

ANDREW BAILEY

Address:

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PRACTICE AREAS

Equity; commercial litigation; construction litigation (including *Security of Payment Act* matters); employment law; insolvency and bankruptcy; wills and estates, including family provision and probate; costs; administrative law.

EDUCATION

2003 – 2005 **Master of Laws (University of Sydney)**

1998 – 2001 **Bachelor of Laws (Queensland University of Technology)**

1994 – 1998 **Bachelor of Arts (University of Queensland)**

ADMISSIONS

2014: called to the New South Wales Bar

2003: admitted as a legal practitioner of the Supreme Court of New South Wales

2002: admitted as a solicitor of the Supreme Court of Queensland; admitted as a legal practitioner in the High Court of Australia;

CHAMBERS

18 Feb 2026 – Third Floor Wentworth Chambers, as licensee

1 Aug 2024 – 15 Jan 2026 Two Wentworth, as licensee

Dec 2017 – Dec 2023 Frederick Jordan Chambers, initially as licensee, then member

2014 – 2017 Fourth Floor, Selborne Chambers, initially reading, then as licensee

PROFESSIONAL MEMBERSHIPS

Costs & Fees Committee, New South Wales Bar Association (2024-2025; 2025 -)

Practice Development Committee, New South Wales Bar Association (2023-2025; 2025-)

Alternate Dispute Resolution Committee, New South Wales Bar Association (2022-2024)

APPOINTMENTS

Costs Assessor appointed by the Chief Justice, Supreme Court of New South Wales, NSW Costs Assessment Scheme (2022 - 2025; 2025 -)

SELECTED CASES

Appellate / Supervisory jurisdiction

Mandalinic v Stone (Liquidator) [2023] FCAFC 146 – for the successful liquidator on an appeal concerning an issue determined summarily that a director cannot file an affidavit in separate recovery proceedings (involving recovery of a penalty following DPN served which itself is based on an estimate) to revoke the liability (with J Baird).

Stokes v Toyne [2023] NSWCA 59 (4 April 2023) – unsuccessful respondent – *Anshun* estoppel – abuse of process – whether subsequent damages claim could have been brought in proceedings for the recovery of deposit under s. 55(2A) of the *Conveyancing Act 1919* (NSW) (with M Castle).

203 Castlereagh St Pty Ltd v Skybloo Holdings Pty Ltd [2016] NSWCATAP 172 – practice and procedure – requirements for an order to be made dispensing with a hearing and proceeding to determine matter on the papers pursuant to s.50 of the *Civil & Administrative Tribunal Act 2013*.

eInduct Systems Pty Ltd v 3D Safety Services Pty Ltd & Ors. (2015) 90 NSWLR 451, [2015] NSWCA 284 – for successful respondent in supervisory jurisdiction – review after appeal from *Legal Profession Act* costs assessment and review of ordered costs – “costs indemnity principle” “proportionality” “refusal to grant leave to amend summons on appeal” (with M. Castle).

Instructed in appeals to a single judge from a decision of an inferior court, tribunal or other body.

Instructed in respect of costs assessment and other costs appeals.

First instance

General

Deputy Commissioner of Taxation v Ijaz Ahmad Rana [2023] NSWDC – for Defendant, where recoveries sought against person named director of company in liquidation pursuant to director penalty notice, specific available defence identified and raised (resolution on terms without need for hearing).

Barnden v Zulian; Barnden v Commissioner of Taxation [2018] NSWSC 1980 – application for further security for costs against liquidator where order made reserving liberty to apply (with Assaf SC)

Bock v Lawrence Dry Cleaners Pty Ltd & Rodrigues [2017] NSWLC (Small Claims) – for successful defendant (bridal boutique owner) – bridal gown manufactured in USA and displayed before imported to Australia for display – ‘second hand’ in sense described in *LR McLean & Co Ltd v Commissioner of Inland Revenue* [1994] 3 NZLR 33 and a care label was not required to be attached.

Instructed previously for a Defendant in proceedings in the Equity Division of the Supreme Court of New South Wales seeking recovery of monies on particular identified bases and remedies of various types including unwinding transactions and equitable compensation.

Instructions in respect of conveyancing matters.

Instructed previously in recovery matters on behalf of a large federal government agency.

Instructions in construction litigation, including applications under the *Building and Construction Industry Security of Payment Act 1999* (NSW).

Bankruptcy / Insolvency

Poon v Proctor Phair Lawyers Pty Ltd [2024] FedCFamC2G 291 – for successful respondent on review of Registrar’s decision following successfully resisting an application to set aside a bankruptcy notice.

In the matter of One Mastery Developments Pty Ltd [2023] NSWSC 980 (18 Aug 2023) – for respondent on unsuccessful application for leave pursuant to s. 459S of the *Corporations Act 2001* – succeeded in establishing serious question to be tried but failed given insufficiency of explanation by director as to arrangements to ensure creditor’s statutory demand received by post.

