

ANDREW GOTTING

Barrister

PG Hely Chambers

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Andrew is a commercial barrister specialising in employment and industrial law.

He is regularly briefed in litigation in the Federal Court of Australia and the Supreme Court of New South Wales. He is also regularly briefed in litigation in the Federal Circuit Court of Australia, the District Court of New South Wales, the Fair Work Commission and the Industrial Relations Commission of New South Wales, and has appeared in a number of inquiries and inquests.

Andrew is regularly engaged to advise both in written form and in conference and to act as a mediator of employment disputes. He has acted in private arbitrations of employment disputes.

He has acted in a number of large, complex and long running employment and industrial disputes.

Andrew appears both at first instance and on appeal, and appears both led and unled.

He has considerable experience in disputes relating to employment contracts, including entitlements and termination as well as disputes relating to restraints of trade in employment, partnership and franchise contexts. He also has considerable experience in disputes relating to unfair dismissals, adverse action, public sector appeals, award and enterprise agreement entitlements, industrial action and rights of entry as well as occupational health and safety defences. He also has considerable experience in judicial review applications.

Andrew has acted mainly for employers and governments but undertakes work for employees regularly.

He has been recognised continually in the Doyles Guide for his work in New South Wales and nationally.

ADMISSIONS

- 1999 Admitted to the Bar of New South Wales
- 1996 Admitted as a Solicitor of the Supreme Court of New South Wales

PROFESSIONAL QUALIFICATIONS

- Bachelor of Business with Distinction (University of Technology, Sydney, 1990-1994)
- Bachelor of Laws with First Class Honours (University of Technology, Sydney, 1990-1994)

PROFESSIONAL EXPERIENCE

- 2014 - present Barrister, PG Hely Chambers
- 1999 - 2013 Barrister, Sixth Floor Wentworth Chambers
- 1999 – 2000, 2003–2006 Lecturer (casual) Conflicts of Law (UTS)
- 1998 – 1999 Associate to the Honourable Justice Gummow AC, High Court of Australia

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PRINCIPAL AREAS OF PRACTICE

- Administrative Law
- Appellate
- Civil & Human Rights and Discrimination
- Employment Law
- Industrial Law
- International Law
- Inquests, Royal Commissions and Statutory Tribunals
- OH&S / Work Health and Safety
- Restraint of Trade

PROFESSIONAL MEMBERSHIPS

- Member, Industrial Law Committee of the Law Council of Australia
- Member, Rules and Bench Books Committee of the Fair Work Commission

SELECT CASES

Andrew's experience includes:

Acting in appeals - see, for example, *CFMMEU v Sunset Power International* [2020] FWCFB 4727; *Sydney Trains v Hilder* [2020] FWCFB 1373; *RAFFWU v Woolworths Group Limited* [2019] FWCFB 2355; *Budd v Australian Federal Police* [2018] FWCFB 6948; *QGC Pty Limited v AWU* [2017] FWCFB 1165; *AMOU v Harbour City Ferries Pty Limited* [2016] FWCFB 1151; *AMWU v Griffin Coal Mining Company Pty Limited* [2016] FWCFB 4620; *Sakari Resources Limited v Purvis* [2016] WASCA 24; *CFMEU v Anglo Coal (Callide Management) Pty Limited* [2016] FCAFC 57; see also *Bateman v Communications Design & Management Pty Limited* [2014] FWCFB 8768; *CFMEU v B J Jarrad Pty Limited* [2013] FWCFB 8740; *Byrne v Macquarie Group Services Australia Limited* [2011] NSWCA 68; *Farstad Shipping (Indian Pacific) Pty Limited v MUA* [2011] FWAFCB 1686; *Barach v UNSW* [2010] FWAFCB 3307; *Coal & Allied Mining Services Pty Limited v MacPherson* [2010] FCAFC 83; *AMOU v Sydney Ferries Corporation* [2009] FCAFC 145; *Russell v Trustees of Roman Catholic Church* [2008] NSWCA 217; *Tokyo Network Computing Pty Limited v Tanaka* [2004] NSWCA 263.

Acting in judicial review applications - see, for example, *SDA v Australian Industry Group* [2017] FCAFC 161; *CFMEU v One Key Workforce Pty Limited* [2017] FCA 1266; *CEPU v Aurizon Operations Limited* [2015] FCAFC 126; *AIPA v Fair Work Australia* [2012] FCAFC 65; *CFMEU v Hamberger* [2011] FCA 719; *Thiess Pty Limited v Industrial Court of NSW* [2010] NSWCA 252; *Caterpillar of Australia Limited v Industrial Court of NSW* [2009] NSWCA 83; *Mitchforce Pty Limited v Industrial Relations Commission* [2003] NSWCA 151.

