

# CURRICULUM VITAE

## Nunzio Lucarelli QC, FCIArb

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### A. FORMAL PARTICULARS

Date of Admission in Victoria:	April 1983
Signed Bar Roll in Victoria:	May 1985
Appointed as Queen's Counsel:	November 1999
Admitted in:	All Australian jurisdictions (including the High Court of Australia), England and Wales and in New Zealand

Academic qualifications:	BA LLB (Hons) Monash University (1977-1981)
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<b>FCIArb</b> (Fellow of the Chartered Institute of Arbitrators)	2018
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Graduate of the Australian Institute of Company Directors	2015
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Nationally Accredited Mediator	2008
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### B. PRACTICE PARTICULARS

#### Practice at the Bar

I have practised as a barrister in a wide range of large complex cases for 35 years and am experienced in all facets of trial and appellate advocacy and advice work. I have been a Queen's Counsel for 21 years. I appear in the Supreme

Court of Victoria, the Supreme Court of Western Australia, the Supreme Courts of other states and in the Federal Court and the High Court of Australia. I appear in international commercial arbitrations and frequently act as a mediator in a wide range of matters.

My clients include listed companies and other major corporations, international companies, the Commonwealth Government, the Victorian State Government, government agencies and instrumentalities, local government and special interest groups. I have also acted for clients operating in Italy, Asia (Singapore and Japan) and in the United States.

Major areas of practice include:

- **Commercial law** (i.e. contracts (including the construction of contracts), trade practices, sale of business, unconscionability, banking and finance, breach of confidence, mining law, telecommunications, international sale of goods and unconscionability);
- **Corporations law** (i.e. director's duties, breach of fiduciary obligations, shareholder oppression actions, managed investment schemes, continuous disclosure requirements, and removal of administrators);
- **Construction law** (i.e. injunctions, interpretations of contracts, unconscionable conduct, security deposits);
- **International commercial arbitrations** (international sale of goods, distributions agreements);
- **International law** (i.e. the proper law of contracts and torts and obtaining evidence in overseas jurisdictions under the letter of request procedure);
- **Property law, equity and trusts** (leases, mortgages, trusts, trustees' duties, constructive trusts, knowing assistance and knowing receipt matters and equitable remedies);
- **Insolvency law** (i.e. work in a wide range of high profile corporate collapses, cross border insolvency, maintenance and champerty and litigation funding);
- **Major torts** (i.e. negligence, professional negligence, negligent misstatement, bushfire claims);
- **Administrative law** (judicial review); and
- **State revenue** (stamp duty)

### **Major matters since taking silk in 1999**

Since taking silk in 1999, I have appeared extensively in the superior Courts throughout Australia. A list of some of the major matters that I have appeared in are set out below.

### High Court (including special leave applications)

- *Commissioner of State Revenue v Aidlaw* (2009) (statutory interpretation, stamp duty recovery)
- *Radburg Pty Ltd v Chiropedic Pty Ltd* (2008) (intellectual property, designs)
- *Magill v Magill* (2005 - 2006) (fraudulent misrepresentation, paternity fraud)
- *Rose & ors v NSW Native Title Services Ltd & anor* (2004) (native title, administrative law)
- *Jeffcott Holdings v Swiss Partners* (2000) (professional negligence, insurance, fiduciary duties)

### Court of Appeal/Full Court

- *Mercier Rouse Street Pty Ltd v Paul Andrew Burness (in his capacity as liquidator of Zinc Port Melbourne Pty Ltd (in liq))* (2014) (Court of Appeal, Supreme Court of Victoria) (trusts and joint venture agreements)
- *Perfection Fresh Pty Ltd & Ors v Melbourne Market Authority* (2013) (Court of Appeal, Supreme Court of Victoria) (unconscionable conduct, interlocutory injunctions)
- *Violet Home Loans Pty Ltd v Schmidt* (2012) (Court of Appeal, Supreme Court of Victoria) (unconscionable conduct in lending transactions)
- *Commissioner of State Revenue v Aidlaw* (2010) (Court of Appeal, Supreme Court of Victoria) (statutory interpretation, stamp duty recovery)
- *Donnelly v Maxwell Smith* (2010) (Full Court Federal Court) (trustees remuneration, expenses)
- *LFF v Minister for the Environment, Heritage and the Arts* (2009) (Full Court Federal Court) (administrative law, Environment Protection and Biodiversity Conservation Act 1999 (Cth))
- *Rose & ors v NSW Native Title Services Ltd & anor* (2005) (Court of Appeal, Supreme Court of Victoria) (application to set aside ex-parte order)
- *Magill v Magill* (2004) (Court of Appeal, Supreme Court of Victoria) (paternity fraud)
- *Boulton v Sanders and ors* (2004) (Court of Appeal, Supreme Court of Victoria) (Wills Act 1997 (Vic), amendment of will)
- *Smith v Gannawarra Shire Council and the Valuer General* (2002) (Court of Appeal, Supreme Court of Victoria) (practice and procedure, application to vacate trial date)