Doyle v Lewis [2023] FedCFamC2G 205 (17 Mar 2023) – for successful respondent on application to set aside bankruptcy notice given underlying liability judgments for damages together with gross sum costs, where no appeal brought against those decisions within time prescribed by UCPR but foreshadowed on basis of contest as to civil liability and as to criminal convictions unsuccessfully appeal from following criminal trial, which was relied upon, in part, in the civil proceedings

ICAC v Obeid & Ors [2022] FCA – creditors petition in respect of \$1.6 million arising from gross sum costs orders and interest following specific Supreme Court proceedings – resolved without need for a hearing, together with claims in respect of other liabilities owing to the State of New South Wales together totalling \$5.25 million on terms including permitting publication of details (with M. Castle)

Instructed previously for Plaintiffs and Defendants in applications to set aside creditor’s statutory demands.

Instructed previously in preference claims.

Instructed previously in bankruptcy examinations.

Wills & Estates

Alexiou v Alexiou [2024] NSWSC 1340 – for two beneficiaries where plaintiff and executor had agreed to separate representation for particular reasons – issue of jurisdiction exercised to control what practitioners charged their clients and what was recovered from a deceased estate by applicant, estate and beneficiaries.

Estate of Maria Zbrozek; Katarzyna (aka Kasia) Duszyk v Charles Emmanuel Morgan – Interim Administrator of the Estate of the late Maria Zbrozek [2020] NSWSC 1591 – in respect of a number of applications made *inter partes* in those proceedings (with M. Evans)

Instructed previously for plaintiffs and defendants in applications for further provision from deceased estates and in contested probate matters, including recently: -

- Probate of a missing Will (lost, assumed destroyed), resolved at mediation.
- Family provision proceedings for Plaintiff daughter where de facto spouse and deceased said to have separated prior to death (in the sense described in *Squire v Squire* [2019] NSWCA 90, and related authorities).
- Proceedings concerning various types of eligible person.

Advice to potential applicants concerning family provision claims being considered.

Advice concerning revival of a previously revoked Will – relying on parts of *Slack v Rogan & Anor*; *Palffy v Rogan & Anor*. [2013] NSWSC 522.

Advice concerning notional estate orders potentially sought where a person wished to dispose of a number of properties in a particular way in favour of children by series of *inter vivos* transactions.

Advice to person seeking to unwind a settlement of family provision and related proceedings resolved in a mediation on a particular basis.

Costs

First instance (some also appellate, where from decisions of review panels)

Read v Solve Legal Pty Ltd [2025] NSWDC (unreported, Waugh SC DCJ) – appeal from review panel affirmation of assessor’s determination – costs assessors can assess costs pursuant to Notice of Discontinuance with term for payment of costs.

Go to Court Lawyers Pty Ltd v Caroline Fagan-Danzer [2023] NSWDC – recovery proceedings adjourned for costs assessor to assess costs – part of claim for costs was for work of former law practice purchased by successor – costs assessor declines to assess – client seeks summary dismissal in the face of the costs assessor’s determination given non-disclosure issue – issue as to characterisation of retainers as novated or assigned and consequences – law practice subsequent application to assess declined by the Manager, Costs Assessments – that decision the subject of separate judicial review proceedings – adjournment application sought by law practice – proceedings resolve on terms without need for hearing.

Issa v Joel [2021] NSWDC, unreported – for successful appellant – appeal from review panel decision where they had material before them but failed to make finding of full payment of invoices and found legal practitioner entitled to substitute last invoice – submission on appeal that law on bills issued applies only between solicitor and client, rejected.

Generally

Instructed previously in respect of various reported decisions on applications for gross sum costs.

Instructions in proceedings in various courts concerning proceedings for the recognition of solicitor’s fruits of the action lien (in the sense described in *Firth v Centrelink* (2002) 55 NSWLR 405) and in one instance, concerning a priorities dispute given disentitling conduct by a subsequent law practice and the divergence in authorities mentioned in *Jaken Properties Australia Pty Ltd v Naaman* [2023] NSWCA 214 at [133].

Advice concerning costs related topics in relation to the new Sydney Fish Markets construction project.

Advice concerning issues arising in respect of claim for costs by barrister against a law practice under conditional costs agreements, with usual issues arising.

PUBLICATIONS AND PAPERS (REVERSE CHRONOLOGICAL ORDER)

Construction law

Bailey, A. “Rectification vs diminution: NSWCA clarifies consumer law damages” [in the construction law context], LSJ Online, 28 Nov 2025.

Bailey, A. “Building and construction industry gets a new look security of payment regime”, Law Society Journal, Issue 61, November 2019, pg 76.

Bailey, A. “Amended security of payment regime set to bring more clarity to building and construction disputes”, Law Society Journal, Issue 53, March 2019, p.82.

Legal practice related

Castle, M. & Bailey, A. “Rewind: 2021 in costs”, Law Society Journal, February 2022.

