

Paul O'Grady KC



Paul O'Grady KC has a broad employment and industrial law practice

QUALIFICATIONS

Bachelor of Commerce (Melb)
Bachelor of Laws (Melb)

CORRESPONDENCE

P 03 9225 8558
E paul.ogrady@vicbar.com.au

CHAMBERS

Aickin Chambers
Level 21 Room 9
200 Queen Street
Melbourne VIC 3000

EMPLOYMENT & INDUSTRIAL

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

PUBLIC LAW

Administrative Law | Discrimination | Judicial Review

Paul joined the Victorian Bar in May 2002 and was appointed Silk in 2015. He specialises in Employment and Industrial Relations Law and has for many years been a strong contributor to the Bar's Continuing Legal Education program.

Paul is an author of the leading Australian employment law text "Macken's Law of Employment", Thomson Reuters, 4th ed (1997), 5th ed (2002), 6th ed (2009), 7th ed (2011), 8th ed (2016) and 9th ed (2022). He is recognised in Doyle's Guide as a leading (2012 - 2022) and preeminent (2023) Employment Law Barrister, The Legal 500 Asia Pacific (2021-2024), Chambers and Partners Pacific (2021-2024) and distinguished as outstanding in Best Lawyers (2016-2023). Best Lawyers have twice awarded Paul 'Lawyer of the Year' for Labour and Employment Law (2018 and 2020).

Paul is also an Honorary Senior Fellow of the University of Melbourne Law School, regularly teaching in the Melbourne Law Masters, and has since 2005 been an Editor of the Practice and Procedure Section of the *Australian Journal of Labour Law*.

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Recent Cases

EMPLOYMENT LAW

Lendlease Building Contractors Pty Ltd v Australian Building and Construction Commissioner (No 2) [2022] FCA 192 (11 March 2022, Snaden J) appearing for Lendlease in a challenge to the validity of a compliance notice issued under s.99 of the *Building and Construction Industry (improving Productivity) Act 2016 (Cth)*, construction of provisions of the *Code for Tendering and Performance of Building Work 2016 (Cth)*.

Lloyd v Healthscope Operations Pty Ltd [2021] VSCA 327 (Court of Appeal) appeal from decision of the County Court of Victoria, workplace injury, psychiatric injury from alleged bullying, whether disciplinary procedure manual was incorporated into the contract of employment.

Australian Rail, Tram and Bus Industry Union v KDR Victoria Pty Ltd (t/a Yarra Trams) [2021] FCA 1377 (22 November 2021, Wheelahan J), construction of enterprise agreement, whether proposed action would contravene enterprise agreement, relevance of any common understanding.

Infosys Technologies Ltd v State of Victoria (2021) 64 VR 61, trial heard by the Court of Appeal, long service leave entitlements, whether overseas service included for purposes of calculating entitlement to payment out of accrued but unused leave on termination.

Transport Workers' Union of Australia v Prosegur Australia Pty Ltd (2020) 298 IR 165; [2020] FWCFB 3655; dispute over validity of a JobKeeper direction concerning hours of work of employees, s.789GV of the *Fair Work Act 2009 (Cth)*.

Australian Building and Construction Commissioner v Construction, Forestry, Maritime, Mining and Energy Union [2020] FCA 549 (28 April 2020, Flick J), assessment of penalty, course of conduct, principles regarding civil double jeopardy, totality principle.

Milam v University of Melbourne (2019) IR 309 (Federal Court), injunction to prevent continuation of workplace investigation.

Application by Metropolitan Fire and Emergency Services Board, Re (2019) 284 IR 239 (Fair Work Commission), whether enterprise agreement contained discriminatory terms, whether "discriminates against" includes indirect discrimination.

Commonwealth of Australia represented by the Department of Home Affairs, Re (2019) FWCFB 143 (11 January 2019) arbitration of industrial action related workplace determination covering the terms and conditions of employment of about 15,000 award covered employees of the Department of Home Affairs, See also related statement [2018] FWCFB 3415 (concerning wage related issues), workplace determination (AG501682, PR704687, 8 February 2019), and decisions in *Commonwealth of Australia represented by the Department of Immigration and Border Protection, Re* (2017) 271 IR 43 [2017] FWCFB 5214 (10 October 2017); *Commonwealth of Australia represented by the Department of Immigration and Border Protection v CPSU* [2017] FWCFB 4200 (11 August 2017) concerning whether material was precluded from being tendered in evidence due to the operation of the *Parliamentary Privileges Act 1987 (Cth)*, s.16.

Australian Education Union v Royal Melbourne Institute of Technology [2018] FCA 1985 (10 December 2018, Wheelahan J), injunction seeking to restraint ballot for approval of an enterprise agreement, whether representations made knowingly or recklessly contrary to s.345 of the *Fair Work Act 2009 (Cth)*, whether the Competition and Consumer Law applies to representations in relation to enterprise bargaining.

