



ROBERT DICK SC
Barrister

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ADMISSIONS

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

QUALIFICATIONS

BA, LLB (Hons), University of Sydney

LLM, University of Sydney

AREAS OF PRACTICE

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

PROFILE

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 1991 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 high profile cases in which Robert has appeared or is appearing include:

- 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);
- representing the Special Purpose Receivers in the Banksia proceedings in the Commercial Court of the Supreme Court of Victoria (2021);
- representing the Plaintiff in Federal Court representative proceedings against IAG's subsidiary, Swann Insurance, for issuing "add-on insurance" which proceedings were settled for \$138 million (2020);
- representing a former executive of Citigroup in criminal "bank cartel" proceedings in the Federal Court which have now been discontinued against him by the Commonwealth DPP (2021);

- representing Woodside Petroleum in an appeal in the Court of Appeal of Western Australia involving complex contract law issues (2021);
- representing Toyota in Federal Court representative proceedings (2021).
- representing entities in the Johnson and Johnson group of companies in Federal Court representative proceedings (2021).
- representing Qantas in a complex contractual dispute 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.

SELECTED APPEALS

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).

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

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

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).

Asirifi-Otchere v Swann Insurance (Aust) Pty Ltd (No. 3) [2020] FCA 1885 (Federal Court, Representative Proceedings, Settlement Approval Application, Settlement Common Fund Order).

Bolitho v Banksia Securities (No 11) [2020] VSC 567 (Supreme Court of Victoria, Apprehended bias, Recusal).

Angelis v Pemba Capital Partners Fund I Partnership, LP & Ors [2019] NSWSC 1646, 1753, 1759, 1878 (Supreme Court, Construction of Commercial Contracts).

Bolitho v Banksia Securities Ltd (No. 6) [2019] VSC 653 (Supreme Court of Victoria, Role of Court Contradictor, Amicus Curiae, Privilege).

Australian Prudential Regulation Authority v Kelaher [2019] FCA 1521 (Federal Court, Corporations, Duties and Liabilities of Officers, Trustees, Conflict of Interest, Superannuation).

Asirifi-Otchere v Swann Insurance (Aust) Pty Ltd [2019] FCA 1500 (Federal Court, Representative Proceedings, Litigation Funding).

Bolitho v Banksia Securities Ltd (No. 5) [2019] VSC 554 (Supreme Court of Victoria, Representative Proceedings, Approval of Settlement Distribution Scheme).

Bendigo and Adelaide Bank Ltd v Russo [2019] NSWSC 661 (Supreme Court, Contracts, Agency, Powers of Attorney).

Beaumont v Peel [2019] NSWSC 465 (Supreme Court, Corporations, Receivers).

Hera Resources Pty Ltd v Gekko Systems Pty Ltd [2019] NSWSC 37 (Supreme Court, Evidence, Client Legal Privilege).

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

Appearing for Examinees in Arrium Public Examinations in Supreme Court of New South Wales (2018).

Australian Insolvency Group v LCM Litigation Investment Fund No 1 [2018] NSWSC 1571 (Supreme Court, Summary Dismissal)

– Estoppel – Anshun Estoppel).

Generic Health Pty Ltd v Wyeth [2018] (Federal Court Patents – Invalidity -Undertaking as to Damages – Causation – Damages).

Swiss Re International SE v Simpson (2018) NSWSC 233 (Supreme Court, Misleading or Deceptive conduct – Damages).

Tiaro Coal Ltd (in liq), Re [2018] NSWSC 828 (Supreme Court, Practice and Procedure – Originating Process – Set aside).

Beaumont v Peel [2018] NSWSC 95 (Supreme Court, Corporations - Oppression).

Tecnicas Reunidas SA v Andrew [2018] NSWSC 645 (Supreme Court, Solicitors – Retainer – Injunction)

Jones v Treasury Wine Estates Ltd [2017] FCA 296 (Class Actions – Class closure and related orders).

Kennedy Miller Mitchell Films Pty Ltd v Warner Bros Feature Production Pty Ltd [2017] NSWSC 1526 (Supreme Court, Arbitration – Stay – Proceedings).

Simonetta v Spotless Group Holdings Ltd [2017] FCA 1071 (Class Action – Discontinuance – Fair and Reasonable).

Weir Services Australia Pty Ltd v AXA Corporate Solutions Assurance 2018, [2017] NSWSC 259 (Supreme Court, Insurance – Damages – Breach of Contract).

Re Banksia Securities Ltd (in liq) (Recs and Mgrs Apptd) [2017] NSWSC 540 (Special Purpose Receivers – Remuneration).

