

Mark Irving

Mark Irving KC has been a barrister since 1997. He was appointed senior counsel in 2017. Mark specialises in employment, industrial and anti-discrimination law. In the last decade he has been briefed in over 100 matters in those fields in the Federal Court and other superior courts, as well as in the High Court of Australia. He has worked for unions, their members, individual workers, employers, employer organisations and regulators.

He has extensive experience in acting against those who have engaged in corrupt conduct within unions and within employer organisations. Mark was the counsel for the Health Services Union in a series of cases concerning corruption by senior officers including Kathy Jackson, Craig Thomson and Michael Williamson. These matters included:

- proceedings successfully seeking the removal of 86 office holders in a branch of the union that had become dysfunctional, and seeking the appointment of an administrator to address corrupt conduct and promote good corporate governance within the organisation
- proceedings against Craig Thomson, the former MP and union official, that resulted in orders requiring the repayment of members' funds Craig Thomson spent on escorts and furthering his personal political career
- multiple proceedings against Kathy Jackson, the former National Secretary of the union, that resulted in orders that she repay over \$1.4 million
- the Trade Union Royal Commission which, in part, resulted in successful applications against Kathy Jackson.

He has drafted rules of unions to embed anti-corruption measures and entrench transparency to members. He has advised employer organisations on their structure and accountability obligations. He has delivered seminars for the regulator to both unions and employer organisations about the corrupting benefits provisions in the Fair Work Act and has advised the regulator on matters including:

- dysfunctional employer organisations
- unauthorised payments made to officers of employer organisations.

Over the last 15 years he also advised the Fair Work Ombudsman, the Wage Inspectorate Victoria and the former regulator governing unions and employer organisations, the Registered Organisations Commission (ROC).

Mark is the author of numerous texts and articles about the contract of employment, discrimination law and labour law. He is the author of *The Contract of Employment* (now in its 2nd edition). The first edition was awarded the LexisNexis Centenary Book Award, a prize awarded to foster the highest standards of authorship in legal publishing. He is the co-author of *Creighton & Stewart's Labour Law* with Professor Andrew Stewart, Professor Anthony Forsyth, Professor Richard Johnstone and Professor Shae McCrystal. He was the co-editor with Mordy Bromberg SC of the *Australian Charter of Employment Rights*.

Mark has regularly acted in large underpayment claims on behalf of employees and their representatives. He is the lead counsel in three current matters each of which seek in excess of \$50 million in underpayments from large employers for over 10,000 employees, as well as three other large underpayment claims concerning over 100 employees. He has acted for a range of employers concerning employment and industrial matters including dealing with allegations of underpayment of wages, defending employers against actions by regulators, defending employers against allegations of

discrimination, appearing in matters associated with the misappropriation of corporate property and confidential information.

In the last few years he has acted, in some cases pro bono, in multiple underpayment actions involving about 50 Vanuatuan seasonal workers under the PALM scheme, 40 Vietnamese and Cambodian vegetable pickers, 20 Taiwanese dairy workers on working holiday visas, 8 students who were migrant workers in the cleaning industry and 12 Pacific Island seasonal workers.

He is an Honorary Senior Fellow at the University of Melbourne. Mark will not be a practising barrister during any administration.

Publications

2024 – *Creighton & Stewart's Labour Law*, 7th edition, co-author with Professor Stewart, Professor Forsyth, Professor Johnstone and Professor McCrystal, Federation Press (forthcoming)

2023 – 'Shifting and Ignoring the Balance of Power: The High Court's New Rules for Determining Employment Status', co-author with Professor Andrew Stewart and Associate Professor Pauline Bomball, *UNSWLJ*

2019 – *The Contract of Employment*, 2nd edition, LexisNexis

2016 – *Creighton & Stewart's Labour Law*, 6th edition, co-author with Professor Stewart, Professor Forsyth, Professor Johnstone and Professor McCrystal, Federation Press

2015 – 'Australian and Canadian Approaches to the Assessment of the Length of Reasonable Notice' (2015) 28 *Australian Journal of Labour Law* 159

2012 – *The Contract of Employment*, LexisNexis

2006 – *Australian Charter of Employment Rights*, co-editor with Mordy Bromberg SC, Hardie Grant Books

2003 – 'Damages Arising from the Manner of an Employee's Dismissal' (2003) 16 *Australian Journal of Labour Law*

1991 – *Enterprise Bargaining and the Law*, CCH

1990–1995 – contributor of case notes and articles to the CCH Labour Law Reporter and Australian Industrial Law Review