- *Batten / McKellar & ors v CTMS* (2000) (Full Court Federal Court) (class actions, breach of contract, conspiracy)
- *Jeffcott Holdings v Swiss Partners* (2000) (Full Court, Supreme Court of South Australia) (stockbroker negligence, whether any damage suffered)

#### Supreme Court of Victoria

- *Scalzo v Openpay Pty Ltd* (2019 – 2020) (share allocation agreement, employment terms)
- *Zhou & Anor v Cullia & Ors* (2019) (mortgage fraud, solicitors' negligence, breach of fiduciary duties)
- *United Lifts Pty Ltd v Motion Elevators Pty Ltd* (2018) (breach of confidence, misuse of confidential information)
- *Form 700 (NSW) Pty Ltd v Probuild Constructions (Aust) Pty Ltd* (2018) (construction contracts, injunction)
- *Middendorp Electric Co & anor v Garrisson & ors* (2011 - 2017) (sale of business, misleading and deceptive conduct, unconscionable conduct, solicitor's negligence, accountant's negligence, apportionment)
- *Azpa Pharmaceuticals Pty Ltd v Meppem & ors* (2015-2018) (breach of fiduciary duties, breach of confidence, restraint of trade)
- *Mazzacca v S&I Enterprise Pty Ltd* (2015 - 2017) (contract for the sale of land, misleading and deceptive conduct, unconscionability)
- *Rabobank Australia Ltd v Littore & ors* (2015 - 2016) (banking, enforcement of securities, knowing receipt, *Farm Debt Mediation Act*, Banking Code of Practice)
- *Naumovski v Ugrinovski* (2015) (shareholders' oppression action, appointment of receivers and managers)
- *Guardian Storage Holdings Pty Ltd v Bryan Thomas, Stephen Kip, and Emily Mudge (sitting as the Building Appeals Board)* (2014 - 2015) (judicial review)
- *Perfection Fresh Pty Ltd & Ors v Melbourne Market Authority* (2013 - 2014) (unconscionable conduct, breach of contract, injunctions)
- *ERG Transit Pty Ltd v Kamco* (2010 - 2013) (breach of contract, damages)
- *Commissioner of State Revenue v Aidlaw* (2003 - 2013) (stamp duty recovery, constructive receipt)
- *Jasper v Beaton* (2011) (shareholders' oppression)
- *Barry v Bell Potter* (2010) (stockbroker's negligence, breach of fiduciary duty, unconscionability, contributory negligence)
- *Yan v Wong* (2007 - 2009) (undue influence, unconscionability, gifts, corporations, private international law)

- *Thomas v The Secretary of the Department of Sustainability and Environment* (2007) (Safety on Public Land Act 2004 (Vic), standing)
- *Commissioner of State Revenue v ANZ* (2003 - 2005) (banking law, cheques, conversion)
- *Primelife v IOOF* (2001 - 2005) (sale of business, contracts, trade practices: arbitration)
- *MKIC v Richfield Investments and anor* (2003) (property law, mortgages, Calderbank offers)
- *Commissioner of State Revenue v MMK Cameroon and others* (2001) (stamp duty recovery: Stamps Act 1958 (Vic))

#### Supreme Court of Western Australia

- *Mongoo v Fiduciary Administration Services Pty Ltd (No 2)* [2020] WASC 182 (trusts, construction of trusts and removal of trust advisory committee)

#### Supreme Court of New South Wales

- *Midland Metals Overseas Pte Ltd v Australian Cablemakers Association Ltd* (2016 - 2017) (misleading and deceptive conduct)
- *Australia Securities Investments Commission v Goddard & ors* (2013 - 2016) (alleged breaches of disclosure requirements, freezing orders)

#### Supreme Court of Queensland

- *Wiggins Island Coal Export Terminal Pty Ltd v Monadelphous Engineering Pty Ltd, Muhibbah Construction Pty Ltd, Monadelphous Group Limited* (2015) (breach of construction contract, unconscionable conduct)

#### Supreme Court of South Australia

- *Eyre Tuna Pty Ltd v ETSA & Anor* (2009 - 2013) (negligence of electricity company, bushfire claim)

#### Federal Court

- *Aucare Dairy (Aust) Pty Ltd & anor v Yunling Huang & ors* (2017-2018) (sale of business; misleading and deceptive conduct; breach of fiduciary duty; breach of director's duties)
- *Fazio Richards Pty Ltd & ors v Ibis Way Pty Ltd & ors* (2016) (breach of confidence, breaches of joint venture agreement)
- *Gibbins Investments v Savage* (2012) (without prejudice privilege, shareholders' oppression)