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Acting in nature of employment relationship applications – see *Voros v Dick* [2013] FWCFB 9339; *Wilton v Coal & Allied Operations Pty Limited* [2007] FCA 725; see also *Re Branded Media Holdings Pty Limited* [2020] NSWSC 557; *ASMOF v Sydney South West Area Health Service* [2007] NSWIRComm 243.

Acting in breach of contract of employment applications - see, for example, *Purvis v Sakari Resources Limited* [2015] WASC 63 and [2016] WASCA 24; see also *Fishlock v Campaign Palace Pty Limited* [2013] NSWSC 531; *O’Sullivan Partners (Advisory) Pty Limited v Foggo* [2011] NSWSC 501 and [2012] NSWCA 40; *Byrne v Macquarie Group Services Australia Limited* [2010] NSWSC 417 and [2011] NSWCA 68; *Russell v Trustees of Roman Catholic Church* [2007] NSWSC 104 and [2008] NSWCA 217; *Downe v Sydney West Area Health Service* [2007] NSWSC 159 and [2008] NSWSC 159; *ASMOF v Sydney South West Area Health Service* [2007] NSWIRComm 243; *Langley v AMP Capital Investors Limited* [2007] NSWSC 937; *Tokyo Network Computing Pty Limited v Tanaka* [2004] NSWCA 263.

Acting in workplace determination applications - see, for example, *BP Refinery (Kwinana) Pty Limited v AWU* [2020] FWCFB 2693; *TWU v Qantas Airways Limited* [2012] FWA 6612.

Acting in four yearly award review applications - see, for example, *Re General Retail Award* [2020] FWCFB 3427; *Registered and Licensed Clubs Award* [2019] FWCFB 349; *Fast Food Industry Award* [2019] FWCFB 4679; *Penalty Rates Decision* [2017] FWCFB 1001, [2017] FWCFB 1551 and [2017] FWCFB 3001.

Acting in unfair dismissal applications - see, for example, *Gosek v Illawarra Coal Holdings Pty Limited* [2017] FWC 4574; *Gilbert v Asciano Services Pty Limited* [2015] FWC 364; *Custovic v State of NSW* [2014] NSWIRComm 1007; *Booshands v Sneaths Freightlines Pty Limited* [2011] FWA 1843; *Trezise v Universal Music Australia Limited* [2011] FWA 5960; *Lindsay v Uniting Church of Australia Property Trust (NSW)* [2010] FWA 8439; *Bell v Linfox Australia Pty Limited* [2006] NSWIRComm 1025; *Scoullar v Campbell Brothers Limited* [2004] NSWIRComm 1118; *de Briaes-Backer v Hyman Bros Limited* [2000] NSWIRComm 1116.

Acting in discrimination applications - see *Fraser-Kirk v David Jones Limited* [2010] FCA 1060; *Poniatowska v Employment Services Australia Pty Limited* [2009] FCA 680, [2010] FCAFC 92 and [2011] HCATrans 21.

Acting in industrial entitlement applications - see, for example, *CFMMEU v Sunset Power International* [2020] FWCFB 4727; *CFMEU v Anglo Coal (Drayton Management) Pty Limited* [2016] FCA 689; *CFMEU v Anglo Coal (Callide Management) Pty Limited* [2015] FCA 696 and [2016] FCAFC 57; *Coal & Allied Mining Operations Pty Limited v Doran* [2011] FCA 1048; *Abigroup Contractors Pty Limited v CFMEU* [2011] FWA 24; *CFMEU v Queensland Coal and Oil Shale Mining Industry (Superannuation) Limited* [2003] FCA 787; *Roberts v Stewart Hicks Real Estate* [2000] NSWIRComm 138.

Acting in contested enterprise agreement approval applications - see, for example, *Re BigW* [2020] FWC 1808; *Re Woolworths Group Limited* [2019] FWCA 7 and [2019] FWCFB 2355; *CFMEU v One Key Workforce Pty Limited* [2017] FCA 1266; *Re Peabody Moorvale Pty Limited* [2014] FWCFB 2042; *Re AMOU* [2015] FWC 8003 and [2016] FWCFB 1151; *CFMEU v B J Jarrad Pty Limited* [2013] FWCFB 8740; *CFMEU v Pilbara Iron (Company) Services Pty Limited* [2010] FCA 822, [2011] FCAFC 91 and [2012] HCATrans 37; see also *Re Operational Ambulance Officers (State) Award* [2011] NSWIRComm 61.

