

# MATTHEW MOIR

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## CAREER OVERVIEW

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I was admitted to the NSW Bar in 2004, having practised as a solicitor since 1999.

Prior to coming to the Bar I was a solicitor at the Australian Industry Group, the Australian Chamber of Manufactures and the Association of Professional Engineers, Scientists and Managers Australia.

I have appeared as Junior Counsel in numerous work health and safety proceedings, including in trials, sentencing hearings and appeals conducted in New South Wales. I have also appeared led and un-led in employment, discrimination, bullying and industrial dispute litigation in a range of jurisdictions (including superior and inferior courts and tribunals).

## EDUCATION

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In 1997 I graduated from Arts/Law at the University of Sydney with Honours in both degrees. In 2014 I graduated with Masters of Law at the University of Sydney.

## SELECTED CASES

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*SafeWork NSW v Investa Asset Management Pty Ltd* [2019] NSWDC 76 (District Court - successfully acted for the prosecutor in catastrophic injury case; the proceedings involved contested expert (engineering) evidence over causation. Led by John Agius SC)

*SafeWork NSW v KD & JT Westbrook Pty Ltd* [2018] NSWDC 255 (District Court - appearing un-led for the prosecutor in a lengthy trial; the defendant was a pastoral company which engaged a young jackaroo to ride a motorbike on its property while not wearing a helmet; the jackaroo died from head injury while chasing a dingo on his motorbike; the prosecution alleged the defendant breached its safety duty by failing to enforce the wearing of helmets; the defendant was found guilty)

*SafeWork NSW v KD & JT Westbrook Pty Ltd (No 2)* [2019] NSWDC 15 (District Court - again appeared for the prosecutor at the sentencing hearing; successfully achieved the first ever adverse publicity order made under the *Work Health and Safety Act* 2011, in addition to a fine of \$180,000 and costs)

*Transit Systems West Services Pty Ltd v RTBU* [2018] FWC 7527 (Fair Work Commission - successfully appeared un-led on behalf of a company to prevent its employed bus drivers from continuing to take covert industrial action in the form of non-genuine sick leave)

*Attorney General (NSW) v Unity (NSW) Pty Ltd* [2018] NSWCCA 266 (Court of Criminal Appeal - appeared for both the Attorney General and SafeWork NSW in appeals against conviction and sentence; led by John Agius SC; successfully defended against the conviction appeal; while the sentence appeals were dismissed due to delay, the appeal court upheld the Attorney's submissions that errors were made by the sentencing judge)

*SafeWork NSW v Cosentino Australia Pty Ltd* [2018] NSWDC 47 (District Court – successfully prosecuted the corporate defendant for breaching its safety duty when stone slabs fell on a truck driver, resulting in serious injury; appeared without a leader; also appeared at the subsequent sentence hearing, leading to a fine of \$200,000 and costs)

*Sandra Brooks v Department of Family and Community Services* [2017] NSWCATAD 300 (Equal Opportunity Division of NCAT – appeared un-led on behalf of a large government department; successfully applied to have evidence of complainant struck out as irrelevant to her complaint of race discrimination; at the subsequent hearing, the complainant was cross-examined over 4 days and later withdrew her complaint against the department)

*SafeWork NSW v Romanous Contractors Pty Ltd and John Allen Romanous* [2016] NSWDC 48 (District Court – appeared for the prosecutor at a contested sentencing hearing; led by Trish McDonald SC; then record fines were imposed on both the corporate offender (\$425,000) and the director of the corporation (\$85,500), following contested evidence on good character, remorse and capacity to pay a fine)

*AMWU v Agilent Technologies Australia Ltd* [2014] FWC 2813 (Fair Work Commission – appeared for an employer in the arbitration of a classification dispute under an enterprise agreement; the Commissioner observed in his judgment that my cross-examination of the union witnesses was “very useful” and “skilful but respectful”)

*WorkCover NSW v Khaled Maarbani* Unreported, June 2014 (Local Court Downing Centre – this was the first successful prosecution brought under the *Explosives Act* 2003; appeared un-led for the prosecutor; the defendant was convicted and fined for numerous offences including illegal storage of fireworks and allowing another person to have unsupervised access to an explosive; the defendant’s explosives licence was subsequently cancelled)

*Ace Insurance Ltd v Trifunovski* [2013] HCATrans 190 (High Court – led by Crawshaw SC and successfully resisted an employment law special leave application)

*Ace Insurance Ltd v Trifunovski* (2013) 209 FCR 146, [2013] FCAFC 3 (Full Federal Court – led by Adam Hatcher SC and succeeded in arguing that sales representatives were truly employees, not contractors and therefore owed substantial sums for annual leave and long service leave; the decision remains a leading authority on the employee/independent contractor distinction under the *Fair Work Act* 2009)

## **PUBLICATIONS**

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*Individual and Collective Bargaining in Australian Labour Law: The CRA Weipa case* Sydney Law Review Vol 18, No 3, pp 350-371 (September 1996)

*Discretion, Good Faith and Employer Control over Executive Remuneration* Australian Journal of Labour Law Vol 24, No 2, pp 121-140 (August 2011)

*Recovery of Damages for Wrongful Resignation* Australian Journal of Labour Law Vol 24, No 2, pp 173-181 (August 2011)

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