

ANDREW BERGER KC

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- 1994 Bachelor of Arts, Australian National University
- 1996 Bachelor of Laws (Honours), Australian National University
- 1997 Graduate Diploma in Legal Practice, Australian National University
- 1997 Admitted as a Barrister and Solicitor of the ACT Supreme Court and the High Court of Australia
- 2001 Practitioner's Certificate in Mediation and Conciliation, Institute of Arbitrators and Mediators
- 2005 Admitted as a Barrister in the Solomon Islands
- 2023 Accredited mediator - NMAS Mediator Training and Accreditation Assessment Course, Mediation Institute

SELECT RECENT MATTERS

- Appearing, leading B Kaplan SC, in a Federal Court class action involving allegations of unconscionable conduct and breach of the implied covenant of quiet enjoyment.
- *Commissioner of Taxation v White*, judgment reserved, leading E Bishop SC and M Hosking, opposed by D McGovern SC, R Johnson and K Josifoski: Federal Court proceedings involving allegations the respondent promoted a tax exploitation scheme.
- *NTMA Pharmaceuticals Pty Ltd v Beardmore* [2026] FCAFC 23 (Full Federal Court), leading HAX Rogers, opposed by J Horton KC and T Flaherty: successfully resisted an application for judicial review of referrals made under the National Health Act to inquire into and report on the services or conduct of the Appellants and named individuals in connection with the supply of pharmaceutical benefits.
- *Koutsouroupas v Minister for Health and Aged Care* [2026] FCAFC 13 (Full Federal Court), leading HAX Rogers, opposed by J Horton KC and PD Hay: successfully resisted an application for declarations that amendments to the *National Health (Pharmaceutical Benefits) (Conditions of Approval for Approved Pharmacists) Determination 2017* (Cth) (the Determination) were invalid.
- *Leslie v Champion* (ACT Supreme Court – McWilliam J, 15-30 July 2024, judgment reserved), leading A Langshaw, opposed by S Chapple SC: a case concerning testamentary capacity and knowledge and approval for several wills relating to a large estate.

- *Molonglo Group (Australia) Pty Ltd v Commissioner for ACT Revenue*, leading N Oram and J Cunliffe, opposed by P Walker SC and J Bird, in an appeal to the ACT Supreme Court in relation to the largest Lease Variation Charge in Territory history.
- *Redrouge Nominees Pty Ltd (t/as Think Garden) v Canberra Institute of Technology (No 2)* [2024] ACTSC 362 and [2025] ACTSC 27, leading J Cunliffe, opposed by JC Giles SC and BJS Smith: a case concerning the construction and interpretation of a contract involving services provided to the Canberra Institute of Technology and whether the exercise of a contractual right to terminate for breach excludes common law right to accept breaching conduct as repudiation and recover loss of bargain damages.
- *Attorney-General (Tas) v Casimaty* [2024] HCA 31; (2024) 98 ALJR 1139, leading P Bindon, appeared before the Full Bench of the High Court for the Australian Capital Territory (Intervening) in a matter involving the application of parliamentary privilege.
- *Commonwealth v De Pyle* [2024] FCAFC 43 (Full Federal Court), leading F Rogers, opposed by P McCafferty KC and S Marsh (for the Respondent) and DR Sibtain SC and CM Roberts (for the ABC – Intervening): successfully appealed the failure to make suppression orders on the basis they were necessary to prevent prejudice to national security and to protect the safety of a person.
- *Adcock v Sealy (No 2)* [2024] FedCFamC1F (McNab J) opposed by G Dickson KC and K Ryan : property proceedings involving a short term de facto relationship with an ultra-high wealth individual.
- *Haeusler v Australian Capital Territory* [2023] FCA 1304, leading B Kaplan, opposed by J Agius SC and P Boncardo: successfully resisted an application for an interlocutory injunction based on alleged breaches of an enterprise agreement.
- *Attorney-General (Cth) v Sa'adat Khan (No 3)* [2024] VSC 58 (Moore J), leading A Yuile and E Adams, opposed by R Nathwani SC, L Thies and C Hart: successfully sought review of an Extended Supervision Order made under the *Criminal Code Act 1995* (Cth).
- *Zirilli v The King* [2023] VSCA 64 (Victorian Court of Appeal), leading J Forsaith and S Martin, opposed by D Renton SC, D Karamicov and Dr M Gumbleton: an application for leave to appeal against a conviction arising out of the 'Lawyer X' scandal, which involved issues relating to the *Telecommunications (Interception and Access) Act 1979* (Cth) and the *Criminal Procedure Act 2009* (Vic).
- *Stokes v Toyne* [2023] HCATrans 147 and [2023] NSWCA 59 (High Court and NSW Court of Appeal), leading N Oram, opposed by D Pritchard SC, M Castle and AJ Macauley: a successful appeal from an adverse decision of the District Court in which Andrew obtained a permanent stay of proceedings against his client on the basis of denial of procedural fairness, Anshun estoppel and abuse of process. The plaintiff's application for special leave to appeal was refused.
- *Hamor v Determining Authority* [2023] FCA 267 (Goodman J), leading D Forrester, opposed by M Robinson SC, J Lucy and C Brain: successfully defended a decision made by the Professional Services Review Committee to disqualify a medical doctor for one year and require him to pay \$1,959,718.75 because of inappropriate practice.

