

Brendan Avallone*

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Brendan Avallone practises in all areas of employment and industrial relations law. He signed the Bar Roll on 22 October 2015, building on 15 years' experience as a solicitor, and has appeared in a number of significant cases in the Federal Court of Australia, other Courts, and the Fair Work Commission.

Brendan acts and advises in matters including industrial action, enterprise bargaining, industrial disputes, contractual disputes, executive employment, disciplinary and performance matters, general protections claims, unfair dismissal applications, underpayment claims and employment discrimination claims.

Brendan's practice has been ranked in peer review journals including:

- [Doyle's Guide 2023 Leading Employment Law Junior Counsel – Australia \(Preeminent\)](#) (listed since 2018) and [Victoria \(Preeminent\)](#) (listed since 2017)
- [The Best Lawyers in Australia 2024 \(Labour and Employment Law\)](#) (since 2018)
- [Lawyer of the Year: Labour and Employment Law, Melbourne, 2023 - The Best Lawyers in Australia](#)
- [Chambers and Partners 2023 \(Employment: The Bar – Australia, Band 3\)](#) (since 2021)
- [Legal 500 Asia Pacific – Commercial Disputes \(Leading Junior Counsel\)](#)
- [Doyle's Guide 2023 Workplace Health & Safety -Victoria \(Recommended\)](#) (since 2017)

At the Bar Brendan has predominantly (but not exclusively) represented employers, appearing in the Federal Court of Australia, Supreme Court of Victoria, Federal Circuit and Family Court of Australia (Division 2), County Court of Victoria, Magistrates' Court of Victoria and the Fair Work Commission. A selected list of cases is set out below, and a more comprehensive listing is also available via his [profile](#).

Prior to joining the Bar, Brendan was a Special Counsel in a major law firm. He advised private sector and government clients in a number strategic industrial relations and sensitive employment matters, and acted in high profile cases including enterprise bargaining and industrial action relating to Victorian public sector nurses and teachers, Australia Post and Boeing Fisherman's Bend Site, and assisted in drafting employment legislation and enterprise agreements while on secondments to Government departments.

Brendan was an Associate at the Australian Industrial Relations Commission in 2001-2002, and has a Master of Laws from The University of Melbourne specialising in workplace relations. He regularly presents CPD presentations in areas relating to industrial and employment law.

Committee Membership:

Brendan is on the Committee for the **Opening of the Legal Year Red Mass** (2019-), and the **Burke Hall Parents' Association** (2023-).

Previous positions include Chair of the **Group Support Committee for 1st North Balwyn Scouts** (2019-2023), Committee of the **Industrial Bar Association** (2017) and Treasurer of the **Industrial Relations Society of Victoria** from 2007-2012 (IRSV Executive Committee from 2007-2013).

Other Memberships

Brendan is also a current member of the Australian Labour Law Association, Melbourne Cricket Club, St Kilda Football Club, Rose Society of Victoria and the Whittlesea Agricultural Society.

Experience

Victorian Bar

Signed the Bar Roll 22 October 2015

Bar Readers' Course: August-October 2015

Selected matters in which Brendan has appeared include:

