

JOHN FERNON SC

Senior Counsel

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John is an experienced counsel who has advised and appeared across many areas of the law and is a leading expert in Employment and Industrial law. Since 2012 he has been recognised every year in the annual Doyles Guide as "Pre-eminent", "Leading" or "Recommended" Senior Counsel in both Employment Law and Work, Health & Safety in NSW and/or Australia along with ongoing recognition by his peers in the *AFR Best Lawyers* guide.

With more than 30 years' experience at the Bar and 19 years as Senior Counsel, John maintains a solid practice and regularly appears for a broad spectrum of clients across a range of Federal and State jurisdictions, including industrial tribunals. He has represented clients involving commercial, equity and administrative law disputes, as well as claims made under contracts of employment and the the *Fair Work Act 2009* (Cth), workplace safety and common law claims for both plaintiffs and defendants in the Dust Diseases Tribunal.

Complementing his practice as a barrister, John also regularly appears in mediations on behalf of clients where he deploys a strategic and measured approach to the resolution of their disputes.

ADMISSIONS AND APPOINTMENTS

- 2003 Appointed as Senior Counsel (SC)
- 1987 Admitted to the Bar of New South Wales
- 1983 Admitted as a Solicitor of the Supreme Court of New South Wales

PROFESSIONAL QUALIFICATIONS

- 1987 Master of Laws: University of Sydney
- 1983 Bachelor of Laws (Honours): University of Sydney
- 1979 Bachelor of Arts: University of Sydney

PRINCIPAL AREAS OF PRACTICE

- Administrative Law
- Appellate
- Class Actions
- Commercial Law
- Common Law / Personal Injury
- Dust Diseases
- Equity
- Employment and Industrial Law
- Workplace Safety

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PROFESSIONAL EXPERIENCE

- 1987 - present Barrister, PG Hely Chambers
(and previously at Sixth Floor Selborne / Wentworth Chambers)
- 1983 - 1987 Solicitor, Freehill Hollingdale & Page (now Herbert Smith Freehills)

ACCOLADES

- 2023 *Doyles Guide*: Noted as “Recommended” Leading Employment Law Senior Counsel
- 2023 *Doyles Guide*: Noted as “Recommended” Leading Workplace Health & Safety Law Senior Counsel
- 2022 *Doyles Guide*: Noted as “Recommended” Employment Senior Counsel - NSW
- 2021 Selected by his peers *AFR Best Lawyers in Australia: Labour and Employment Law, Occupational Health & Safety Law*
- 2021 *Doyles Guide*: Noted as “Recommended” Employment Senior Counsel - NSW
- 2020 *Doyles Guide*: Noted as “Recommended” Employment & WHS Senior Counsel - NSW; Selected by his peers *AFR Best Lawyers in Australia: Labour and Employment Law, Occupational Health & Safety Law*
- 2019 *Doyles Guide*: Noted as “Recommended” Employment & WHS Senior Counsel - NSW
- 2018 *Doyles Guide*: Noted as “Recommended” Employment & WHS Senior Counsel - NSW
- 2017 *Doyles Guide*: Noted as “Leading” Employment & WHS Senior Counsel - in Australia and NSW
- 2016 *Doyles Guide*: Noted as “Recommended” Leading Employment & WHS Barrister – Australia and “Leading” Employment, Industrial Relations & WHS Barrister - Sydney
- 2015 *Doyles Guide*: Noted as “Recommended” Leading Employment Barrister - Sydney
- 2014 *Doyles Guide*: Noted as “Pre-eminent” Leading Employment Barrister - NSW
- 2013 *Doyles Guide*: Noted as “Pre-eminent” Leading Employment Barrister - NSW

APPOINTMENTS AND PROFESSIONAL MEMBERSHIPS

- Member, New South Wales Bar Association
- Chairman of the Catholic Commission for Employment Relations (2014 to present)
- Vice President of Modern Pentathlon Association of Australia Inc (2009 to present)
- Bar Council nominee on Legal Qualifications Committee (2002 to present)
- Member of Council of Sancta Sophia College (1999 to 2014)

SELECT CASES

John has over 30 years of experience appearing for clients in hearings and appeals in a wide variety of jurisdictions. Cases in which he has appeared include:

- *Lipa Pharmaceuticals Ltd v Mariam Jarouche* [\[2023\] FWCFB 101](#)
- *Sydney International Container Terminals Pty Limited t/as Hutchison Ports v CFMMEU* [\[2023\] FWCFB 87](#)
- *Janala Pty Limited (No 3) v Hardaker* [\[2023\] NSWSC 446](#)

