v General Motors Acceptance Corporation Australia [2002] VCAT 1653, Consumer Code application

Numerous unfair dismissal claims

DISCRIMINATION AND SEXUAL HARASSMENT

Fisher v Commonwealth of Australia [2023] FCAFC 106, Federal Court representative proceeding claiming race discrimination in relation to the age pension

Yasmin v Commonwealth of Australia [2022], Federal Court class action claiming negligence, false imprisonment, misfeasance in public office and race discrimination in relation to people smuggling boat crew

The Hon. Christian Porter MP, Attorney General and Minister for Industrial Relations v Metropolitan Fire and Emergency Services Board [2019] FWCFB 6255, Appeal concerning the statutory construction of the term 'discrimination' in s.195 of the *Fair Work Act 2009*

Application by the Metropolitan Fire and Emergency Services Board [2019] FWC 106, opposing approval of enterprise agreement containing discriminatory terms

Bashour v Australian and New Zealand Banking Group Limited [2017] FCA 163, discrimination claim (costs)

Suleyman v The Speaker of the Legislative Assembly & Anor (2013, unreported), application for leave to appeal to the Supreme Court of Appeal from a discrimination claim

Jennings v Department of Education & Early Childhood Development (2012, unreported), Application for leave to appeal to the Supreme Court from a discrimination claim

Jennings v Department of Education & Early Childhood Development [2012] VCAT 131, pregnancy discrimination claim by a teacher

Harley v Commonwealth of Australia [2011] FMCA 197, application for appointment of a Court expert in discrimination proceedings

Suleyman v The Speaker of the Legislative Assembly & Anor [2011] VCAT 2305, claim of discrimination based on political activity by an electorate officer

Harley v Commonwealth of Australia [2010] FMCA 1029, application for trial of a separate question in discrimination proceedings

Mik v Hilakari & Ors [2009] VCAT 902, strike out application of a discrimination claim concerning a student association

Tarpey v State of Victoria [2009] VCAT 410, strike out application of a discrimination claim by a parent

Dickie v State of Victoria & Ors [2009] VCAT 713, racial discrimination claim by a teacher

Pitt v OneSteel Reinforcing Pty Limited [2008] FCA 923, Federal Court application for leave to appeal the decision to dismiss discrimination proceedings

Mangan v Melbourne Cricket Club [2006] VCAT 792, sex discrimination claim (costs)

Mangan v Melbourne Cricket Club [2006] VCAT 73, sex discrimination claim concerning "Ladies' tickets"

Golten v Pink Healthcare Services [2005] VCAT 825, sexual harassment claim

Taylor v Moorabbin Saints Junior Football League and Football Victoria Ltd [2004] VCAT 158, sex discrimination claim by female footballers

Stockdale v Colliers Jardine (Vic) Pty Ltd & Anor [2003] VCAT 590, strike out application of an age discrimination claim

Smith v Football Victoria Ltd [2003] VCAT 936, application for interim order to restrain the prevention of girls from participating in the Junior Football league

Boxall v Chisholm Institute of TAFE [2003] VCAT 125, application for interim order to restrain termination of employment

ROYAL COMMISSIONS AND INQUIRIES

Inquiry into Historical Child Sexual Abuse in Beaumaris Primary School and certain other Government Schools [2023]

COVID-19 Hotel Quarantine Inquiry [2020]

Royal Commission into Violence Abuse Neglect and Exploitation of People with Disability [2019]

Memberships

Victorian Bar Industrial Bar Association – President

Law Council of Australia Equal Opportunity Committee - Member