



## ANDREW COLEMAN SC

*Barrister*

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### ADMISSIONS

Barrister: 1996 (appointed Senior Counsel in 2010)

Solicitor: 1987 (NSW), 1992 (England & Wales)

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### QUALIFICATIONS & APPOINTMENTS

BA, University of NSW (1985)

LLB, University of NSW (1987)

Senior Member (Part-Time) NSW Civil and Administrative Tribunal (NCAT), Appeal Panel, Occupational and Consumer and Commercial Divisions

Major, Australian Army Legal Corps (Res)

Hon. Secretary North Bondi RSL Sub-Branch (2018 – 2020)

Chair, National Rugby League Player Agent Accreditation Board

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### AREAS OF PRACTICE

Commercial law

Common law /torts

Corporations law

Equity

Insolvency

Insurance

Inquests, Commissions & inquiries

Sports law

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### LISTINGS

Recommended insolvency and reconstruction Senior Counsel (Doyle's Guide 2017, 2018, NSW)

Recommended insolvency and reconstruction Senior Counsel (Doyle's Guide 2016, Australia)

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### PROFILE

Andrew practises in a broad range of areas and appears in all Courts and Tribunals in NSW and most of the Federal Courts and Tribunals.

Andrew acts for liquidators, administrators and other insolvency practitioners in corporations matters. He has also acted for corporations and directors in these types of matters. Those matters have ranged from public examinations, statutory demand matters through to more complex litigious matters including breach of directors' duties, uncommercial transactions, and preference claims. He also appears for creditors and debtors in bankruptcy matters.

Andrew is also regularly briefed in common law matters, general commercial and equity cases, inquests and inquiries, ADR, and sports law.

Andrew has appeared in many common law matters in the Supreme and District Courts, mostly appearing for insurers in liability matters. Most recently in this field, Andrew appeared in the District Court for an insurer challenging liability under a public liability policy. The matter also went to the NSW Court of Appeal,

Andrew has appeared in several significant Federal Court matters, including class actions. He was junior counsel in the Graham Barclay Oysters case in the Federal Court, Full Federal Court and High Court of Australia, which was a class action by group members who had contracted hepatitis A from eating oysters harvested from Wallace Lake.

Andrew was one of the senior counsel acting for a number of NSW local councils in an action against councils' investment adviser, ABN Amro Bank and Standard & Poors ratings agency arising out of the councils' investment in collateralised debt obligations (CDO's). This case, heard in the Federal Court and on appeal to the Full Federal Court, was the first time that a ratings agency had been held liable for the rating of a financial instrument.

Andrew has also acted in several product comparative advertising cases in the Federal Court.

Andrew has regularly appeared in inquests and inquiries over the course of his career at the Bar. He was briefed to appear for the regulators (CASA and AirServices Australia) in multiple coronial inquests in NSW and inter-state, arising from aircraft crashes. He was briefed for the Sydney Cricket Ground Trust in the inquest into the death of the cricketer Philip Hughes.

Most recently, for much of 2019 and early 2020, Andrew appeared for the (then) Chief Commissioner of Victoria Police Mr Graham Ashton AM in the Royal Commission into the Management of Police Informants (RCMPI) in Victoria (the Gobbo Royal Commission) in which evidence and submissions have just been completed. The report is due to be handed down later in 2020.

Andrew appeared as junior counsel for ACTEW-AGL in the Coronial Inquest into the bushfires that devastated Canberra in 2003.

Andrew has appeared in several inquiries conducted by the Independent Commission Against Corruption in NSW, most recently in relation to the use of "ghosting" practices for security services at the University of Sydney.

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## RECENT WORK

A summary is below. A detailed list of appearances is available on request.

## COMMERCIAL MATTERS

Andrew has appeared in numerous matters involving the assessment of the conduct of financial advisers, both investigatory and disciplinary matters and proceedings involving allegations of negligence and/or oppression. His recent and notable work includes the following:

Appearing for the applicants in the Federal Court in *Corowa Shire Council & Ors v LGFS Pty Ltd & Ors*. This was the first case in which a ratings agency, here Standard & Poors, had been held liable to persons relying on its rating of a financial product. The case involved causes of action in negligence, breach of fiduciary duty, misleading and deceptive conduct and other relief and cross claims under the Corporations Act, the ASIC Act and the apportionment legislation in NSW. The matter was the subject of an appeal to the Full Court of the Federal Court of Australia. The appeal was unanimously dismissed.

