

ARRON HARTNETT

Year called – 2017
Year admitted – 2012

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AREAS OF PRACTICE

Administrative and public law
Appellate law
Migration
Constitutional law
Regulatory and disciplinary matters
Employment law
Workplace investigations
Family law

EDUCATION

Bachelor of Laws (Hons), Queensland University of Technology
Graduate Diploma of Legal Practice, Queensland University of Technology
Master of Business (Professional Accounting), Queensland University of Technology

CAREER HISTORY

Arron was called to the bar in 2017. He practices predominately in administrative law (both merits and judicial review), regulatory proceedings, employment law and family law. Arron routinely acts for government agencies (Commonwealth and state), as well as private clients. He regularly acts for government agencies in civil penalty matters, in judicial review applications and in appeals from decisions of tribunals. He has appeared led and unled in federal and state courts and tribunals (including at the appellate level).

Arron appeared for the plaintiffs in the landmark High Court case of *Love v Commonwealth of Australia* (2020) 270 CLR 152; [2020] HCA 3 and also in *Thoms v Commonwealth of Australia* (2022) 96 ALJR 635; [2022] HCA 20 (led by Stephen Keim SC in both cases).

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Prior to coming to the bar, Arron worked in the Queensland Department of Justice and Attorney-General developing complex primary and subordinate legislation for the Queensland Parliament. His background gives him unique insight to complex statutory construction questions.

Arron is a member of the Australian Bar Association's Ethics Committee. He regularly contributes to the Law Council of Australia's publication 'Chapter III'. Arron is a member of the Australian Association of Constitutional Lawyers and the Law Council of Australia's Federal Litigation and Dispute Resolution Section.

Arron is a sessional academic at QUT, tutoring in constitutional law and evidence.

SELECTED CASES

Love v Commonwealth of Australia (2020) 270 CLR 152; [2020] HCA 3

Arron appeared as junior counsel for Mr Love and Mr Thoms on a special case referred to the Full Court in its original jurisdiction. The Full Court of the High Court, by a majority of four justices, held that Aboriginal Australians, who satisfy the tripartite test in *Mabo v Queensland (No. 2)* (1992) 175 CLR 1 (at 70) are not 'aliens' within the meaning of s 51 (xix) of the *Constitution*.

The case recognised the sui generis position that First Nations people as the original inhabitants of Australia and prevents certain detention and removal decisions under the *Migration Act 1958* (Cth) from applying to First Nations people. The High Court recognised that Aboriginal Australians, if they are not Australian citizens, are 'non-aliens' (the only kind of non-alien non-citizens recognised in Australian law).

Thoms v Commonwealth of Australia (2022) 96 ALJR 635; [2022] HCA 20

Arron appeared as junior counsel for Mr Thoms on a question removed from the Federal Court of Australia into the High Court under s 40 of the *Judiciary Act 1903* (Cth). The question removed related to whether Mr Thoms' detention under the *Migration Act 1958* (Cth) was unlawful, given the High Court's decision in *Love v Commonwealth*.

The case was an important decision about the scope of the power to detain under s 189 of the *Migration Act 1958* (Cth). A unanimous High Court found that a 'reasonable suspicion' as to whether a person is an 'unlawful non-citizen' depended upon an officer's understanding of the relevant law at the time a decision to detain was made.

Hirama v Minister for Home Affairs [2021] FCA 648

Arron appeared unled against a silk and junior counsel for the applicant seeking a declaration that he was not an 'alien' for the purposes of s 51(xix) of the *Constitution*. The applicant was a Nyul Nyul man and a native title holder. The Court held that the applicant was an Aboriginal Australian in accordance with the tripartite test in *Mabo v Queensland (No. 2)* (1992) 175 CLR 1 (at 70). A declaration was made to the effect that he was not an 'alien'.

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He v Secretary, Department of Education, Skills and Employment [2023] FedCFamC2G 356

Arron appeared for the respondent Secretary of the Department of Education, Skills and Employment in the applicant's appeal against a decision of the Administrative Appeals Tribunal. The applicant had been unsuccessful in the Tribunal. The question of law raised on the appeal was the meaning of the expression 'liable to pay' for a session of childcare under a provision of the *A New Tax System (Family Assistance) Act 1999*. Arron successfully resisted the applicant's appeal in the Federal Circuit and Family Court of Australia.

CASE LIST

Family Court of Australia (Full Court)

- *Newett & Newett* (No. 3) [2021] FamCAFC 164 (appeal)
- *Newett & Newett* (No. 2) [2021] FedCFamC1A (appeal)
- *Sattler & Furnie* [2021] FedCFamC1A 20 (appeal)
- *Michar & Balieford & Child Support Registrar* (2019) FLC ¶98-076; [2019] FamCAFC 60 (unled) (appeal)
- *Laremore & Speidell* (2019) 60 Fam LR 250; [2019] FamCAFC 215 (appeal)
- *Winship & Wrays* (2019) FLC ¶93-928; [2019] FamCAFC 225 (appeal)
- *Newett & Newett* [2019] FamCAFC 102 (appeal)

Federal Court and Federal Circuit and Family Court (Divisions 1 and 2)

- *Clean Energy Regulator v E Connect Solar Pty Ltd* (Federal Court, awaiting judgment)
- *He v Secretary, Department of Education, Skills and Employment* [2023] FedCFamC2G 356 (statutory entitlements, appeal from Tribunal)
- *Fair Work Ombudsman v Buchanan* [2022] FedCFamC2G 92 (civil remedy)
- *Mainor & Mainor* [2022] FedCFamC1F 975 (costs)
- *Hirama v Minister for Home Affairs* [2021] FCA 648 (declaration, constitutional law)
- *SBP Employment Solutions v Smith* [2021] FCA 601 (employment, appeal)
- *Fair Work Ombudsman v 63 Racecourse Road Pty Ltd & Anor* [2021] FCCA 1875 (civil remedy)
- *Mainor & Mainor* [2020] FCCA 2269 (family law, parenting)
- *EFA18 v Minister for Immigration and Border Protection* [2019] FCCA 740 (judicial review, migration)

Tribunals

- *Tabuarua & Minister for Immigration, Citizenship and Multicultural Affairs* [2023] AATA 1383 (merits review, revocation of mandatory visa cancellation)
- *Lonie v LiveBetter Services Limited* [2023] NSWCATAD 60 (anti-discrimination)
- *Mamatta & Minister for Immigration, Citizenship and Multicultural Affairs* [2023] AATA 133 (merits review, mandatory cancellation revocation)
- *Legal Services Commissioner v Walker* [2021] QCAT 389 (discipline, legal practitioners)
- *Kerry & Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2020] AATA 869 (merits review, revocation of mandatory visa cancellation)

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