- *Willmott Forests Ltd (R & M appted) (Administrator Appted)* (2010) (corporations law, removal of administrators)
- *ABC Learning Centres Ltd (Administrators Appted)* (2009 - 2010) (Corporations law, assignment of leases, relief against forfeiture)
- *Munday Group Pty Ltd (Receivers and Managers appted) (In Liquidation) v Tsourlinis* (2011 – 2012) (termination of lease, right of first refusal, relief against forfeiture, external administration)
- *High – Performance Health Pty Ltd v Probiotech Pharma Pty Ltd and ors* (2009) (trade practices, breach of fiduciary obligations, trademarks, unconscionable conduct)
- *Egglishaw v ACC (“Wickenby”)* (2006) (search warrants, administrative law, taxation)
- *Sita v State of Queensland* (2001) (government contracts, trade practices) (in Queensland)

### **C. PRIOR TO BEING CALLED TO THE BAR**

From April 1982 to July 1983, I completed my Articles of Clerkship and practised as a Solicitor at Arthur Robinson & Co (now Allens). At that firm, I practised principally in the areas of corporate reconstructions and takeovers.

From July 1983 until January 1985, I was the Associate to Sir Edward Woodward, a Justice of the Federal Court.

### **D. OTHER RELEVANT PROFESSIONAL MATTERS**

#### **Pro bono Work**

I also act pro bono (including through Law Access and PILCH) on a regular basis. The types of matters in which I have appeared or advised pro bono include: native title; indigenous rights, prisoner’s claims and *parens patriae* and banking matters. During 2009 and 2010, I also participated in the Victoria Bar Bushfire Pro Bono Legal Assistance Scheme. I also acted pro bono as the Chair of the Judo Australia Olympic Appeals Tribunal in 2004.

In August 2019 and in October 2020, I was awarded the “Pro Bono Hero” award by Law Access.

#### **Papers and Publications:**

- “The date for the assessment of damages for breach of contract” (October 2020)

- “The impact of COVID-19 on commercial leases in Victoria” (September 2020)
- “Breach of directors’ duties and oppression actions” (June 2020)
- “Statutory unconscionable conduct after *ASIC v Kobell*” (October 2019)
- “Equitable remedies for commercial transactions outside of contract” (October 2018)
- “Setting aside commercial arbitration awards for procedural unfairness under the *Commercial Arbitration Act (2012)* (WA)” (2018) (published in July 2018 in the Law Society of Western Australia Journal)
- “Mediations in Commercial Litigation: The Legislative and Common Law Framework for Legal Practitioners and Mediators” (2017)
- “Proportionate Liability Under Section 18 of the *Australian Consumer Law*: the impact of the High Court’s decision in *Selig v Wealthsure Pty Ltd*” (2016)
- “The New Commercial Morality: the boundaries of unconscionable conduct under section 21 of the Australian Consumer Law” (2015)
- “Opinion Evidence in Victoria: admissibility and the effects of the overarching obligations on experts” (2011)
- “The development of unconscionable conduct under Part IVA of the *Trade Practices Act 1974* (Cth)” (2008)
- “Contempt of Court: breach of the implied undertaking” (published in the Tasmanian Law Society Journal) (2007)
- “Making the most of equitable remedies in litigation” (2006)
- “Maintenance and Champerty and recent developments in litigation funding” (2004)
- “Re Wakim: Cross-vesting and Back Again” (published in the Victorian Bar News) (1999)

### **Western Australian Bar Association**

- Member (2018-)

### **Membership of Committees and Associations**

- International Chamber of Commerce
- Chartered Institute of Arbitrators
  - Fellow
- Law Council of Australia
  - Member, Reconstruction and Insolvency Committee – Business Law Section (1998 to present)
- Victorian Bar:
  - Chair, Commercial Bar Association – Insolvency Law Section (2000 - 2012)
  - Secretary, Commercial Bar Association – Insolvency Law Section (1994 - 2000)

**Membership of the Australian Institute of Company Directors**

- Graduate of the Australian Institute of Company Directors (2015)

**Additional Legal Education**

- Chartered Institute of Arbitrators – Accelerated Route to Fellowship New York (2018)
- Columbia Law School – Chartered Institute of Arbitrators Comprehensive Course on International Arbitration (2018)
- National Institute of Trial Advocacy jury trial course, Minnesota, USA (1998)
- Bond University Mediator's Course (1995)

<b>E. COMMUNITY RADIO</b>
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Since May 2003, I have co-hosted a weekly community radio program “Hard Rock Hits” with my son on 3WBC 94.1FM ([www.3wbc.org.au](http://www.3wbc.org.au)).