



# ANDREW BERGER KC

BARRISTER

LLB (Hons), BA, PLT

## CONTACT

berger@  
keychambers.com.au

(02) 6185 1401

## AREAS OF PRACTICE

- Appeals
- Administrative & Regulatory
- Employment & Industrial
- Common Law
- Constitutional
- Contract Disputes
- Discrimination
- Family
- Inquiries, Inquests & Coronial Law
- Professional Discipline
- Workers Compensation/ Comcare
- Workplace Health & Safety

## QUALIFICATIONS

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

## SELECT RECENT APPEARANCES

- [\*Zirilli v The King\*](#) [2023] VSCA 64 (Emerton P, Beach JA, McLeish JA), J Forsaith and S Martin with him, 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 *Telecommunications (Interception and Access) Act 1979* (Cth) and the *Criminal Procedure Act 2009* (Vic).
- [\*Stokes v Toyne\*](#) [2023] NSWCA 59 (Ward P, Adamson JA and Simpson AJA), N.Oram with him, opposed by M.Castle and H.D. Bailey: 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.
- [\*Hamor v Determining Authority\*](#) [2023] FCA 267 (Goodman J), D.Forrester with him, opposed by M.Robinson SC with 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.

Level 5, 54 Marcus Clarke St  
Canberra ACT 2601

GPO BOX 2011, Canberra ACT

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- Appeared in and advised on a range of interim and family law proceedings including proceedings:
  - to injunct actions causing the devaluation of marital property (July 2022)
  - concerning parental responsibility for a teenage child with gender dysphoria (July 2022)
  - concerning whether a party's interests in a significant family trust constitute property for the purposes of s 79 of *Family Law Act* (September 2022)
  - seeking to set aside a binding financial agreement (December 2022)
  - involving an urgent application for relocation (February 2023)
  - for final property orders, where complex issues relating to one parties' legal practice and the parties' superannuation funds and property investments were involved (February 2023)
  - 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* arise (ongoing)
- Advising and appearing for the Commonwealth of Australia in the [Royal Commission into Defence and Veteran suicide](#).
- Advising a senior public servant in relation to his response to a notice of adverse comment in the [Royal Commission into the Robodebt Scheme](#).
- Appeared for two prominent Australians in proceedings before the Commonwealth Law Enforcement Integrity Commissioner (March 2023).
- [Comcare v Friend](#) (Rangiah, Wheelahan, Goodman JJ), 22 February 2023, decision reserved, P.Bindon with him, opposed by K.Nomchong SC and C.Magee; [Leach v Comcare](#) [2021] FCAFC 134, 285 FCR 326 (Collier J, Charlesworth J, Snaden J), K. Slack with him, opposed by M.L.Robertson QC and F.J. Chen: 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 Marshall of the Family Court 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), J.Edwards and C.Ernst with him, 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 (Beach JA, McLeish JA, Kennedy JA), M.Hosking and A.Lord with him, opposed by D.Star QC, C.Tran and N.Wooton: 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*.

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