



NICHOLAS BENDER
Barrister

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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 Commercial Litigation and Dispute Resolution Barristers*) in 2017, 2018, 2019, 2020, 2021, 2022 - currently "Leading"

Doyle's Guide (*Leading Insolvency and Reconstruction Barristers*) in 2015, 2016, 2017, 2021, 2022 - currently "Leading"

Best Lawyers - 2019, 2020, 2021, 2022

NOTABLE CASES - AS LEAD/SOLE COUNSEL

Sallway and Newman in their capacity of liquidators of MB Australia Pty Ltd v. Citadel Group Properties (ongoing): Nick is retained for the seven principal defendants in proceedings in the Supreme Court of NSW brought by the liquidators of the Max Brenner Group seeking to recover property valued by the liquidators at more than \$70 million.

Daiwa Can Company v. Koutsoukos (ongoing): Nick is retained in proceedings involving a claim for \$11 million in the Supreme Court of Victoria against the liquidators of a company arising from their conduct in respect of a sale of the company's assets. Judgment is reserved following a 2-day application for authority to prosecute derivative proceedings against the liquidators.

ASIC v. Caddick (2021) 395 ALR 481; [2021] FCA 143: Nick was appointed as contradictor in the trial of civil penalty proceedings brought by ASIC against Melissa Caddick. The proceedings arose out of a fraud perpetrated over several years. ASIC sought proprietary relief including the seizure, realisation and distribution of Ms Caddick's estate pursuant to s.1101B of the *Corporations Act 2001*. My appointment was necessary due to Ms Caddick's disappearance.

Camenzuli v. Hawke [2022] NSWSC 168: Nick was appointed *amicus curiae* to appear at the urgent final hearing in the Supreme Court of NSW of an application for declaratory relief as to whether the Executive Committee of the New South Wales Liberal Party would soon thereafter cease to hold office automatically by operation of the Party's constitution at a time when it was necessary for the Executive Committee to exercise its powers in relation to the pre-selection of candidates for the 2022 federal election.

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

Lewis v. Battery Mineral Resources (2021) 156 ACSR 162; [2021] FCA 963: Nick successfully opposed an application in the Supreme Court of NSW for the appointment of a special purpose liquidator to investigate the conduct of the liquidators in relation to the sale of the company's assets for \$21 million.

Forge Ltd v. Hutchinson [2021] NSWSC 576: Nick appeared for three directors in large and complex proceedings brought against them in the Supreme Court of NSW by the liquidators of the Forge group of companies arising out of transactions prior to the companies entering administration.

Visy Paper Pty Ltd v. Burwood Council [2021] NSWSC 565: Nick appeared for Visy in proceedings brought against It In the Supreme Court of NSW by Burwood Council arising from a contract for the processing of recyclable material.

TW McConnell Pty Ltd v. Surfstitch Group Limited [2021] NSWSC (No 4) [2021] NSWSC 121: Nick appeared for the director defendant in representative proceedings in the Supreme Court of NSW involving alleged breaches of director duties in the prior to the Surfstitch Group entering administration.

Arnold Bloch Leibler v. Slater & Gordon Ltd [2020] FCA 1496: Nick appeared at the final hearing In the Federal Court 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: Nick appeared In the Supreme Court of NSW 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): Nick appeared for the University of Sydney in the 2.5 week hearing of 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: Nick appeared in applications for judicial advice under s.63 of the *Trustee Act 1925 (NSW)* In the Supreme Court of 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: Nick appeared in the NSW Court of Appeal 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: Nick appeared for the successful appellant in the NSW 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: Nick appeared for the Commonwealth of Australia in the Supreme Court of NSW and then the NSW 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: Nick appeared for the plaintiff in an action in the Supreme Court of NSW 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): Nick appeared for Councillor Jeff Salvestro-Martin in relation to ICAC's investigation of him and other Councillors at a time when Mr Salvestro-Martin was the ALP candidate for Bennelong.

Agricultural & Rural Finance Pty Ltd v. Kirk (2011) 82 ACSR 390; [2011] NSWCA 67: Nick appeared in the NSW Court of Appeal in relation to the discharge of *ex parte* orders extending period of validity of originating process. The appeal had final consequences due to the expiry of the statutory time limit applicable to all causes of actions.

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

NOTABLE CASES AS JUNIOR COUNSEL

Palmer v. McGowan (judgment reserved): Nick appeared for the Premier of Western Australia in defamation proceedings brought against him by Clive Palmer - led by B. Walker SC.

Mallonland v. Advanta Seed Pty Ltd (judgment reserved): Nick appeared for the Appellant in the Victorian Court of Appeal in an appeal from the dismissal of representative proceedings brought by farmers in respect of loss they suffered as a result of contamination in sorghum seed manufactured by the Respondent - led by J.T. Gleeson SC.

ASIC v. GetSwift Limited [2021] FCA 1384: Nick appeared for a 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 Dr R.C.A. Higgins SC.

Knights Quest Pty Ltd v. Daiwa Can Company [2018] VSCA 349; [2018] VSC 426: Nick appeared for a large Japanese listed company in at trial in the Supreme Court of Victoria and on appeal in the Victorian Court of Appeal in relation to oppression and just and equitable winding up proceedings arising from a shareholders' dispute – led by J.T. Gleeson SC.

Re Boart Longyear (No 2) [2017] NSWSC 1105; (2017) 122 ACSR 291: Nick appeared for an objector to an application in the Supreme Court of NSW 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.

Mineralogy Pty Ltd v. Sino Iron Pty Ltd (No 13) [2016] WASC 403: Nick appeared for Clive Palmer's interests in the Supreme Court of Western Australia 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: Nick appeared for the 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): Nick was the principal junior counsel for the Applicants in representative proceedings in the Federal Court 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.

ASIC v. Wellington Capital Ltd (2014) 254 CLR 288; (2013) 94 ACSR 293; (2012) 91 ACSR 514: Nick appeared in 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: Nick appeared for the CFO of Jamies Hardie in civil penalty proceedings brought by ASIC against its directors and officers in the Supreme Court of NSW and then the NSW Court of Appeal – led by B.C. Oslington QC and R.A. Dick SC.