



CURRICULUM VITAE
David Wai Mun Chin
Tel: +61 2 8066 6119
Email: david.chin@5wentworth.com

Areas of Practice

Industrial/employment

Appellate

Discrimination

Employment contracts and restraint of trade

Industrial disputes and statutory employment rights

Public sector appeals

Work health and safety

Public/administrative Civil and human rights

Disciplinary proceedings

Discrimination

Judicial review and administrative law

Inquests/inquiries

Commissions and other inquiries

Coronial inquests

Date of Admissions/Appointments

Barrister, NSW: 23 February 2001

Barrister and Solicitor, High Court of Australia: 3 October 1997

Solicitor, Supreme Court of NSW: 30 June 1994

Adjunct Senior Lecturer, Sydney Law School,
the University of Sydney: 2016 - current

Adjunct Lecturer, Sydney Law School,
University of Sydney: 2008-2016

Australian Labour Law Association,
Member of the National Committee of Management: 2015 - current

Qualifications

Bachelor of Laws (Honours): Macquarie University, 1994

Bachelor of Economics: Macquarie University, 1994

Master of Studies (Legal Research): University of Oxford, 1995

Selected cases

Employment

WorkPac Pty Ltd v Rosatto [2018] FCA 2100 (test case on the distinction between casual and permanent employment under the *Fair Work Act*)

Skene v Workpac Pty Ltd [2018] FCCA 3628 (compensation and penalty for mischaracterisation of employee as casual rather than permanent)

Fair Work Ombudsman v Raying Holding Pty Ltd (No. 2) [2017] FCCA 2148;
Fair Work Ombudsman v Raying Holding Pty Ltd (No 3) [2018] FCCA 668
(accessorial liability for contraventions of the *Fair Work Act* by reason of wilful blindness)

Westpac Banking Corporation v Wittenberg [2016] FCAFC 33 (redundancy policy, implied term of reasonable notice, negligent misstatement)

Bartlett v Australia and New Zealand Banking Group Limited [2014] NSWSC 1662 (wrongful termination / serious misconduct)

Charltons CJC Pty Ltd v Fitzgerald (No 3) [2013] NSWSC 1945 (damages for breach of post-termination restraint)

Ashby v Commonwealth of Australia (No 4) [2012] FCA 1411 (abuse of process)

Industrial law

Francois v Industrial Relations Secretary (Department of Corrective Services) [2019] NSWIRComm 1058 (public sector disciplinary appeal)

Public Service Association and Professional Officers' Association Amalgamated Union of New South Wales v Secretary for Industrial Relations [2018] NSWIRComm 1061 (appeal proceedings – the NSW Industrial Relations Commission's powers to interpret documents including "instruments" under s 175 of the Industrial Relations Act 1996 (NSW))

Fair Work Ombudsman v Transpetrol TM As [2019] FCA 400; [2017] FCA 311 (hearing on penalty for underpayment of foreign crew of foreign-flagged vessel engaged in coastal trading)

Australian Building and Construction Commissioner v O'Connor (No 4) [2018] FCA 1293 (penalties for unlawful threats to take industrial action)

Allison v Commissioner of Police [2018] NSWIRComm 1005 (removal of police officer under s 181D of the *Police Act 1990*)

Hutchings v Coles Group Supply Chain Pty Ltd t/a Coles Kewdale Distribution Centre [2017] FWCFB 50 (interpretation of an incentive scheme provision in an enterprise agreement)

Director of the Fair Work Building Industry Inspectorate v Cartledge (No 2) [2015] FCA 851 (contempt of court)

Commissions, inquiries and arbitrations

Independent Commission Against Corruption - Operation Acacia: Inquiry into whether officials of ALP NSW and Country Labor, members of Chinese Friends

of Labor, political donors and others entered into a scheme to evade the *Election Funding , Expenditure and Disclosures Act 1981* (current)

Royal Commission into Trade Union Governance and Corruption – Construction, Forestry, Mining and Energy Union ACT hearing, 20-28 July 2015 (appeared for Milin Builders Pty Ltd)

Royal Commission into Institutional Responses to Child Sexual Abuse – Case Study 22: Yeshivah Melbourne and Yeshiva Bondi, 2-13 February 2015 (appeared as junior counsel for Rabbi Moshe Gutnick)

Independent Commission Against Corruption - Operation Acacia: Inquiry concerning mining exploration licences, 2013 (appeared for the Commonwealth Minister for Climate Change, Industry and Innovation)

Arbitration before the London Beth Din, Court of the Chief Rabbi, 2009

Independent Commission Against Corruption - Investigation into Corruption in the Provision of Security Industry Training, 2009 (appeared for the Commissioner of Police)

Re Inquiry into matters relating to the availability of work at Tristar Steering and Suspension Australia Ltd (2007) 161 IR 50 (appeared as junior counsel for the NSW Minister for Industrial Relations)

Occupational Health and Safety

SafeWork NSW v Grey Colt Pty Ltd [2019] NSWDC 68 (sentencing)