Admark Property Group Pty Ltd (in liq) v GJ Building and Contracting Pty Ltd [2017] NSWSC 118 (Supreme Court, Contempt - Sentencing).

Commercial Arbitration proceedings involving building and construction disputes under Commercial Arbitration Act 2010 (November – December 2016, February 2017).

Stanford v DePuy International Ltd (No. 6) [2016] FCA 1452 (Federal Court, Representative Proceeding, Application for court approval of settlement under s. 33V Federal Court of Australia Act 1976).

Re Keystone Group Holdings Pty Ltd (Recs and Mgrs Apptd) (Admins Apptd) [2016] NSWSC 1604 (Supreme Court - Voluntary Administration - Corporations Act 2001).

Lynch v Cash Converters Personal Finance Pty Ltd [2016] FCA 1536 (Federal Court, Practice and Procedure, Amendment).

PAYCE Consolidated Ltd; In the matter of PAYCE Consolidated Ltd (No. 2) [2016] FCA 1413 (Federal Court, Scheme of Arrangement).

PAYCE Consolidated Ltd; In the matter of PAYCE Consolidated Ltd (No. 1) [2016] FCA 1412 (Federal Court, Scheme of Arrangement).

Re Application of South Australian Council of Social Service Inc. [2016] ACOMPT 8 (Australian Competition Tribunal, National Electricity Law).

Hopkins v AECOM Australia Pty Ltd (No. 7) [2016] FCA 234 (Federal Court – pleading and evidence issues – class action).

KGD Investments Pty Ltd v Placard Holdings Pty Ltd [2015] VSC 712 (Supreme Court of Victoria, Company law, oppression, dividends).

Re CIC Insurance Ltd (in liq) & Anor [2015] NSWSC 1518 (Supreme Court, insolvency, appeal under s1321, Corporations Act).

Stanford v Depuy International Ltd (March 2015 – June 2015, Federal Court trial, representative proceedings).

ACICA international arbitration hearing (July 2015, Contract and Trade Practices Act issues involving Philippines, Canadian and Australian corporations).

Milstern Nominees Pty Ltd v Chief Commissioner of State Revenue [2015] NSWSC 68 (Supreme Court, stamp duties, exemptions, Administrative Law).

MDA National Ltd v Medical Defence Australia Ltd [2014] FCA 954 (Federal Court, Scheme of Arrangement).

Re HIH Underwriting Insurance (Australia) Pty Ltd (in liq and subject to a scheme of arrangement) [2014] NSWSC 484 (Supreme Court, insolvency, application for orders under s562A(4), Corporations Act 2001 re proceeds of contracts of reinsurance).

Cudgegong Australia Pty Ltd v Transport for NSW [2014] NSW LEC 19; (NSW Land and Environment Court, Advance Payment under Just Terms Act); related applications at [2014] NSWLEC 36 (Land and Environment Court); and [2014] NSWCA 224 (Court of Appeal).

Re Envestra Ltd [2014] FCA 395 (scheme of arrangement, Federal Court) and *Re Envestra Ltd (No. 2)* [2014] FCA 483 (adjournment of scheme meeting under s1319, Corporations Act).

Re Commonwealth Managed Investments Ltd [2014] NSWSC 74 (appearing for Commonwealth Bank of Australia in Supreme Court judicial advice proceedings for a transaction effecting internalisation of management of two listed managed investment schemes).

Re Babcock & Brown Securities Ltd (in liq) re public examinations [2014] (acting for examinees being publicly examined in the Supreme Court by the liquidator of Babcock & Brown Securities Pty Ltd (in liq)).

OTHER NOTABLE CASES

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).

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 (in liq) [2001] NSWSC 253 (Supreme Court, winding up, meetings, entitlement to vote).

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

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.

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

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

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.

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).

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.

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).

Re Sinclair Knight Merz Management Pty Ltd [2013] FCA 1211 and [2013] FCA 1366 (scheme of arrangement, Federal Court, issues involving escrow account and warranty claims regime).

Universal Publishers Pty Ltd v Australian Executor Trustees Ltd [2013] NSWSC 2021 (Supreme Court, obtaining injunction to restrain lessor demanding funds under Bank Guarantee).

EDUCATION AND PROFESSIONAL EXPERIENCE

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).

Solicitor, Freehill Hollingdale and Page (now Herbert Smith Freehills) (1991 – 1996, Banking and Finance, Commercial Litigation).

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

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

Federal Court Commercial & Corporations User Group (Insolvency)

PUBLICATIONS

"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)