Castle, M. & Bailey, A. “The pitfalls of pursuing bankruptcy on the basis of assessed costs”, Law Society Journal, August 2021.

Castle, M. & Bailey, A. “The law of costs: 2020 year in review”, Law Society Journal, December 2020.

Castle, M. & Bailey, A. “The costs of law: a look back at the stand-out cases of 2019”, Law Society Journal, Issue 62, December 2019, p 70.

Castle, M. & Bailey, A. “Chorley abolished! High Court has final say”, Law Society Journal, Issue 60, October 2019, p 68.

Castle, M. & Bailey, A. “Reflecting on a costly year: key themes and future predictions”, Law Society Journal, Issue 51, December 2018, p.72

Castle, M. & Bailey, A. “Limitation issues in solicitor/client costs”, Law Society Journal, Issue 50, November 2018, p.80.

Castle, M. & Bailey, A. “Taking security for legal costs: lessons from *Malouf v Constantinou*”, Law Society Journal, Issue 48, September 2018, p.90.

Castle, M. & Bailey, A. “Getting in on the ‘fruits of the action’: the power of the equitable lien”, Law Society Journal, Issue 47, August 2018, p.80.

Castle, M. & Bailey, A. “You really got a hold on me... the power of the solicitor’s lien”, Law Society Journal, Issue 46, July 2018, p.86.

Castle, M. & Bailey, A. “A practical guide to lump sum costs orders”, Law Society Journal, Issue 45, June 2018, p.82.

Castle, M., & Bailey, A. “To sue or not to sue? That is the question”, Law Society Journal, Issue 44, May 2018, p.83.

Castle, M., Bailey, A. & Rosati, K. "Legal costs: grappling with the complexities in the Legal Profession Uniform Law", Law Society Journal, Issue 43, April 2018, p.80.

Castle, M. & Bailey, A. "Solicitor estopped from claiming fees: how did that happen?", Law Society Journal, Issue 25, August 2016, p.78.

Johnson, J., Castle, M. & Bailey, A. "The Chorley Exception: Three Strikes and Out?", Law Society Journal, Issue 24, July 2016, p.80.

Castle, M. & Bailey, A. "Yours, Mine or Ours? Access to a solicitor's file when a retainer ends", Law Society Journal, Issue 23, June 2016, p 88.

Castle, M. & Bailey, A. "Consequences of inaccurate costs estimates and negligently performed work", Law Society Journal, Issue 22, May 2016, p84.

Castle, M. & Bailey, A. "Costs Assessments: Unravelling the mysteries of certificate judgments", Law Society Journal, Issue 18, December 2015, p 94.

Castle, M. & Bailey, A. "Costs Assessments: Recent cases in the Court of Appeal", Law Society Journal, Issue 17, November 2015, p84.

Papers delivered

"Drafting affidavits: topics for consideration": for Legalwise, September 2018 seminar series.

"Recent decisions under the Competition and Consumer Act 2010: a year in review": for the Law Society of New South Wales, Specialist Accreditation conference (11 Aug 2018).

"Permissible re-litigation or an abuse of process? Some issues for consideration for litigation lawyers": for Legalwise, Litigation Masterclass (15 Sept 2017).

"Proportionality & legal costs: what does it all mean? (a good question)": for the Law Society of New South Wales, Specialist Accreditation conference (4 Aug 2017)

"Applications for judgment under the Building and Construction Industry Security of Payment Act 1999": for the Law Society of New South Wales CPD program (7 Mar 2017)

"Proceed with caution: inaccurate costs estimates, negligent work & consequences": Legalwise, Personal Injury conference (3 Mar 2017).

"Aspects of the enforcement of judgments": for the Law Society of New South Wales CPD program (11 Oct 2016).

"Jumping the low bar required to succeed on an application to set aside a statutory demand": for the Law Society of New South Wales CPD program (1 Mar 2016).

"Through the Looking Glass': examining the bankruptcy jurisdiction of the Family Court": for the Law Society of New South Wales CPD program – family law symposium (17 Feb 2016), to the NSW State Legal conference – Family Law session (23 Mar 2016).'

PREVIOUS EMPLOYMENT

Nov 2010 – Nov 2013	TressCox Lawyers , Solicitor*, Commercial Litigation	Sydney, Australia
June 2008 – Sept 2010	Church & Grace , Solicitor, Litigation	Sydney, Australia
June 2006 – June 2008	Andrew Priestley & Associates , Solicitor, Commercial Litigation (Victorian) & General Commercial Practice	Sydney, Australia
2005 – 2006	Burns and Roe Worley Pty Ltd (subsidiary of WorleyParsons Ltd), Commercial Officer	North Sydney, Australia
Dec 2003 – Mar 2005	Toogoods Solicitors , Solicitor, Mixed commercial & litigation practice	Brisbane, Australia
2002	Office of DPP (Qld) , Committals Clerk	Brisbane, Australia

* Denotes appointment as Senior Associate with effect from 1 July 2012.