Acting in industrial disputes - see, for example, *AMWU v AGC Industries Limited* [2017] FWC 6787; *Goodwin v Ministry of Health* [2016] NSWIRComm 1044; *Re Griffin Coal Mining Company Pty Limited* [2016] FWCFB

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4620; *USU v Eraring Energy* [2015] NSWIRComm 23; *Re Mater Misericordiae Health Services Brisbane Limited* [2014] FWC 2019; *Re Farstad Shipping (Indian Pacific) Pty Limited* [2011] FWAFFB 1686; *Re Qantas Airways Limited* [2011] FWAFFB 7444; *HSU v Department of Health* [2010] NSWIRComm 145; *Re LHMU* [2009] FWA 920; *AMWU v Delta Electricity* [2006] NSWIRComm 154; *Labor Council of NSW v Delta Electricity* [2005] NSWIRComm 39; *NUW v Delta Laboratories* [2004] NSWIRComm 1079; *MEAA v SBS* [2003] AIRC 932; *CFMEU v Delta Electricity* [2003] NSWIRComm 135.

Acting in summary occupational health and safety prosecutions - see, for example, *Comcare v John Holland Pty Limited* [2016] FCA 501; *Bastian v Medcraft Hil-Rom Australia Pty Limited* [2010] NSWIRComm 34; *WorkCover Authority v OSS World Wide Movers Pty Limited* [2010] NSWIRComm 81; *WorkCover Authority v Australand Holdings Limited* [2008] NSWIRComm 153 and [2008] NSWIRComm 223; *WorkCover Authority v Hunter Douglas Limited* [2007] NSWIRComm 56; *WorkCover Authority v Rose* [2006] NSWIRComm 325; *WorkCover Authority v Ritchie* [2006] NSWIRComm 384; *WorkCover Authority v JR Haulage Pty Limited* [2005] NSWIRComm 457; *WorkCover Authority v Thiess Pty Limited* [2003] NSWIRComm 325; *WorkCover Authority v Hansen Yuncken Pty Limited* [2002] NSWIRComm 314; *WorkCover Authority v Develco Project Pty Limited* [2000] NSWIRComm 97.

Acting in occupational health and safety civil prosecution proceedings - see, for example, *Comcare v John Holland Pty Limited* [2016] FCA 501, [2015] FCA 388 and [2014] FCA 1191.

Acting in summary criminal prosecutions - see, for example, *Kemp v Walker* [2015] NSWSC 490.

Acting in anti-bullying applications – see, for example, *Pham v Property Council of Australia* [2020] FWC 5494.

Acting in long running litigation - see, for example, *Gough & Gilmour Holdings Pty Limited v Caterpillar of Australia Limited* [2011] NSWIRComm 87; [2009] NSWCA 83; [2009] HCATrans 210; [2008] NSWIRComm 3; [2007] NSWIRComm 3; [2005] NSWIRComm 8; [2003] NSWIRComm 26; [2003] NSWIRComm 44; [2003] NSWIRComm 173; [2002] NSWIRComm 354; [2002] NSWIRComm 379, [2001] NSWIRComm 208; see also the Lane Cove Tunnel occupational health and safety prosecutions ([2012] NSWIRComm 26).

PAPERS

Andrew's articles and papers include:

- "Practical Issues Associated with Exercising, and Seeking to Exercise, Statutory Rights of Entry", (unpublished paper to Law Society of NSW, 19 October 2016).
- "The Interrelationship Between the Industrial Power and Other Heads of Power in Australian Industrial Law" (with Neil Williams), (2001) 20 *Australian Bar Review* 264.
- "Unfair Contracts – Recent Developments"(unpublished paper to NSW Young Lawyers, 2002).
- "Compliance (Awards and Enterprise Agreements)" in *Industrial Law – Federal*, Butterworths, Loose Leaf Service, 1999-2005.
- "Termination of Employment" in Colvin and Watson (eds) *The Workplace Relations Handbook - A Guide to the Workplace Relations Act 1996 (Cth)*, Butterworths, 1998.
- "The Employment Advocate" in Colvin and Watson (eds) *The Workplace Relations Handbook - A Guide to the Workplace Relations Act 1996 (Cth)*, Butterworths, 1998.