- Appeared in and advised on a range of interim and family law proceedings including proceedings:
 - involving complex interim and final property and parenting issues
 - to injunct actions causing the devaluation of marital property
 - involving the interaction between orders made in a foreign jurisdiction and proceedings in the Family Court
 - concerning parental responsibility for a teenage child with gender dysphoria
 - concerning whether a party's interests in a significant family trust constitute property for the purposes of s 79 of *Family Law Act*
 - seeking to set aside binding financial agreements
 - seeking to enforce previous court orders
 - involving urgent applications for relocation
 - seeking to set aside a bloodline trust in relation to a large farming enterprise, where complex issues relating to estoppel, trust law, equitable damages and s 90AE of the *Family Law Act* arose

- Appeared for and advised a range of clients (both governments and individuals) in numerous Royal Commissions, inquests and inquiries, including:
 - Appeared for the Commonwealth of Australia in the IGADF Inquiry led by former Justice the Honourable Margaret McMurdo AC into the catastrophic crash of Australian Army MRH-90 Taipan helicopter while conducting night-time training during Exercise Talisman Sabre
 - Appeared for a senior ACT public servant in the ACT Integrity Commission's public hearing concerning whether public officials within the ACT Education Directorate failed to exercise their official functions honestly and/or impartially when making recommendations and decisions regarding the Campbell Primary School Modernisation Project between 2019 and 2020
 - Appeared for the Chief of Army, Chief of Navy and Secretary of the Department of Veterans Affairs in the Royal Commission into Defence and Veteran suicide
 - Advised a senior public servant in relation to his response to a notice of adverse comment in the Royal Commission into the Robodebt Scheme and subsequent Centralised Code of Conduct Taskforce investigation
 - Appeared for two prominent Australians in proceedings before the Commonwealth Law Enforcement Integrity Commissioner
 - Appeared for the Commonwealth of Australia in the coronial inquest into the death of Ishak Ahmed

- *Comcare v Friend* [2024] FCAFC 4; (2024) 301 FCR 617, leading P Bindon, opposed by K Nomchong SC and C Magee; *Leach v Comcare* [2021] FCAFC 134, 285 FCR 326, leading K Slack, opposed by ML Robertson QC and FJ Chen: Full Federal Court appeals relating to the interpretation and application of the *Safety, Rehabilitation and Compensation Act 1988* (Cth).
- *Marshal of the Federal Circuit and Family Court of Australia v Trach* [2022] FedCFamC1F 22; *Che v Don (No 2)* [2021] FedCFamC1F 304 (Gill J), opposed by M Davis: acting for the Marshal of the Federal Circuit and Family Court of Australia to prosecute a case of contempt.
- *Roberts-Smith v Fairfax Media Publications Pty Ltd (No 31)* [2022] FCA 271 / *Roberts-Smith v Fairfax Media Publications Pty Ltd (No 15)* [2021] FCA 582 (Abraham J), leading J Edwards and C Ernst, opposed by A Moses SC and P Sharp: hearings concerning the *Inspector General Australian Defence Force Regulations 2016* (Cth), the *National Security Information (Criminal and Civil Proceedings) Act 2004* (Cth) and public interest immunity in the context of Ben Roberts-Smith's defamation proceedings against Fairfax Media Publications Pty Ltd.
- *Benbrika v Minister for Home Affairs* [2021] VSCA 303 (Victorian Court of Appeal), leading M Hosking and A Lord, opposed by D Star QC, C Tran and N Wootton: successfully defended a decision to impose a continuing detention order on the appellant.
- *Patrick and Secretary, Department of Prime Minister and Cabinet (Freedom of Information)* [2021] AATA 2719 (White J), opposed by G Watson SC and D Tang: the 'National Cabinet papers case'.
- *Minister for Home Affairs v Benbrika* (2021) 95 ALJR 166 (Kiefel CJ, Bell, Gageler, Keane, Gordon, Edelman and Steward JJ): appeared for the Minister for Home Affairs in High Court proceedings concerning the constitutional validity of Division 105A of the Commonwealth *Criminal Code*.