



**ROBERT DICK SC**  
*Barrister*

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robert.dick@banco.net.au

## ADMISSIONS

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- 2009** Appointed Silk
- 1996** Admitted to the Bar

## QUALIFICATIONS

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BA, LLB (Hons), University of Sydney

LLM, University of Sydney

## AREAS OF PRACTICE

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Appellate	Commissions of Inquiry	Equity & Property
Arbitration	Competition and Consumer Law	Insurance & Reinsurance
Commercial law	Corporations and Insolvency	International law

## PROFILE

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Robert commenced his legal career as Associate to Justice Hill on the Federal Court of Australia (1990 – 1991). He then worked as a solicitor at Freehills (now Herbert Smith Freehills) between 1992 and 1996 before joining the Bar in 1996. Robert was appointed Senior Counsel in 2009. Robert practises widely in commercial law matters including trials, appeals and arbitrations.

Robert has appeared as Counsel in many leading cases and appeals including landmark cases such as the Firebird/Republic of Nauru proceedings in the High Court (Foreign State Immunity/International Law), the Ha/Walter Hammond proceedings in the High Court (Commonwealth duties of excise and business franchise licence fees), the Roxborough litigation in the Federal and High Court (restitution), the Fostif proceedings (litigation funding and class actions), and recently, the Banksia proceedings in the Supreme Court of Victoria (administration of justice).

Recent cases in which Robert has appeared or is appearing include:

- representing McDonald's Australia Ltd in Federal Court representative proceedings (2023);
- representing Qantas in a complex contractual dispute in the Commercial List of the Supreme Court of New South Wales (2023);
- representing FX Group Holdings Pty Ltd in Supreme Court Commercial List proceedings (2023);
- representing entities in the Johnson and Johnson group of companies in Federal Court representative proceedings and settlement approval proceedings (2021-2023);
- representing Basis Capital in Federal Court representative proceedings against Standard and Poor's (2023);
- representing Sev.en Gamma a.s. in Supreme Court Commercial List proceedings (2023);
- acting for CPB Contractors in contractual disputes in various forums (2023);
- acting for Firstmac Ltd in Federal Court proceedings commenced by ASIC (2023);

- representing Woodside Petroleum in an appeal in the Court of Appeal of Western Australia involving complex contract law issues (2021-2022);
- representing Toyota in Federal Court representative proceedings and appeal proceedings (2021-2022).
- representing Herbert Smith Freehills in their successful defence of cross-claims in the Arrium proceedings in the Commercial List of the Supreme Court of New South Wales (2021);

Robert has also appeared in a number of major Commissions of Inquiry including the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industries, the ICAC public hearings for Operations Jasper and Acacia and the Equine Influenza Inquiry; and in significant Public Examinations such as the One Tel and Arrium examinations.

Robert is regularly ranked as a leading silk in the Chambers Global and Chambers Asia Pacific Guides for Dispute Resolution where he is described as a “very skilful advocate and extremely well prepared”; and in the Doyles Guide, the Legal 500 Guide, and the Australian Financial Review’s Best Lawyers in Australia Guide.

## SELECTED APPEALS

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*Toyota Motor Corp Australia Ltd v Williams* [2022] (Full Federal Court, class action, statutory construction, damages). Decision reserved.

*Armada Balnaves Pty Ltd v Woodside Energy Julimar Pty Ltd* [2022] WASCA 69 (WA Court of Appeal, Contract, Breach of Contract, Repudiation, Termination).

*Armada Balnaves Pty. Ltd v Woodside Energy Julimar Pty Ltd* [2022] HCASL 197 (High Court, special leave refused).

*Elliott v Lindholm* [2020] VSCA 260 (Court of Appeal, Supreme Court of Victoria, apprehended bias, recusal).

*Australian Funding Partners Ltd v Botsman & Ors* [May 2019] (High Court – Special Leave from Supreme Court of Victoria, Court of Appeal).

*Tecnicas Reunidas SA v Andrew* [2018] NSWCA 192 (Court of Appeal, Solicitors – Retainer - Injunction).

*Jaeger v Bendigo and Adelaide Bank Ltd* [2018] NSWCA 116 (Court of Appeal, Equity – Choses in action – assignment – loan).

*Re Tiaro Coal Ltd (in liq)* [2018] NSWCA (Court of Appeal, Practice and Procedure – Corporations Rules – Originating Process – Set aside).

*Weir Services Australia Pty Ltd v Axa Corporate Solutions Assurance* [2018] NSWCA 100 (Court of Appeal, Insurance – Damage – Liability).

