

Justin Bourke KC



Justin Bourke KC has extensive experience in industrial, employment and discrimination law.

QUALIFICATIONS

Bachelor of Economics (Hon) (Mon)
Bachelor of Laws (Mon)
Master of Laws (Melb)

CORRESPONDENCE

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CHAMBERS

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EMPLOYMENT & INDUSTRIAL

Employment Contracts | Industrial Disputes

PUBLIC LAW

Administrative Law | Discrimination | Judicial Review

COMMERCIAL LAW

Regulatory Investigations

Justin brings immense experience to the conduct of trials and appeals, having done numerous trials, including trials of substantial length, and complex appeals, in the areas of industrial, employment and discrimination law since coming to the Victorian Bar.

Justin's experience includes being involved in numerous interlocutory applications, especially in respect of applications to stop industrial action and applications to enforce post-employment restraints and protect confidential information.

Justin also regularly provides strategic advice to regulators, State and Federal governments and the corporate sector.

Justin has been consistently ranked in Chambers and Partners as a top tier national industrial law Silk and Doyle's Guide as a Preeminent national employment law senior counsel, being referred to in their research findings as "clearly the leading industrial silk." In 2024, he was described as "a master advocate with a strategic brilliance few can match." The Legal 500 Asia Pacific for the Australian Bar further recognises Justin as a leading Senior Counsel in Commercial Disputes (2024). Most recently, Justin has been recognised as one of the top ten employment and industrial law senior counsel in Australia, by [Business Today](#).

Liability limited by a scheme approved under the Professional Standards Legislation.

Recent Cases

HIGH COURT EXPERIENCE

Justin's practice has extended to him being involved in some of the most important industrial cases to go to the High Court in recent years. These cases are listed below:

***Fair Work Ombudsman v Quest South Perth Holdings Pty Ltd* [2015] HCA 45; (2015) 90 ALJR 113**

Justin successfully argued for a broader construction of the independent contractor provisions in the Fair Work Act 2009 (Cth) (FW Act) on behalf of the Fair Work Ombudsman, overturning a previous unanimous decision of the Full Federal Court.

***Bendigo TAFE v Barclay* [2012] HCA 32; (2012) 248 CLR 500**

Justin successfully argued that a contravention of the "adverse action" provisions of the FW Act requires a prohibited subjective state of mind, not merely a causal link between the conduct and the adverse action, overturning an earlier majority decision of the Full Federal Court.

***State of NSW v Commonwealth of Australia (The Work Choices Case)* [2006] HCA 52; (2006) 229 CLR 1**

Justin was one of a number of Counsel who acted for the Commonwealth in the landmark Constitutional case where the High Court found that the Work Choices industrial legislation could be supported by the corporations power.

***Amcor v CFMEU* [2005] HCA 10; (2005) 222 CLR 241**

Justin represented the Federal Minister for Employment, who intervened in this appeal in support of Amcor. Amcor successfully argued on appeal that the relocation of its workforce to a related company did not trigger a redundancy entitlement for its workforce under the enterprise agreement.

***Gribbles Radiology v HSUA* [2005] HCA 9; (2005) 222 CLR 194**

Justin successfully argued that the then “transmission of business” provisions in the Workplace Relations Act 1996 (Cth) were not engaged when a person opened the same type of business at the same location and hired some of the previous business’s staff, overturning an earlier unanimous decision of the Full Federal Court.

A selection of other cases***Swiegers v CSIRO* [2015] NSWDC 298**

Justin successfully defended CSIRO in a 13 day District Court trial in New South Wales where a former senior employee had alleged that CSIRO conspired to make him redundant because he had made various whistleblower allegations against CSIRO.

***Fair Work Ombudsman v Offshore Marine Services* [later known as *Skilled*] & MUA [2013] FCA 943; [2015] FCA 275; [2015] FCAFC 120**

Justin successfully established that the MUA had discriminated against a married couple because they did not have union membership. Penalties were secured against the MUA as well as a compensation order in favour of the couple totalling the sum of \$723,300 (reduced on appeal to \$330,000).

***Tattsbet v Morrow* [2015] FCAFC 62; (2015) 233 FCR 46**

Justin successfully overturned a decision of a Federal Circuit Judge who found that a person who ran a Tattsbet outlet under an agency agreement was an employee of Tattsbet, not an independent contractor.

***Chen v Monash University* [2015] FCA 130**

Justin successfully defended Monash University and two professors from numerous allegations of sexual discrimination and harassment in the workplace in a trial of 15 days’ duration.

***Melbourne Stadiums Ltd [Etihad Stadium] v Sautner* [2015] FCAFC 20; (2015) 229 FCR 221**

Justin successfully argued before a five member Full Federal Court that Etihad Stadium was entitled to summarily dismiss its senior manager for serious misconduct, overturning a contrary finding of a County Court Judge at trial. This case is now the leading case as to when an employer can rely on a ground to dismiss where such ground was not known or not raised at the time of dismissal.

***Shea v TRUenergy Australia [now EnergyAustralia] (No. 6)* [2014] FCA 271; (2014) 314 ALR 346; [2014] FCAFC 167; (2014) 242 IR 159**

Justin successfully defended EnergyAustralia in what was a high profile adverse action case brought by Kate Shea against EnergyAustralia, wherein Ms Shea, in what was a 2½ week trial, alleged she was dismissed for complaining about a corporate culture of sexual harassment in the workplace. The appeal by Kate Shea both against the liability judgment and an adverse indemnity costs order was successfully resisted.

***UFU v Country Fire Authority* [2014] FCA 17; (2014) 218 FCR 210; [2015] FCAFC 1**

Justin at first instance, in part, successfully argued that a number of the provisions of an enterprise agreement said to be breached by the CFA were constitutionally invalid. This decision was later overturned on appeal.

Abela v State of Victoria (Department of Education) [2013] FCA 832

Justin successfully defended the Victorian Education Department from a disability discrimination claim in a trial of four weeks' duration. The proceeding was later settled on appeal, the settlement being approved by the Court: [2015] FCA 902.

Nojin v Commonwealth of Australia [2011] FCA 1066; (2011) 283 ALR 800; [2012] FCAFC 192

At first instance, in what was a test case, Justin successfully argued that the Business Services Wage Assessment Tool used by the Commonwealth to assess wage rates for persons with a disability did not infringe the Disability Discrimination Act. The decision was later overturned on appeal.

Fair Work Ombudsman v MUA [2014] FCA 440; (2014) 243 IR 312; [2015] FCA 814

Justin successfully argued that the MUA had contravened the adverse action provisions of the FW Act when it published and distributed a scab poster on the Western Australian waterfront naming five men who the MUA claimed worked during a strike. Compensation orders were made in respect of each of these men. Judgment in the appeal is pending.

Walker v State of Victoria (Department of Education) [2011] FCA 258; (2011) 279 ALR 284; [2012] FCAFC 38

Justin, in what was a trial of 21 days duration, successfully defended a disability discrimination case brought by a student against the Victorian Education Department. The case made important observations as to the limits on the reach of indirect discrimination claims. The Applicant's appeal was successfully resisted.

Haros v Linfox [2011] FCA 699; [2012] FCAFC 42

Justin successfully defended Linfox from a claim by a former manager that he was misled into commencing employment with Linfox in what was a trial of 13 days' duration. The Applicant's appeal was successfully resisted.

Memberships

Member of the Editorial Board of the Australian Journal of Labour Law

Member of the Industrial Bar Association