

NICHOLAS CAREY

Juris Doctor (Distinction) University of New South Wales

Bachelor of Music (Honours Class 1) Sydney Conservatorium of Music, University of Sydney

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Admitted to the legal profession
2020

Admitted as a barrister in NSW
2024

Also entitled to practise in
All Australian jurisdictions (Commonwealth, State and Territory)

Nicholas maintains a broad practice in commercial and public law. Prior to being called to the Bar, he was an Associate to the Hon Justice Michelle Gordon AC of the High Court of Australia, an Associate to the Hon Justice Michael Lee of the Federal Court of Australia, and a solicitor at Herbert Smith Freehills.

Since coming to the Bar, Nicholas' experience has included regulatory proceedings, corporate insolvency, class actions, contract, real property, appellate matters and administrative law. He has acted for individuals, insolvency practitioners, financial institutions, small businesses and large corporates in a variety of sectors, as well as for regulators and government agencies.

Nicholas appears led at first instance and on appeal across various areas of law in superior and appellate courts, principally in the Federal Court of Australia and Supreme Court of New South Wales. He also appears unled in final and interlocutory hearings in a range of jurisdictions.

Nicholas graduated with a Juris Doctor (Distinction) from the University of New South Wales.

Before studying law, Nicholas worked for a coffee trading company as a green coffee buyer and operations manager. Prior to that, he was a professional clarinetist and clarinet teacher. He also holds a Bachelor of Music (Performance) with First Class Honours from the Sydney Conservatorium of Music.

PROFESSIONAL EXPERIENCE

2023 – 2024: Solicitor, Herbert Smith Freehills

2022 – 2023: Senior Associate to the Hon Justice Michelle Gordon AC, High Court of Australia

2021: Solicitor, Herbert Smith Freehills

2020 – 2021: Associate to the Hon Justice Michael Lee, Federal Court of Australia

PROFESSIONAL MEMBERSHIPS

- New South Wales Bar Association
- Australian Bar Association

PUBLICATIONS

2021: Nicholas Carey, 'Presumptions upon Presumptions: Problems with the Threshold of Materiality' (2021) 44(2) *University of New South Wales Law Journal* 548.

SELECTED CASES

As Counsel

***Poulton v Conrad* (H1/2026)** – (Judgment reserved), High Court of Australia, property and torts, whether a holding in Bitcoin is "property" under the common law and possessable for the purposes of conversion and detinue, for Federal Commissioner of Taxation, intervening. Led by Tim Begbie KC (acting Solicitor-General of the Commonwealth) and Emma Beechey.

***Gurung v Minister for Immigration and Citizenship* [2026] FedCFamC2G 2118** – administrative law, migration, judicial review of decision of delegate of Minister to refuse to grant a student visa, claims of misconstruction of relevant test, illogicality, irrationality and unreasonableness, and failure to take into account relevant considerations, for the Minister. Unled.

***Fogg v Schneeberger* (NSD954/2025)** – (Settled), Federal Court of Australia, shareholder oppression, proprietary estoppel, adverse action, whistleblower protections, for respondents. Led by Ben Katekar SC and Gideon Gee.

***Dann v Chief Executive Officer (Housing)* (NTD24/2022)** – Federal Court of Australia, class action, claims in contract, under *Australian Consumer Law* and *Racial Discrimination Act* 1975 (Cth) concerning public housing in Northern Territory remote communities, for Respondent. Led by David McLure SC, Trevor Moses and Winnie Liu, and with Charlotte Egan, George Napier and Natasha Novo.

***KJFD and National Disability Insurance Agency (NDIS)* [2026] ARTA 1235** - Administrative Review Tribunal, merits review of decision that applicant did not meet disability requirements in s 24 of the *National Disability Insurance Scheme Act 2013* (Cth), for National Disability Insurance Agency. Unled.

***Ample Skill Ltd v Reidy* [2026] NSWCA 32** – New South Wales Court of Appeal, corporations, corporate insolvency, leave to appeal from interlocutory decision, Insolvency Practice Schedule (Corporations) 2016 (Cth), whether liquidators justified in declining to convene meeting of creditors for purpose of resolving whether to replace liquidators, and whether liquidators ought be ordered to convene the meeting, for applicant creditors. Led by Emma Beechey.

***In the matter of Macquarie Securities (Australia) Limited* [2026] NSWSC 202** – Corporations, regulatory proceeding commenced by ASIC, agreed contraventions of Corporations Act 2001 (Cth) and civil penalties in the amount of $35 million in connection with misreporting of short sales and regulatory data, for ASIC. Led by Luke Livingston SC and Amy Reid.

***Qassrani & Qassrani [No 2]* [2025] FedCFamC1F 814** – review of decision of Senior Judicial Registrar to dismiss Applicant's application to join Commonwealth Bank of Australia to family law property settlement proceedings, for CBA. Unled.

***Burrows v Minister for Immigration, Citizenship and Multicultural Affairs* [2025] FCA 1364** – judicial review of decision of Minister pursuant to s 501BA of the Migration Act 1958 (Cth) to set

aside decision of Administrative Appeals Tribunal and cancel Applicant's visa, for Applicant. Unled (pro bono)

***Preston, in the matter of Grays.Com Pty Ltd (Administrators appointed)* [2025] FCA 1269** – application by administrators under s 447A(1) of the *Corporations Act 2001* (Cth) to limit administrators' personal liability in respect of funding agreement and for notices to creditors, for Administrators. Led by Emma Beechey.

***Blackbird First Mortgage Corporation Pty Ltd v CAM Engineering and Construction Pty Ltd* [2025] NSWSC 1146** – Possession of land, loan agreement, mortgage, guarantee, leave to file cross-claim against plaintiff and defendant companies' receivers out of time, for Blackbird. Unled.