*Kawasaki Heavy Industries Ltd v Laing O’Rourke Australia Construction Pty Ltd* [2017] NSWCA 291 (Court of Appeal, Contract – Insurance Bonds - Injunctions).

*Bonham v Iluka Resources Ltd* (2017) 252 FCR 58 (Full Federal Court, Preliminary Discovery).

*Bennett v Gennacker Pty Ltd* [2016] NSWCA 89 (Court of Appeal, statutory construction)

*Firebird Global Master Fund II Ltd v Republic of Nauru* [2015] HCA 43 (High Court); [2014] NSWSC 1358 (first instance); and on appeal to the NSW Court of Appeal [2014] NSWCA 360; and Court of Appeal stay application [2014] NSWCA 375.

*EPS Constructions Pty Ltd v Mass Holdings Pty Ltd* [2015] NSWCA 317 (Court of Appeal, Formation of Commercial Contract).

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*Australian Vintage Ltd v Belvino Investments No. 2 Pty Ltd* [2015] NSWCA 275 (Court of Appeal, Construction of Commercial Lease).

*Golden Mile Property Investments Pty Ltd (in liq) v Cudgegong Australia Pty Ltd* [2015] NSWCA 1000 (Court of Appeal, Corporations Act 2001 - equity and real property).

*Sydney Water Corporation v McGrath* [2014] NSWCA 197 (Court of Appeal, Insolvency - Reinsurance).

*DSG Holdings Australia Pty Ltd v Helenic Pty Ltd* [2014] NSWCA 96 (Court of Appeal, Deed of Company Arrangement - Insolvency).

*Hare v Van Brugge* [2013] NSWCA 74 (Court of Appeal, Real Property - Easements and Fixtures).

*OneSteel Manufacturing Pty Ltd v Bluescope Steel (AIS) Pty Ltd* (2013) 85 NSWLR 1 (Court of Appeal, Contract construction – Sale of Goods).

## **RECENT TRIALS, ARBITRATIONS AND OTHER APPEARANCES (2021 – 2023)**

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*Gill v Ethicon Sarl (No's 10 and 11)* [2023] FCA 228; [2023] FCA 229 (Representative Proceedings, Settlement, Contradictor, whether settlement is fair and reasonable).

*ACN 117 641 004 Pty Ltd (in liq) v S & P Global Inc* [2023] FCA 172 (Practice & Procedure, Production, Notice to Produce).

*Beyond International Ltd, Re* [2022] NSWSC 1649; *Beyond International Ltd (No. 2), Re* [2022] NSWSC 1787 (Supreme Court, Corporations - Scheme of Arrangement).

*ASIC v Scholz (No. 2)* [2022] FCA 1542 (Federal Court, Corporations, Financial services, Injunctions).

*Harvard Nominees Pty Ltd v Caratti* [2022] WASC 441 (Real Property, Caveats, removal, proprietary interest).

*Construcciones y Auxiliar de Ferrocarriles SA v CPB Contractors Pty Ltd* [2022] NSWSC 1264 (Supreme Court, Arbitration, Arbitration Clauses, *International Arbitration Act 1974*, Stay of court proceedings).

*ACN 117 641 004 Pty Ltd (in liq) v S & P Global Inc* [2022] FCA 1289 (Federal Court, Evidence, admissibility, Paramount importance)

*Cimic Group Ltd v AIG Group Ltd & Ors* [2022] NSWSC 999 (Insurance, claim for indemnity and declaratory relief against two consecutive insurance towers); now on appeal to NSW Court of Appeal.

*Mirvac Funds Management Ltd v Value Lodging Pty Ltd* [2022] NSWSC 787 (Supreme Court, Leases and tenancies, Sub-leases, Termination of leases, validity).

*Williams v Toyota Motor Corp Australia Ltd* [2022] FCA 344 (Federal Court, Class Action, Statutory Construction, Damages); appeal to Full Federal Court in November 2022 (Judgment reserved).

*Canavan v ICRA Rolleston Pty Ltd (Recs and Mgrs Apptd) (in liq) (No. 2)* [2022] FCA 137 (Federal Court, Corporations, Insolvency, Special Purpose Liquidators).

*Williams v Toyota Motor Corp Australia Ltd* [2021] FCA 1425 (Federal Court, Interlocutory hearing, Statutory interpretation, *Federal Court of Australia Act 1976*, Class Actions, Aggregate Damages)

*Bolitho v Banksia Securities Ltd (No. 18) (Remitter)* [2021] VSC 666 (Supreme Court of Victoria, Administration of Justice, Remedies).

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*Anchorage Capital Master Offshore Ltd v Sparkes (No. 3); Bank of Communications Co Ltd v Sparkes (No. 2)* [2021] NSWSC 1025 (Supreme Court, Insolvency, construction of finance documents, Negligence, Misleading or Deceptive Conduct).

