

Nicholas Bender  
Banco Chambers

Curriculum Vitae

**Professional qualifications and prior employment**

Tipstaff to the Hon R. I. Barrett	2002
Admitted to legal practice	2003
Mallesons Stephen Jaques (Sydney)	2003 to 2004, 2007
Linklaters (London)	2005 to 2007
Signed Bar roll	2007

**Academic**

B.A. (Political Science), LL.B, UNSW	2001
LL.M (Hons I), University of Cambridge, Jesus College <i>2<sup>nd</sup> of 134</i>	2005
Visiting Teaching Fellow, University College, London <i>Lecturer, International Arbitration</i>	2005
Visiting Fellow, University of New South Wales <i>Convenor, Conflict of Laws</i>	2008 to 2011

**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

**Publications**

Contributing author, *Robson's Annotated Corporations Act* (ed. the Hon R.I. Barrett), Thomson, 2010: Chapters 2D.1 (directors' duties), 2E (related party transactions) and 2F (members' remedies) (2010-present)

N Bender, 'Multiple wrongdoers: One for the money - or something different?' (2004) 12 *Trade Practices Law Journal* 66

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## **Professional recognition and other professional activities**

*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

Member of the National Basketball League Tribunal

## **Examples of major cases<sup>1</sup>**

### *As lead/sole counsel*

*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

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<sup>1</sup> A detailed list of appearances is available on request if further information as to experience and practice areas is required.

*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*

*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

*Mineralogy 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, corporations, directors' duties in the New South Wales Supreme Court and Court of Appeal – led by B.C. Oslington QC and R.A. Dick SC