SafeWork NSW v Turfco Australia Pty Ltd [2018] NSWDC 191 (sentencing resulting in one of the largest fine imposed by the District Court)

Safe Work New South Wales v Waycon Bulk Pty Ltd [2015] NSWDC 254 (sentencing of a trustee)

Inspector Childs v Area Concrete Pumping Pty Ltd and others [2013] NSWIRComm 110 (leave to withdraw pleas of guilty)

Inspector James v Paul [2011] NSWIRComm 82 (Appeal against application of s 10 Crimes (Sentencing Procedure) Act 1999)

Inspector Hayes v Santos and Lorenzo [2009] NSWIRComm 163 (prosecution of directors of corporation; overturned on appeal in *Lorenzo and Santos v Inspector Peter Hayes* [2011] NSWIRComm 54, following the High Court judgment in *Kirk v Industrial Court of New South Wales* (2010) 239 CLR 531)

Constitutional/Administrative

Tristar Steering and Suspension Limited v Industrial Relations Commission of New South Wales (2007) 158 FCR 104 (validity of a Ministerial reference inquiry – section 109 inconsistency)

Building Professionals Board v Hans (No 2) (GD) [2008] NSWACTAP 48 (professional misconduct)

Selected Publications

Books and articles

The Modern Contract of Employment, (with Ian Neil SC), Second Edition, Thomson Reuters Australia, 2017 (first edition published in 2012).

“Multiple decision-makers and their reasons for taking adverse action” (with N Saady), *Employment Law Bulletin*, February 2017, p 8.

“High Court yet to resolve differences regarding Mutual Trust and Confidence” (with Ian Neil SC), *Law Society Journal*, Vol 48 No 4, May 2010, p 70.

“The State of Section 106” (with M Kimber SC), *Australian Journal of Labour Law*, Vol 21 No 1, April 2008, p 89.

“Transitional arrangements” in *Australian Master Workplace Relations Guide, the Work Choices edition*, 2nd and 3rd editions, CCH Australia Limited, 2006, 2007 and 2008.

“Fairness and Balance in Industrial Bargaining” (with Professor Ron McCallum and Anne Gooley) in M Bromberg and M Irving (eds), *Australian Charter of Employment Rights*, The Australian Institute of Employment Rights/Hardie Grant Books, 2007.

“Servant or Serf? Severance Pay on Transmission of Business and the Right to Choose an Employer”, *Australian Journal of Labour Law*, Vol 16 No 2, September 2003, pp 172-183.

“Employees or Independent Contractors?”, *Law Society Journal*, Vol 39 No 11, December 2001.

A Social Clause for Labour’s Cause: Global Trade and Labour Standards, Institute of Employment Rights (UK)/International Centre for Trade Union Rights, London, July 1998.

“Exhuming the Individual Employment Contract: A Case of Labour Law Exceptionalism”, *Australian Journal of Labour Law*, Vol 10 No 3, December 1997, pp 257-279.

Conference papers

“Implied terms and the stifling of innovation in the employment contract”, paper presented at the Eight Biennial National Australian Labour Law Association Conference, Melbourne, 4-5 November 2016.

“Mutual Trust and Confidence”, paper presented at the 22nd Labour Law Conference, The University of Sydney Law School, Sofitel Wentworth Sydney, 25 August 2014.

“The doctrine of repudiation and the contract of employment”, paper presented at the Australian Labour Law Association seminar, Thomson Lawyers, Sydney, 27 March 2014.

“The Future of Mutual Trust and Confidence in Employment Contracts – Two Controversies”, paper presented at the Law Society of NSW Young Lawyers 2013 CLE Annual One Day Seminar, Hilton Hotel, Sydney, 23 February 2013.

“Dismissal and Damages for Breach of the Mutual Trust and Confidence Term”, paper presented at the 6th Biennial Australian Labour Law Association Conference, Canberra, 16-17 November 2012.

“The Forgotten Class – Independent Contractors in the World of Fair Work: A Media Industry Case Study”, paper presented at the Australian Labour Law Association Conference, Adelaide, 19-20 November 2010.

“Secondary Boycotts and section 45E of the Trade Practices Act”, paper presented at the 6th Annual Industrial Relations Workforce Conference, Menzies Hotel, Sydney, 3-4 December 2007.

“Employment Litigation after ‘Work Choices’: Causes of Action at Common Law”, paper presented at The Combined Legal Centres’ Group Employment Law Evening Seminar, Gilbert & Tobin Lawyers, Sydney, 20 November 2006.

“Transforming the safety net through the Australian Fair Pay and Conditions Standard”, paper presented at the Workplace Relations Law Reform seminar, IIR, Crown Plaza Darling Harbour, Sydney, 20 March 2006.

“The Transition to Work Choices – An Overview of Post-Reform Awards and Agreements”, paper presented at the NSW Young Lawyers Annual Employment & Industrial Law One Day Seminar, Four Seasons Hotel, Sydney, 25 February 2006.