*Commonwealth DPP v Citigroup Global Markets Australia Pty Ltd* [2021] FCA 757 (Federal Court, Criminal Law, Indictment).

*Lenthall v Westpac Banking Corp (No. 3)* [2021] FCA 1004 (Federal Court, Settlement Approval Application).

A fuller list of cases prior to 2021 can be supplied on request.

## **EARLIER NOTABLE CASES**

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Lead Counsel for APRA in the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industries (2018).

*Re Independent Commission Against Corruption 2012 – 2013* (acting for Mr Brian Flannery in the ICAC Commissions of Inquiry for Operations Jasper and Acacia relating to the grant of the Mt Penny and Doyles Creek Mining Licences).

*Morley v ASIC* (2010) 274 ALR 285 (Court of Appeal, Civil Penalty proceedings, directors and officers, directors' duties, disqualification and penalties); and related Court of Appeal proceedings [2011] NSWCA 110 and Supreme Court trial proceedings [2009] NSWSC 287.

*Ingot Capital Investments Pty Ltd v Macquarie Equity Capital Markets Ltd & Ors* (2007) 63 ACSR 1 (Supreme Court, prospectuses, convertible notes, misleading and deceptive conduct, causation damages); and on appeal to the NSW Court of Appeal (2008) 73 NSWLR 653; and special leave application to High Court [2009] HCA Trans 208.

*ASIC v Citigroup Global Markets Australia Pty Ltd* (2007) 160 FCR 35 (Federal Court, insider trading, fiduciary relationships, Chinese walls, conflicts of interest).

*Idoport v National Australia Bank Ltd* [2005] NSWSC 752 (Supreme Court, barring order, restraint on commencing new proceedings); on appeal to the NSW Court of Appeal [2006] NSWCA 202 and special leave application to the High Court [2006] HCA Trans 673; and related Supreme Court proceedings [2007] NSWSC 1349 (contractual set-off and barring order).

*Fostif Pty Ltd v Campbells Cash & Carry Pty Ltd* (2005) 63 NSWLR 203 (Court of Appeal, representative proceedings, licence fees, restitution, litigation funding).

*Re United Medical Protection Ltd* [2002] NSWSC 516 (Supreme Court, provisional liquidators, directions, indemnity from Commonwealth) and related proceedings [2002] NSWSC 545; [2002] NSWSC 562; [2002] NSWSC 865; [2003] NSWSC 237; [2003] NSWSC 1031.

*National Australia Bank Ltd v Market Holdings Pty Ltd* (in liq) [2001] NSWSC 253 (Supreme Court, winding up, meetings, entitlement to vote).

*Roxborough v Rothmans of Pall Mall Australia Ltd* (2001) 208 CLR 516 (High Court, customs and excise, licence fees, restitution). See also trial proceedings in Federal Court (1999) 161 ALR 253; and appeal in full court of Federal Court (1999) 95 FCR 185.

*National Australia Bank Ltd v Market Holdings Pty Ltd* [2000] NSWSC 1009 (Supreme Court, winding up, creditors, meetings).

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*Ha v State of NSW; Walter Hammond & Associates v State of NSW* (1997) 189 CLR 465 (High Court, business franchise licence fees, duties of excise under s90, Constitution).

## **EDUCATION AND PROFESSIONAL EXPERIENCE**

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Sydney University (1985-1989), BA, LLB (Hons), LLM, Bowman – Cameron Scholarship, James Aitken Scholarship, Sydney Morning Herald Scholarship, all for academic proficiency, Student Representative Council (1986-1987), Vice President, Arts Faculty Society (1987-1988), Director of Student Publications (1987 - 1988).

Associate to Justice Hill, Federal Court of Australia (1990 - 1991).

Solicitor, Freehill Hollingdale and Page (now Herbert Smith Freehills) (1992 – 1996, Banking and Finance, Commercial Litigation).

Counsel (1996 – 2009); Senior Counsel (2009 – present).

NSW Bar Association Practice Development Committee (2006 – 2013).

Federal Court Class Actions User Group.

Federal Court Commercial & Corporations User Group (Insolvency).

## **PUBLICATIONS**

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*“A Loss of State Autonomy: Implications of the Ha and Hammond Decisions”* (1998) 27 AT Rev 30.

*“Restitution – Practical Update and Recent Cases”* in Commercial Law Quarterly, December 2004 (co-authored with Justin Gleeson SC).

Chapter on *“Agency”* in *“Historical Foundations of Australian Law”* (Vol 2, Commercial & Common Law, Federation Press, 2013)