Appearing for the applicant in representative proceeding in the Federal Court of Australia. The matter involves issues surrounding the rating of a synthetic collateralised debt obligation (SCDO's), similar to the issues raised in the *Corowa Shire Council* matter. The matter has resolved.

Briefed as senior counsel for a respondent to a large representative proceeding in the Federal Court of Australia (*Gray v Cash Converters Intl. Ltd. & Ors*). The matter ran through several interlocutory steps and was settled in 2015.

Appearing as junior counsel for the applicants in the matter of *Wingecarribee Shire Council & ors v Lehman Bros (Aust) Pty Ltd (in liq) & Ors*. Successfully appeared before the Full Court of the Federal Court in having the Deed of Company Arrangement set aside. The decision was successfully defended in the High Court of Australia.

Appearing as senior counsel in a complex class action in the Supreme Court of NSW for the plaintiff involving claim against the trustee of a debenture issuer seeking to recover damages for losses suffered by the debenture holders consequent on the failure of the issuer (*Creighton v Australian Executor Trustees Ltd*).

Appearing as senior counsel for a financial advisor business as plaintiff in a claim against directors of an entity alleging breach of directors' duty resulting in loss of investment commissions to the advisor. A claim is also being made against the insurer of the directors.

Appearing for a family owned large building company in a dispute with other family members about the operation and control of the business and alleged oppressive conduct in the affairs of the company (*Festival Corp Pty Ltd v Dyldam Developments & Ors*).

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## COMMON LAW & INSURANCE

Throughout his career Andrew has advised and appeared in a diversity of common law and insurance cases. He regularly appeared when junior counsel in the District Court for insurers in personal injury/liability matters. His recent and notable work includes the following

Appearing in a long running insurance dispute in the District Court of NSW. The matter involved issues of policy construction, non-disclosure, estoppel, misrepresentation and breach of the duty of good faith. The matter subsequently went to the NSW Court of Appeal.

Appearing for the plaintiff seeking to recover indemnity under a directors and officers insurance policy arising from the director's attendance at an ICAC inquiry involving alleged corrupt conduct in the granting of Hunter Valley coal licences: *Poole v Chubb Insurance Company of Australia Pty Ltd*.

Appearing for Law Cover in claims against solicitors in both the Supreme Court of New South Wales and the District Court of New South Wales

Appearing for syndicates of "top up" insurers in professional liability matters, including a recent case in Western Australia and the Court of Appeal of Western Australia involving the affairs of the late Lang Hancock (*The Hancock Family Memorial Foundation Ltd v Fieldhouse*).

Andrew also has broad experience in appearing for Commonwealth Government Departments and agencies in large, high profile litigation. He has acted for the Commonwealth in claims brought against it by servicemen and servicewomen from all branches of the ADF, including appearing for the Commonwealth over a number of years in the HMAS Melbourne and HMAS Voyager litigation.

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## TRADE PRACTICES

Andrew has appeared in several comparative advertising cases for a large international pharmaceutical company in the Federal Court both as counsel for applicant and respondent. His most recent case, *GlaxoSmithKline Australia Pty Ltd v Reckitt Benckiser (Australia) Pty Ltd* is reserved.

Andrew is acted for Dominos Pizza in a dispute with Precision Tracking Pty Ltd in relation to the intellectual property rights of its pizza delivery tracking system. The case, presently before the Federal Court, involves patent, confidential information and Australian Consumer law issues.

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## INQUESTS, COMMISSIONS & INQUIRIES

Andrew accepts briefs to appear in Royal Commissions, inquests and inquiries and has experience appearing for a diversity of interests. His recent and notable work includes:

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Appearing for the Sydney Cricket Ground Trust at the inquest into the death of Philip Hughes.

Appearing for statutory authorities such as Roads and Maritime Services (NSW) (formerly the Roads and Traffic Authority) in Coronial inquests.

Appearing in many coronial inquests, both in NSW and interstate, in respect to aviation matters where he has appeared for Air Services Australia and the Civil Aviation Safety Authority.

Appearing at ICAC for persons giving evidence at public and private hearings

Appearing in the Victorian Royal Commission into the management of Police Informants (the Lawyer X Royal Commission) for the (then) current Chief Commissioner of Victoria Police, Mr Graham Ashton AM.

