



NICHOLAS BENDER

Barrister

+61 2 9376 0666

bender@banco.net.au

ADMISSIONS

Barrister (2007)

Solicitor, NSW (2003)

PRIOR EMPLOYMENT

Tipstaff to the Hon R. I. Barrett (2002)

Mallesons Stephens Jacques, Sydney (2003 - 2004, 2007)

Linklaters, London (2005 - 2007)

ACADEMIC & AWARDS

B.A. (Political Science), LL.B, UNSW (2001)

LL.M (Hons I, 2nd of 134), University of Cambridge, Jesus College

Visiting Teaching Fellow, University College, London (2005)
Lecturer, International Arbitration

Visiting Fellow, University of New South Wales (2008 - 2011)
Convenor, Conflict of Laws

Contributor to *Robson's Annotated Corporations Act* - Chapters 2D.1 (Directors Duties), 2E (Related Party Transactions) and 2F (Members rights and remedies) (2010 – present)

Awards

Pegasus Scholarship (The Inner Temple), 2005

The Glanville Williams Prize for Law (Jesus College, Cambridge), 2005

The Sir Peter Gadsden Prize (Jesus College, Cambridge), 2005

Foundation Scholarship (Jesus College, Cambridge), 2005

Commonwealth Scholarship (Cambridge Commonwealth Trust), 2004

Winner, Senior Mooting Competition (UNSW), 2001

Winner, Intervarsity Constitutional Law Mooting Competition, 2000

Butterworths Prize (UNSW), 2000

LISTINGS

Doyle's Guide (Leading Insolvency and Reconstruction Barristers) in 2015, 2016, 2017

Doyle's Guide (Leading Commercial Litigation and Dispute Resolution Barristers) in 2017, 2018, 2019, 2020

SELECTED CURRENT AND RECENT CASES

As lead/sole counsel

Webb v. GetSwift Limited (No 6) [2021] FCAFC 26: appeared for Second Appellant in successful appeal from trial judge's decision not to disqualify himself on grounds of apprehended bias from hearing trial of representative proceedings.

TW McConnell Pty Ltd v. Surfstitch Group Limited [2021] NSWSC (No 4) [2021] NSWSC 121: appeared for director defendant in representative proceedings involving alleged breaches of director duties that were ultimately resolved through a Deed of Company Arrangement approved by the Court.

Arnold Bloch Leibler v. Slater & Gordon Ltd [2020] FCA 1496: final hearing of application for declaratory relief as to the entitlement of a law firm to use confidential information of its former client for the purpose of defending itself in representative proceedings

Angelis atf Angelis Family Trust v. Pemba Capital Partners Fund LP (No 2) [2019] NSWSC 1759: appeared for the purchaser of shares in Australia's largest insurance intermediary in connection with an urgent shareholders' dispute seeking to restrain the transaction

ICAC Operation Gerda (2019): appeared for the University of Sydney in a public inquiry by ICAC into alleged corruption in the provision to the University of security services by contracting companies

Re Investa Listed Funds Management Ltd [2018] NSWSC 1391; [2018] NSWSC 1433: applications for judicial advice under s.63 of the *Trustee Act 1925 (NSW)* in connection with trust schemes of arrangement successfully implementing an acquisition of units for scheme consideration of over \$3 billion

Snowside Pty Ltd as trustee for the Snowside Trust v. Boart Longyear Ltd [2017] NSWCA 215; (2017) 122 ACSR 291: appeared for one of the successful respondents in an appeal from an order approving two contested

schemes of arrangement restructuring USD738 million of debt under s.411 of the *Corporations Act 2001* (Cth)

Hastie Group Pty Ltd v. Moore [2016] NSWCA 305; (2016) 339 ALR 665: appeared for the successful appellant in the Court of Appeal in an evidentiary appeal in relation to legal professional privilege and issue waiver