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- *BGC Securities Australia Pty Limited v Shillington* [\[2022\] NSWSC 611](#)
- *Jack v Corestaff NT Pty Ltd* [\[2022\] FCA 1005](#)
- *Patrick Stevedores Holdings Pty Limited v Construction, Forestry, Maritime, Mining and Energy Union* [\[2021\] FCA 1645](#)
- *Patrick Stevedores Holdings Pty Limited v Construction, Forestry, Maritime, Mining and Energy Union* [\[2019\] FCA 451](#) (2 April 2019).
- *SafeWork NSW v Cosentino Australia Pty Limited* [\[2018\] NSWDC 47](#) – a case involving a prosecution under s 19(1) of the Work Health and Safety Act 2011.
- *BGC Partners (Australia) Pty Limited v Hickey* [\[2016\] NSWSC 90](#); (2016) 259 IR 318 - a case concerned with whether a former employee was bound by a restraint of trade provision.
- *Transport Union of NSW v Staples Australia Pty Limited* [\[2016\] NSWIRComm 11](#) - a case concerned with the powers of a Commissioner under the *Industrial Relations Act 1996*.
- *Tipto Pty Limited v Yuen* [\[2015\] NSWSC 1086](#) - a case concerned with whether a former employee was bound by a restraint of trade provision.
- *WorkCover Authority of NSW v Visy Paper Pty Limited* - [\[2015\] NSWDC 284](#) - a case to determine penalty for offence under *Work, Health and Safety Act 2011*.
- *Smith v Comcare* [\[2014\] FCA 811](#); and on appeal [\[2015\] FCAFC 24](#) - a case concerned with whether a worker was entitled to compensation under *the Safety, Rehabilitation and Compensation Act 1988* and the proper approach of Comcare to determine entitlement to compensation.
- *Fair Work Ombudsman v Valuair Limited (No 2)* [\[2014\] FCA 759](#); (2014) 224 FCR 415 - a case concerned with whether the Modern Award applied to work performed in Australia by cabin crew engaged overseas.
- *Australian and International Pilots Association v Qantas Airways Limited* [\[2014\] FCA 32](#) – case concerned with whether there was ‘adverse action’ under the *Fair Work Act 2009*, implication of terms under an employment contract and construction of an industrial agreement.
- *Richardson v Oracle Australia Pty Limited* [\(2014\) 223 FCR 334](#); [2014] FCAFC 82 - a case concerned with ‘indirect discrimination’ and assessment of damages under the *Australian Human Rights and Commission Act 1986*.
- *State of New South Wales v Talovic* (2014) 87 NSWLR 512; [\[2014\] NSWCA 333](#) - an appeal from an award of damages by the District Court for wrongful arrest, false imprisonment and trespass where detained under the *Mental Health Act 2007*.
- *Fair Work Ombudsman v Jetstar Airways Limited* [\[2014\] FCA 33](#) - a case concerned with breach of a Modern Award and penalties.
- *National Union of Workers (NSW) v HP Distribution Pty Limited* [\[2013\] FCA 139](#); (2013) 210 FCR 250 - a case concerned with the construction of an enterprise agreement under the *Fair Work Act 2009*.
- *Cohen v iSoft Group Pty Limited* [\[2012\] FCA 1071](#) and on appeal [\[2013\] FCAFC 49](#) - a claim for damages under an employment contract
- *Smith v Comcare* [\[2012\] FCA 502](#) and on appeal [\[2013\] FCAFC 65](#); (2013) 212 FCR 335 – a case concerned with whether a worker was entitled to compensation under *the Safety,*

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Rehabilitation and Compensation Act 1988 and the proper approach of Comcare to determine entitlement to compensation.

- *Yum Restaurants Australia Pty Limited v Full Bench of Fair Work Australia* [\[2011\] FCA 1315](#) and on appeal [\[2012\] FCAFC 114](#) ; (2012) 205 FCR 306 - a case concerned with the jurisdiction of Fair Work Australia.
- *Keays v JP Morgan Administrative Services Australia Limited* [\[2011\] FCA 547](#) and on appeal [\[2012\] FCAFC 100](#) - a claim for damages under the *Trade Practices Act 1974* and under an employment contract.
- *O'Sullivan Partners Advisory Pty Limited v Foggo* [\[2011\] 206 IR 87](#) and on appeal [\[2012\] NSWCA 40](#) (2012) 218 IR 331 - a claim for damages under an employment contract.