- Acting for **Coles Supermarkets Australia Pty Ltd** in a significant proceeding involving alleged underpayment of salaried employees (junior to Rachel Doyle S.C., Marc Felman KC and Jonathan Kirkwood S.C., also appearing with Anna Batrouney and James Page)
- [*National Tertiary Education Industry Union v Royal Melbourne Institute of Technology and RMIT Training Pty Ltd* \[2023\] FWC 1729](#) - opposing application for protected action ballot order – meaning of “notification time” (with Stephanie Cheligoy)
- [*Australian Education Union v State of Victoria \(Department of Education\)* \(PR762936\)](#) – 9 June 2023 – determination of dispute about application of enterprise agreement – off duty time while on school camps (junior to Chris O’Grady KC)
- [*Thompson v Ventia Australia Pty Ltd* \[2023\] FWC 904](#) – 18 April 2023 - opposing unfair dismissal application – application dismissed
- [*Pelly v Ventia Australia Pty Ltd* \[2023\] FWC 907](#) – 18 April 2023 - opposing unfair dismissal application – employee reinstated (decision subject of an appeal)
- [*Pilbrow v The University of Melbourne* \[2022\] FedCFamC2G 1001](#) – 1 December 2022 - opposing general protections application (decision subject of an appeal) (with Chris McDermott)
- [*Airservices Australia v Civil Air Operations Officers' Association of Australia* \[2022\] FCAFC 172](#) – 19 October 2022 – appeal in relation to jurisdiction, penalties and declarations – penalties reduced on appeal (junior to Chris O’Grady KC)
- [*Australian Manufacturing Workers' Union \(AMWU\) v Viva Energy Australia Pty Ltd* \[2022\] FWC 668](#) - 29 March 2022 - dispute about the application of an agreement
- [*Lendlease Building Contractors Pty Limited v Australian Building and Construction Commissioner \(No 2\)* \[2022\] FCA 192](#) - 11 March 2022 –case concerning proper construction of the *Code for the Tendering and Performance of Building Work 2016* (Cth) (junior to Paul O’Grady QC)
- [*EnergyAustralia Yallourn Pty Ltd v Construction, Forestry, Maritime, Mining and Energy Union* \[2021\] FWCFB 6037](#) – 28 October 2021 – appeal against decision in relation to proper interpretation of enterprise agreement – appeal successful
- [*Transport Workers' Union of Australia v Prosegur Australia Pty Ltd* \[2021\] FWCFB 1562 \(23 March 2021\)](#) – appeal regarding degree of particularity required as to nature of industrial action in ballot questions for a protected action ballot order
- [*ISG Management Pty Ltd v Mutch* \[2020\] FCAFC 213 \(30 November 2020\)](#) – appeal regarding application for declaration that proceeding not properly commenced as representative proceeding pursuant to s 33C Pt IVA *Federal Court of Australia Act 1976* , and related relief on behalf of the respondent (junior to Frank Parry QC and Dr Catherine Button QC, also with Daniel Snyder)

- [Ealwin Pty Ltd & Anor v Master Builders Association of NSW \[2020\] VCC 561 \(21 April 2020\)](#) – action for breach of contract and negligence relating to employer association’s drafting of enterprise agreement
- [Bianco Walling Pty Ltd v Construction, Forestry, Maritime, Mining and Energy Union \[2020\] FCAFC 50 \(24 March 2020\)](#) – application for prerogative relief quashing Fair Work Commission Full Bench and single Member decision – application successful – matter remitted to single Member to determine application to vary agreement to remove ambiguity/uncertainty (junior to Chris O’Grady QC)
- [Fair Work Ombudsman v NSW Motel Management Services Pty Ltd & Ors \(No 2\) \[2018\] FCCA 1935](#) – proceeding against employer and two directors for underpayments and other contraventions. See also [\[2019\] FCCA 2638](#) and [\[2018\] FCCA 2330](#)
- [Australian Building and Construction Commissioner v Construction, Forestry, Maritime, Mining and Energy Union \(Geelong Grammar School Case\) \(No 2\) \[2019\] FCA 1498 \(13 September 2019\)](#) – penalties for contravention of Fair Work Act 2009 right of entry provision - see also [\[2018\] FCA 1698](#) and Declarations dated [11 December 2018](#) and [24 December 2018](#)
- [The Environmental Group Ltd v Bowd \[2019\] FCA 951 \(21 June 2019\)](#) – appearing for employer and managing director (ASX listed company) to oppose claim by former CEO of adverse action contrary to Fair Work Act 2009 and victimisation contrary to the Corporations Act 2001 – claim dismissed (with Dan Christie). See also costs decision [The Environmental Group Ltd v Bowd \(No 2\) \[2019\] FCA 1227 \(9 August 2018\)](#)
- [Sodexo Remote Sites Australia Pty Ltd v Construction, Forestry, Maritime, Mining and Energy Union & Australian Workers’ Union \[2019\] FWCFB 690 \(7 February 2019\)](#) – appeal against decision to refuse extension of time to lodge enterprise agreement – appeal upheld on natural justice grounds
- [Specialist Diagnostic Services Pty Ltd t/a Dorevitch Pathology Workplace Determination \[2018\] FWCFB 5778 \(13 September 2018\)](#) – making of a Workplace Determination by a Full Bench of the Fair Work Commission
- [United Firefighters’ Union of Australia v Emergency Services Telecommunications Authority t/a ESTA 000 \[2018\] FWCFB 5624 \(24 August 2018\)](#) – appeal – dispute about enterprise agreement
- [Choppar Helicopters Pty Ltd and Anor v Bobridge \[2018\] FCA 325 \(15 March 2018\)](#) and [Choppar Helicopters Pty Ltd v Bobridge \(No 2\) \[2018\] FCA 700 \(18 May 2018\)](#) – appeal against decision of Federal Circuit Court – alleged award underpayments including superannuation – order for payment of compensation by person “involved” under s550 – appeal partially successful
- [EnergyAustralia Yallourn Pty Ltd v Construction, Forestry, Mining and Energy Union \[2017\] FWCFB 3574 \(10 July 2017\)](#) – appeal against decision in relation to decision about the application of an enterprise agreement – appeal successful
- [Minister for Industrial Relations for the State of Victoria v AGL Loy Yang Pty Ltd and others \[2017\] FWC 2533 \(9 May 2017\)](#) – application for an Order to terminate protected industrial action (junior to Frank Parry QC)
- [Halici v KDR Victoria Pty Ltd TIA Yarra Trams \(No.3\) \[2017\] FCCA 764 \(28 April 2017\)](#) and [Halici v KDR Victoria Pty Ltd TIA Yarra Trams \(No.2\) \[2016\] FCCA 1391 \(16 June 2016\)](#) – opposing an

