# CURRICULUM VITAE

## Nunzio Lucarelli QC

Room 2714
Aickin Chambers
200 Queen St
Melbourne
Ph: +613 9225 8205
Mob: 0412 551 281
nlucarelli@vicbar.com.au

## 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) |
| Languages other than English: | Italian |
| Nationally Accredited Mediator | 2008 |
| Graduate of the Australian Institute of Company Directors | 2015 |

## B. PRACTICE PARTICULARS

**Practice at the Bar**

I have practised as a barrister in a wide range of large complex cases for 32 years and am experienced in all facets of trial and appellate advocacy and advice work. I have been a Queen's Counsel for 18 years. I also appear in the Supreme Court of Victoria, 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, trade practices, unconscionability, banking and finance, breach of confidence, mining law and telecommunications and international sale of goods);
- **Corporations law** (i.e. director's duties, breach of fiduciary obligations, oppression actions, managed investment schemes, and continuous disclosure requirements);
- **Insolvency law** (i.e. work in a wide range of high profile corporate collapses, cross border insolvency, maintenance and champerty and litigation funding);
- **Property law and equity** (i.e. leases, mortgages, equitable remedies, trusts, constructive trusts, trustees' duties, knowing assistance and knowing receipt);
- **International law** (i.e. the proper law of contracts and torts and obtaining evidence in overseas jurisdictions under the letter of request procedure);
- **Major torts** (i.e. negligence, professional negligence, negligent misstatement, bushfire claims);
- **Administrative law** (i.e. judicial review); and
- **International commercial arbitrations**

**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.

<u>High Court (including special leave applications)</u>

- *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

- *Middendorp Electric Co & anor v Garrisson & ors* (2011 - 2017) (misleading and deceptive conduct, unconscionable conduct, solicitor's negligence, accountant's negligence, apportionment)
- *Azpa Pharmaceuticals Pty Ltd v Meppem & ors* (2015-) (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)
- *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) (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))

<u>Federal Court</u>

- *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)

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 contract, unconscionable conduct)

Supreme Court of South Australia

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

## 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 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. 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.

**Papers and Publications:**

- "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)

**Membership of Committees and Associations**

- 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)
- The International Committee of Jurists Victoria

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

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

**Additional Legal Education**

Bond University Mediator's Course (1995)

National Institute of Trial Advocacy jury trial course, Minnesota, USA (1998)

## E. COMMUNITY RADIO

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).