Firebird Global Master Fund II v. Republic of Nauru (2014) 89 NSWLR 477; (2014) 289 FLR 373: appeared for the Commonwealth of Australia in the Supreme Court of New South Wales and the Court of Appeal opposing an unsuccessful application by the Plaintiff to enforce a foreign judgment over foreign aid money donated by the Commonwealth to Nauru

Investec Bank Australia Limited v. Naude [2014] NSWSC 165: appeared for the plaintiff in an action to enforce a personal guarantee in respect of construction finance and obtained judgment for the entire claim of \$10.3 million, resisting cross-claim alleging misleading or deceptive conduct and unconscionability

ICAC inquiry into the affairs of Ryde City Council (2013): appeared for Councillor Jeff Salvestro-Martin in relation to ICAC's investigation of him and other Councillors

Agricultural & Rural Finance Pty Ltd v. Kirk (2011) 82 ACSR 390; [2011] NSWCA 67: appeared in Court of Appeal in relation to the discharge of *ex parte* orders extending period of validity of originating process

Regular appearances as lead or sole counsel in Corporations and Commercial List hearings and urgent applications in the Duty Judge list

As junior counsel

ASIC v. GetSwift Limited (judgment reserved) – appeared for director defendant in relation to alleged breaches of the *Corporations Act*, *ASIC Act* and *Australian Consumer Law* arising from information released to the market – led by R. Higgins SC

Knights Quest Pty Ltd v. Daiwa Can Company [2018] VSCA 349; [2018] VSC 426: successful at trial and on appeal in relation to oppression and just and equitable winding up proceedings in a shareholders' dispute – led by J. T. Gleeson SC

Re Boart Longyear (No 2) [2017] NSWSC 1105; (2017) 122 ACSR 291: successfully opposed approval of schemes of arrangement pursuant to s.411 of the *Corporations Act 2001* (Cth) in respect of the restructuring of USD738 million of debt, leading to modification of the schemes under s.411(6) – led by J.T. Geeson SC

Minerology Pty Ltd v. Sino Iron Pty Ltd (No 13) [2016] WASC 403: appeared for Clive Palmer’s interests and successfully obtained a mandatory interlocutory injunction requiring the payment of more than USD100,000,000 by the Defendants – led by P. Zappia QC

Grant Samuel Corporate Finance Pty Ltd v. Fletcher (2015) 254 CLR 477: appeared for successful appellant in High Court appeal in relation to the period within which claims under s.588FF of the *Corporations Act 2001* (Cth) may be brought – led by C.R.C. Newlinds SC

Stanford & anor v. Depuy International Limited & anor (2015) Federal Court of Australia: principal junior counsel for the Applicants in representative proceedings arising from defects in ASR metal-on-metal hip replacement implants; case was settled after a six month trial with a judgment for \$250 million in favour of the Applicants, being the third largest settlement achieved in Australian history – led by A. J. L. Bannon SC, J C. Sheahan QC and D. Graham SC

ASIC v. Wellington Capital Ltd (2014) 254 CLR 288; (2013) 94 ACSR 293; (2012) 91 ACSR 514: proceedings in the Federal Court and subsequent appeals to the Full Federal Court and High Court in relation to the power of the responsible entity of a managed investment scheme to make *in specie* distribution to unitholders – led by C.R.C. Newlinds SC then P. H. Morrison QC (as his Honour then was) then B. Walker SC

ASIC v. Macdonald (2009) 256 ALR 199; (2009) 230 FLR 1; (2009) 71 ACSR 368; [2009] NSWSC 287; (2009) 259 ALR 116; (2009) 73 ACSR 638; [2009] NSWSC 714; *Morley v. ASIC* (2010) 274 ALR 205; (2010) 247 FLR 140; (2010) 81 ACSR 285; [2010] NSWCA 331; [2011] NSWCA 110: prosecution by ASIC of James Hardie directors and officers, appearing for former CFO in the NSW Supreme Court and Court of Appeal – led by B.C. Oslington QC and R.A. Dick SC