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## SPORTS LAW

Andrew is extensively experienced in sports law and is a member of the Australian and New Zealand Sports Lawyers Association (ANZSLA). He has appeared in state and federal courts, as well as domestic tribunals, in matters relating to rugby league and soccer. His recent and notable work includes:

- Appearing at the NRL Anti-Doping Tribunal in 2016 for the hearing as to the penalty to be imposed on two Cronulla players. He acted *pro bono* for an up and coming player in the NSWRL Anti-doping tribunal in 2019.
- Appointed by the Rugby League Players' Association as senior counsel for players from the Cronulla Sharks to act for and provide advice to them in respect to the ongoing investigation by the Australian Sports Anti-Doping Authority (ASADA) into drugs in rugby league in 2013. Andrew appeared with the players at their ASADA interviews and advised them throughout the process up to and including the imposition of penalties by ASADA.
- Appearing for an A-League football club in an arbitration relating to a dispute between it, a player and his manager.
- Acting for NRL players in respect to contractual disputes and at the NRL judiciary.

In 2016 Andrew was appointed as a member of the Football Federation Australia Football Independent Banning Appeals Committee (FIBAC). FIBAC hears and determines appeals by spectators who have been the subject of banning notices preventing them from attending FFA matches or having involvement with football generally.

In 2017 Andrew was appointed to the National Basketball League's Tribunal and sits as a single member and also as a member of the full member tribunal as required.

In 2019 Andrew was appointed the Chair of the National Rugby League Player Agent Accreditation Board. The board comprises representatives from the NRL, the Rugby League Players Association and player agents and oversees the applications for and accreditation of player agents in rugby league. It is also responsible for revising and recommending changes to the scheme rules for such accreditation.

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## **NCAT**

Andrew is a Senior Member (Part-Time) of the NSW Civil and Administrative Tribunal (NCAT), having been appointed in 2014. Andrew sits mostly on the Appeal Panel of the Tribunal and is assigned to the Consumer and Commercial Division and the Occupational Division. In this role,

In Appeal Panel matters, Andrew sits with another member, usually as presiding member, at appeal hearings where internal appeals from decisions of the Tribunal are heard. Matters heard can range from consumer claims, tenancy matters, retail leasing claims and strata matters (to name but a few). Broadly speaking, the Appeal panel hears internal appeals as of right on questions of law and otherwise by leave. Whilst the rules of evidence do not normally apply, principles of procedural fairness, correct application of statutory tests and issues of law are required to be applied in hearing and deciding these matters. Reasons for decision are almost invariably prepared after the appeal hearing and must be completed within 12 weeks of the hearing. A list of decisions Andrew has been involved in can be provided if required.

Andrew also sits in the Occupational Division of the Tribunal. He has presided over disciplinary matters involving nurses and a dentist and has sat on a disciplinary matter involving complaint against a barrister. Rules of evidence apply in such matters. In such matters the panel is made up of a presiding member, a legal member and professional and lay members.

When sitting in NCAT, especially at first instance or on Appeal Panel matters, it is often the case that parties will not be represented. It is of course important that unrepresented parties are able to fully argue their case and courtesy, patience and judgment is required to ensure this occurs. Often, and usually in Occupational Matters, parties are represented by counsel/solicitors and a proper interaction between the bench and legal practitioner ensures the proper running of the hearing. Andrew is experienced in dealing with both litigants in person and legal representatives in these situations.

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## **OTHER**

Andrew has been a member of the Australian Army Legal Corps (AALC) since 2016 when he was commissioned as a major. He advises his chain of command, reviews legal inquiries, provides legal advice to serving members and appears at commissions of inquiry or in disciplinary matters.

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Andrew is a member of the North Bondi RSL Sub-Branch and was appointed Hon. Secretary of the sub-branch in 2018 – 2020. He remains active in the sub-branch. The sub-branch acts to assist veterans and serving ADF members in welfare and social matters.

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**PREVIOUS EMPLOYMENT**

Clayton Utz, Solicitors, Sydney 1987-1990

Freehill Hollingdale & Page, Solicitors, Sydney 1990-1991

Linklaters & Paines, Solicitors, London 1991-1993

Freehill Hollingdale & Page, Solicitors, Sydney 1993-1996