

# Colin Magee

Solicitor 1991

Barrister 1998

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Colin has been a barrister since 1998 and has over 30 years of experience. He has a broad practice that includes civil claims, prosecutorial decisions, and industrial disputes. Colin is recognised as a leading barrister in New South Wales in work, health and safety law, and industrial and employment law. He has been consistently recognised in Doyle's Guide for his work and was listed in 2023, 2022 and 2021 as the Junior Counsel Market Leader in work health and safety law in New South Wales.

Colin appears for prosecutors and defendants in criminal prosecutions and advises and appears in a range of Employment and Industrial litigation, as well as civil claims. Colin also acts for a range of health professionals (in particular, specialist medical practitioners), as well NSW Health agencies, and corporations operating in the medical/health industry, with respect to Commonwealth and State regulatory fields and professional disciplinary matters in a range of Courts and specialist Tribunals.

## **QUALIFICATIONS**

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- Bachelor of Laws and Arts - University of New South Wales 1991

## **SPECIALISATIONS**

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- Work Health and Safety
- Industrial and Employment Law
- Regulatory Prosecutions
- Criminal Law
- Inquests and Commissions of Inquiry
- Disciplinary and Appeal Tribunals
- Appellate

Colin's advocacy experience extends to appearing in a range of jurisdictions including the New South Wales Court of Criminal Appeal, the Federal Court of Australia, and the Supreme Court of New South Wales. Colin also appears in specialist Courts and Tribunals, such as the Fair Work Commission, the Industrial Relations Commission of NSW, the NSW Civil & Administrative Tribunal, and the Coroners Court of NSW. He has also appeared before the Australian Human Rights Commission and the Anti-Discrimination Board of NSW.

The outcomes and reasoning of the cases in which Colin appears are published regularly in specialist industry publications and material (such as Workplace Express, OHS Alert, Alert 24 - Workplace & Employment Law). These are disseminated widely to both legal and non-legal audiences.

Colin regularly presents papers at UNSW CLE Employment Law seminars and for other conference providers, as well as for lawyers in law firms and government departments, in respect to Work Health and Safety issues, as well as in respect to Employment and Industrial Law.

Colin has a broad base of clientele including corporations, officers, trade unions, individuals, and the government. In his government practice, he regularly appears in prosecutions and appeals in various courts for work health and safety offenses for state regulators such as SafeWork NSW, the NSW Department of Industry (previously Department of Trade & Investment; and formerly Department of Mineral Resources), the NSW Ministry of Health, the NSW Department of Customer Service, the NSW Department of Communities and Justice, and the National Heavy Vehicle Regulator. He also provides advice on policy matters and legal developments for various government departments on work health and safety matters.

Outside the law, Colin is a passionate cyclist, footballer, and ocean swimmer. He has also been an active member of the Coogee Surf Life Saving Club since 2012.

## Admissions to Practice

- 1998 Admitted to the Bar of New South Wales
- 1995 Admitted as a Legal Practitioner of the High Court of Australia
- 1991 Admitted as a Solicitor of the Supreme Court of New South Wales

## Professional Qualifications

- 1991 Bachelor of Arts University of New South Wales
- 1991 Bachelor of Laws Bachelor of Laws University of New South Wales

## Professional Experience

- March 2023 - Present Barrister, Greenway Chambers
- 1998 - February 2023 Barrister, Denman Chambers
- 1992 - 1998 Solicitor, Carroll & O'Dea

## Principal Areas of Practice

- Appellate
- Alternative Dispute Resolution (including Mediation and Arbitration)
- Criminal Law

- Discrimination Law/Human Rights
- Industrial and Employment Law
- Inquests and Commissions of Inquiry
- Professional Negligence/Disciplinary Tribunals
- Regulatory Prosecutions
- Work Health and Safety.

## Accolades

2023	Doyles Guide: Market Leader Work Health & Safety Law Junior Counsel Doyles Guide: Recommended Employment & Industrial Law Junior Counsel
2022	Doyles Guide: Market Leader Work Health & Safety Law Junior Counsel Doyles Guide: Recommended Employment & Industrial Law Junior Counsel
2021	Doyles Guide: Market Leader Work Health & Safety Law Junior Counsel Doyles Guide: Recommended Employment & Industrial Law Junior Counsel
2020	Doyles Guide: Pre-Eminent Work Health & Safety Law Junior Counsel Doyles Guide: Leading Employment & Industrial Law Junior Counsel
2019	Doyles Guide: Pre-Eminent Work Health & Safety Law Junior Counsel.