BSA Ltd v Victorian WorkCover Authority [2018] VSCA 265 (Court of Appeal) Appeal from decision of the Supreme Court of Victoria, whether contractor who provided services to a principal was "carrying on an independent trade or business" for the purposes of cl.9 of schedule 1 to the *Workplace Injury and Compensation Act 2013 (Vic)*.

Swinburne University of Technology v National Tertiary Education Industry Union (2016) 263 IR 172 [2016] FWCFB 6838 protected action ballot, whether protected action can be taken in circumstances where the relevant notification time was for a multi-enterprise agreement.

National Tertiary Education Industry Union v Swinburne University of Technology (2015) 232 FCR 246* (Full Court) whether sessional and casual employees "employed at the time" of ballot so as to cast a valid vote for approval of an enterprise agreement.

Tattsbet Limited v Morrow (2015) 233 FCR 46* Full Court appeal from finding that a Tattsbet agent was an employee. Cross-appeal in relation to a general protections claim and other claims.

Director of the Fair Work Building Industry Inspectorate v Construction, Forestry, Mining and Energy Union (No.2) [2015] FCA 199 (13 March 2015, Mansfield J) concerning the taking of action on a building site to coerce an employer to pay a fee to a union and improper conduct while exercising rights of entry onto the building site.

Shea v EnergyAustralia Services Pty Ltd (2014) 242 IR 159; [2014] FCAFC 167 (8 December 2014, Rares, Flick and Jagot JJ)*, appeal from refusal of trial judge to grant relief in a claim that an employer terminated the employee's employment because the employee had made various complaints in relation to her employment. See also related costs decision [2015] FCAFC 14* and decision at trial *Shea v TRUenergy Services Pty Ltd (No 6)* (2014) 314 ALR 346*.

Grocon & Ors v Construction, Forestry, Mining and Energy Union & Ors (2013) VSC 275 (24 May 2013, Cavanough J)*, appearing for Grocon in bringing contempt proceedings against the CFMEU in relation to conduct contrary to court orders concerning a mass protest in Lonsdale Street at Myer Melbourne site.

Construction, Forestry, Mining and Energy Union v State of Victoria (2013) 302 ALR 1; [2013] FCA 445 (17 May 2013, Broomberg J)*; *Construction, Forestry, Mining and Energy Union v McCokell Constructions Pty Ltd and the*

State of Victoria (No 2) (2013) 232 IR 290; [2013] FCA 446 (17 May 2013, Broomberg J)* concerning whether the State of Victoria acted contrary to the General Protections provisions in Part3-1 of the *Fair Work Act* in relation to the selection of contractors at the Bendigo Hospital site and the Circus Oz project. *Construction, Forestry, Mining and Energy Union v State of Victoria* (2013) FCA 24 (24 January 2013, Broomberg J), being an application for interlocutory injunctions in relation to the Circus Oz project.

Gamboni v Bendigo and Adelaide Bank Ltd (2013) 39 VR 578 (Court of Appeal) concerning a claim for severance pay.

Board of Bendigo Regional Institute of TAFE v Barclay (2012) 248 CLR 500*, (High Court) appearing for the Bendigo TAFE on appeal from the Full Court of the Federal Court in a decision which determines the approach to the question of whether adverse action was taken "because" of a particular proscribed attribute under the general protections provisions in the Fair Work Act 2009 (C'th). See also the related costs decision [2012] HCA 42 (2012) 248 CLR 549*.

Klein v Metropolitan Fire and Emergency Services Board (2012) 208 FCR 178, [2012] FCA 1402 (10 December 2012, Gordon J)*.

Alfred v CFMEU [2012] FCA 450 (2 May 2012, Bromberg J).

White v CFMEU [2011] FCA 192 (7 March 2011, Kenny J) and earlier proceedings [2010] FCA 835, (2010) 198 IR 470.

Yousif v Commonwealth Bank of Australia [2010] FCAFC 8; 193 IR 212* and at trial *Yousif v Commonwealth Bank of Australia* [2009] FCA 657; 185 IR 447*, special leave to appeal refused on the papers [2010] HCASL 239 (30 September 2010), High Court of Australia, Hayne and Crennan JJ)*.

Draffin v Construction, Forestry, Mining and Energy Union [2009] FCAFC 120; 189 IR 145.

John Holland Pty Ltd v Comcare [2009] FCAFC 127; 260 ALR 103 and related proceedings *Comcare v John Holland Rail Pty Ltd* (2010) 189 FCR 173, [2010] FCA 981 (7 September 2010, Bromberg J) and *Comcare v John Holland Rail Pty Ltd (No 2)* [2010] FCA 1516 (20 October 2010, Bromberg J).

Australian Ophthalmic Supplies Pty Ltd v McAlary-Smith [2008] FCAFC 8; 165 FCR 560.

Cruse v Multiplex Ltd [2008] FCAFC 179; 172 FCR 279*.

Ponzio v B & P Caelli Constructions Pty Ltd [2007] FCAFC 65; 158 FCR 543*.

Memberships

Australian Labour Lawyers Association

Victorian Bar - Industrial Bar Association (former Vice President and committee member).