application alleging false imprisonment, contravention of an enterprise agreement and breach of contract (junior to Chris O'Grady QC)

- [Heading v Secretary of the Department of Education and Training on behalf of the State of Victoria \[2017\] FWCFB 1352](#) (7 April 2017) – opposing an appeal against a decision about the application of an enterprise agreement
- [Construction, Forestry, Mining and Energy Union v AGL Loy Yang Pty Ltd \[2017\] FWCFB 1019](#) (2 March 2017) - opposing an appeal against decision to terminate enterprise agreement (junior to Frank Parry QC)
- [Winters v Fogarty and others \[2017\] FCA 51](#) (2 February 2017) – acting for **second and third respondents** seeking strike out of claim alleging contravention of discrimination laws during Court-ordered mediation (junior to Rachel Doyle S.C.)
- [Volunteer Fire Brigades Victoria v Country Fire Authority \(Discovery ruling\) \[2016\] VSC 573](#) (29 September 2016) – Discovery obligations in circumstances of expedited hearing in the Supreme Court of Victoria (junior to Chris O'Grady QC).
- [AGL Loy Yang Pty Ltd v Construction, Forestry, Mining and Energy Union and others](#) (PR582599, 10 July 2016) – application for Order that industrial action (a ban on overtime) stop, not occur and not be organised
- [Construction, Forestry, Mining and Energy Union v EnergyAustralia Yallourn Pty Ltd \[2016\] FWC 3961](#) (17 June 2016) - dispute about interpretation of enterprise agreement concerning ability of non-EBA employees to perform work also performed by EBA employees
- [Turner v Australia Post \[2016\] FWC 801](#) (2 March 2016) - jurisdictional objection to unfair dismissal application (applicant was not an employee - company was an independent contractor)
- [Australian Nursing and Midwifery Federation v Ryman HealthCare \[2015\] FWC 8790](#) (22 December 2015) – opposing a majority support determination under the *Fair Work Act 2009*
- [Australian Commercial Catering Pty Ltd v Fair Work Commission and Powell and Togia \[2015\] FCAFC 189](#) (22 December 2015) – judicial review of Fair Work Commission Full Bench decision, relating to 'acceptable alternative employment' and redundancy. See also [Australian Commercial Catering Pty Ltd v Powell and Togia \[2016\] FWCFB 5467](#).

Minter Ellison Lawyers

(March 2000 – August 2015; leave of absence November 2001-November 2002)

- Special Counsel from 2011, prior to that a senior associate, lawyer and articled clerk
- In his previous practice as a solicitor, Brendan advised and acted for a range of private sector and government clients and appeared as a solicitor in a range of contested applications, predominantly in the Fair Work Commission and the Australian Industrial Commission. For a list of cases in which Brendan appeared as a solicitor, see the list of case available via his [profile](#).
- Brendan's secondments included a stint of 7 months with the Australian Government Department of Employment and Workplace Relations, assisting in the drafting of workplace relations legislation

Australian Industrial Relations Commission

Associate to Deputy President Ives (November 2001 – November 2002)

Ford Motor Company of Australia

Finance – Customer Service Division (December 1996-February 1998)

Education

Master of Laws (University of Melbourne) (2008)

- First-class honours average across all subjects, focussing on employment and workplace relations
- Awarded the annual Prize for Labour Relations Law

Bachelor of Laws (Hons) (University of Melbourne) (2000)

- Graduated with Second Class Honours (H2A)

Bachelor of Commerce (Hons) (University of Melbourne) (1997)

- Graduated with First Class Honours (H1) in Economics and Economic History
- Katherine Woodruff Memorial Exhibition in Economic History Research Essay
- Dean's Honours List - Third Year of Bachelor of Commerce

Admission details

- Supreme Court of Victoria: 2 April 2001
- High Court of Australia: 10 May 2001
- Signed the Bar Roll: 22 October 2015