## Notable Cases / Practice Area Cases

Colin has appeared in numerous jurisdictions in complex hearings and appeals. Significant matters in which he has appeared include:

### High Court of Australia

*Blackadder v Ramsey Butchering Services Pty Ltd [2005] HCA 22; 221 CLR 539; 79 ALJR 975; 139 IR 338; 215 ALR 87*

This case concerned the clarification of the term of “reinstatement” under the then federal unfair dismissal law and whether it meant more than a payment of wages. Colin was led in this case by S C Rothman SC and instructed by MRM Solicitors.

### Federal Court of Australia

*Friend v Comcare [2021] FCA 837*

This matter was an application for judicial review pursuant to the Administrative Decisions (Judicial Review) Act, 1977 (Cth) (ADJR Act) of decisions by Comcare to recover amounts received by the Applicant by way of a settlement of a sexual harassment and discrimination complaint that had been filed in the Australian Human Rights Commission (AHRC). Colin was led by K Nomchong SC and instructed by Lazarus Legal. The matter considered the question of whether the settlement of the AHRC Complaint could constitute “damages” or a “recovery of damages” under s48(1)(a) of the Safety, Rehabilitation and Compensation Act 1988 (Cth) (SRC Act). Comcare were seeking to recover \$677,364 in workers’ compensation payments after the Applicant had settled the AHRC Complaint for the sum of \$1.25m from her employer, the Australian Federal Police. Rares J considered the intention of the remedies contained in s46PO(4) of the AHRC Act, and determined that they were outside the scope of the operation of s44(1) of the SRC Act, and therefore that no part of constituted damages or a recovery of damages to which s48 of the SRC Act applied. The Applicant was therefore successful in setting aside Comcare’s decisions.

## **NSW Court of Criminal Appeal**

### *Orr v Hunter Quarries Pty Ltd [2022] NSWCCA 39*

This matter was a stated case made by the prosecutor from the District Court under s5AE of the Criminal Appeal Act 1912 where the primary judge provided no final orders. The case considered the utility of stated case procedure. Colin was led in this case by K Nomchong SC and instructed by McCullough Robertson Lawyers.

### *SafeWork NSW v Williams Timber Pty Ltd; SafeWork NSW v Easy Fall Guttering Pty Ltd [2021] NSWCCA 233*

This case concerned the appeal against an order by the District Court declining to award cost to the prosecutor and considered the denial of procedural fairness. Colin represented SafeWork NSW and was instructed by the NSW Department of Customer Service.

### *Orr v Cobar Management Pty Limited [2020] NSWCCA 220*

This matter was a stated case referred by the trial judge and considered the meaning of a question of law for the purposes of a stated case pursuant to s5AE of the Criminal Appeal Act 1912. Colin was led by J Agius SC and instructed by McCullough Robertson Lawyer.

### *Poletti Corporation Pty Ltd v SafeWork NSW [2020] NSWCCA 243*

This was an appeal against a conviction under the *Work Health and Safety Act 2011* (NSW) (WHS) on the grounds that the trial judge erred in his application of the WHS Act. Colin was led by I Taylor SC and instructed by SafeWork NSW.

### *Attorney General for the State of New South Wales v Ceerose Pty Ltd [2019] NSWCCA 35* *Attorney General for the State of New South Wales v DSF Constructions Pty Ltd [2019] NSWCCA 33*

These two appeals were brought by the Attorney General against the inadequacy of a sentence and fine for a breach of the *Work Health and Safety Act 2011* (NSW) in relation to the same fatal accident at a construction site. The appeals were held sequentially. Colin was led by J Agius SC and instructed by the Crowns Solicitor's Office.

### *Attorney General for New South Wales v McMahon Mining Services Pty Ltd [2019] NSWCCA 8*

This appeal by the Attorney General was against the inadequacy of a sentence and fine for a breach of the *Work Health and Safety Act 2011* (NSW) and whether the primary judge erred in assessment of objective seriousness of the offence concerning a fatal accident at a mining site. Colin was led by J Agius SC and instructed by the Crowns Solicitor's Office.

### *Unity Pty Ltd v SafeWork NSW [2018] NSWCCA 26*

This was an appeal by Unity against its conviction and sentence for a breach of the *Work Health and Safety Act 2011* (NSW). The Attorney General also appealed inadequacy of the sentence and the limited orders for costs. Colin was instructed by Dettmann Longworth

*Nash v Silver City Drilling (NSW) Pty Ltd; Attorney General for New South Wales v Silver City Drilling (NSW) Pty Ltd [2017] NSWCCA 96*

This appeal concerned the general inadequacy of the sentence under *Criminal Appeal Act 1912* (NSW) and the inadequate fine for the failure to comply with health and safety issues under *Work Health and Safety Act 2011* (NSW). Colin, as part of the prosecutorial team, was successful in this appeal and the case is a leading precedent which sets out the principles for sentencing and imposing penalties. Colin was led in this appeal by J Agius SC and instructed by the Attorney General of NSW.

## **New South Wales Court of Appeal**

*Nash v Silver City Drilling (NSW) Pty Ltd [2017] NSWCA 100*

Silver City Drilling (NSW) Pty Ltd were successfully convicted, sentenced, and fined under s32 of the *Work Health and Safety Act 2011* (NSW) however costs were not awarded to the successful prosecutor. This appeal concerned the judicial review of the refusal to award costs to the prosecutor under *Criminal Procedure Act 1986* (NSW) and whether the prosecutor had right of appeal under *Criminal Appeal Act 1912* (NSW) s5AA. Colin was led in this appeal by J Agius SC and instructed by NSW Crown Solicitors.

## **District Court of New South Wales**

*SafeWork NSW v A1 Arbor Tree Services Pty Ltd and Anor [2023] NSWDC 256*

Colin appeared as Counsel for the Prosecutor where A1 Arbor Tree Services Pty Ltd were convicted and fined \$2.025 million dollars in the NSW District Court over the death of a worker who was killed while using a woodchipper in 2019.

The company pleaded guilty to failing to comply with its safety obligations under the *Work Health and Safety Act 2011* and the court determined that the appropriate fine to be imposed on the company was \$3 million (being the maximum fine at the time of the incident). However, this amount was reduced to \$2.025 million dollars a result of a 25% discount for pleading guilty early and an additional 10% discount based on their ability to pay. The multi-million-dollar penalty is the single largest court imposed fine for a business under work health and safety legislation in New South Wales.

*SafeWork NSW v Norske Skog Paper Mills (Australia) Limited [2020] NSWDC 559*

Colin represented SafeWork NSW in this matter and this case concerned the prosecution of a paper mill operator in relation to the death of two workers and the serious injury of a third worker at their mill. Colin was successful in prosecuting the defendant for a breach of the *Work Health and Safety Act 2011* (NSW) and a record fine in this jurisdiction of \$1.35 million was imposed.

*SafeWork NSW v Tamex Transport Services Pty Ltd (t/as Tamex) [2016] NSWDC 295*

This case concerned the prosecution of the defendant for a breach of the *Work Health and Safety Act 2011* (NSW) where a worker suffered serious head injuries when struck by a forklift. Colin was successful in prosecuting the defendant and this was the first defendant hearing in this jurisdiction to set out the principles applicable to the determination of a breach of a duty under the *Work Health and Safety Act 2011* (NSW).

## **Australian Human Rights Commission**

*Friend v Australian Federal Police 2020 (unreported)*

This case concerned a disability and sexual discrimination complaint with the Australian Human Rights Commission pursuant to s46P of the Australian Human Rights Commission Act 1986 (Cth). Colin successfully assisted his client in the conciliation process to be awarded a record settlement, at the time, of \$1.25m.

## **Fair Work Commission**

*Appeal by Ferrymen Pty Ltd [2013] FWCFB 8025*

This appeal concerned the dispute of wages increases under an Enterprise Agreement, interaction of Industrial Awards and Enterprise Agreements and the powers of Fair Work Australia (now the Fair Work Commission) to determine the dispute. Colin was led in this appeal by A Moses SC.

## **NSW Civil & Administrative Tribunal**

*Crawford Freightlines Pty Ltd v SafeWork NSW [2022] NSWCATAD 50*

This case concerned a review of a decision by SafeWork NSW to refuse a license application for an increase in the amount ammonium nitrate that could be stored in facility in Newcastle. The case examined the criteria that SafeWork NSW could use to assess risk when reviewing the application. There was also significant community concern as the storage facility was nearby to passenger and freight rail line, an aged care facility, a childcare centre, a school, and a private hospital. Colin was instructed by NSW Department of Customer Service and was successful in having the decision by SafeWork NSW to refuse to amend the licence affirmed.