Liquidators' examinations (September 2025) - Federal Court of Australia, multi-day liquidators' examinations in relation to examinable affairs of group of civil contractor companies, for liquidators. Unled.

***M.&S. Investments Pty Ltd v Affordable Demolitions and Excavations Pty Ltd* [2025] NSWCCA 148** – New South Wales Court of Criminal Appeal, leave to appeal decision to stay private prosecutions commenced under *Protection of the Environment Operations Act 1997* (NSW) as abuse of process, application of *Legal Profession Uniform Conduct (Barristers) Rules 2015* (NSW), r 101(e), for Carbone Respondents. Led by Arjun Chhabra.

***Albarran, in his capacity as liquidator of State Road Constructions (in liquidation) v Ferrazzano (No 3)* [2025] FCA 1026** – Costs, variation of costs orders made following *inter partes* return hearing of *ex parte* freezing orders, for Liquidators. Unled.

***Albarran in his capacity as liquidator of State Road Constructions (in liquidation) v Ferrazzano* [2025] FCA 730** – *inter partes* return hearing of *ex parte* freezing and ancillary orders in relation to misappropriation of $5.2 million in company assets, delivery up of company property, for Liquidators. Unled.

***Albarran in his capacity as administrator of State Road Constructions (Administrators Appointed) v Ferrazzano (No 2)* [2025] FCA 837** – *ex parte* application, freezing and ancillary orders and search and seizure warrants in relation to misappropriation of $6.6 million in company assets, for Liquidators. Unled.

***Chamoun v A&J Trading International Pty Ltd* (Victorian Civil and Administrative Tribunal BP209/2023, 9 April 2025, unpublished)** – home building dispute, claims under *Australian Consumer Law*, for homeowner. Unled.

***Keenan, in the matter of Prospero Markets Pty Ltd (In liq)* [2025] FCA 390** - application for directions under s 90-15 of the *Insolvency Practice Schedule (Corporations)* and judicial advice under s 63 of the *Trustee Act 1925* (NSW), for Court-appointed contradictor. Led by Emma Beechey.

***Robert Low Builder Pty Ltd v Pegus* (Local Court of NSW 2023/00210021, 22 November 2024, unpublished)** – home building dispute, contract, quantum meruit, claims under *Home Building Act 1989* (NSW) and *Design and Building Practitioners Act 2020* (NSW), for homeowners. Unled.

***JBS Australia Pty Ltd v SafeWork NSW* [2024] NSWCCA 209** – New South Wales Court of Criminal Appeal, work health and safety, appeal against conviction under s 32 of the *Work*

Health and Safety Act 2011 (NSW) and sentence, for JBS Australia Pty Ltd. Led by Arthur Moses SC and Phillip Sharp.

***In the matter of Balamara Resources Ltd* [2024] NSWSC 1309** – Corporations, winding up, just and equitable ground, for shareholder Bright Agile Pty Ltd. Led by Emma Beechey.

***Evagelakos v UPG 318 Pty Ltd* [2024] NSWSC 1179** – Equity, specific performance, sale of land, guarantee and indemnity, for Mr and Mrs Evagelakos. Led by Anthony McInerney SC and Miles Condon SC.

***Kisun v New Zealand* [2024] FCAFC 118** – Full Federal Court Appeal, extradition, appeal against order for extradition to New Zealand under s 34(2) of the *Extradition Act 1988* (Cth), for Mr Kisun. Led by James Sheller SC.

***CEO of AUSTRAC v SkyCity Adelaide Pty Ltd* [2024] FCA 664** – Corporations, regulatory proceeding, agreed contraventions of and civil penalties under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth), for AUSTRAC. Led by Catherine Gleeson SC and Daniel Tynan.

As a solicitor

Australasian Centre for Corporate Responsibility v Santos Ltd (NSD858/2021) – misleading and deceptive conduct, climate change, claims of "greenwashing" market disclosures in relation to natural gas, hydrogen and greenhouse gas emission reduction targets, for Santos. Subsequently decided as *Australasian Centre for Corporate Responsibility v Santos Limited* [2026] FCA 96.

Jubilee Australia Research Centre Ltd v Export Finance and Insurance Corporation (NSD724/2023) – alleged contraventions of annual reporting requirements under *Environment Protection and Biodiversity Conservation Act 1999* (Cth), for Northern Australia Infrastructure Facility ('NAIF') and current and former Chairs of NAIF Board.

Australian Securities and Investments Commission v AMP Superannuation Ltd (VID280/2021) – financial services, civil penalty proceeding in relation to fee-for-no-service conduct, for AMP entities. Subsequently decided as *Australian Securities and Investments Commission v AMP Superannuation Limited* (2023) 168 ACSR 206.

Kayler Thomson v Colonial First State Investments Ltd (VID1313/2018 see, eg, (2021) 153 ACSR 663 – joint interest privilege) – financial services, class action, claims of breach of superannuation trustee duties, for Colonial, Avanteos and Commonwealth Bank of Australia.

Australian Securities and Investments Commission v Westpac Banking Corporation (NSD386/2021) – financial services, insider trading, unconscionable conduct, acting for current and former employee witnesses of an Australian bank. Subsequently decided as *Australian Securities and Investments Commission v Westpac Banking Corporation (Penalty Hearing)* [2024] FCA 52.

Australian Licensed Aircraft Engineers Association v Qantas Airways Ltd (2022) 314 IR 231 – industrial law, Full Court of the Federal Court appeal, challenge to stand down provisions invoked due to COVID, for Qantas and Jetstar.

Advising global technology company in administrative law regulatory dispute concerning development of online industry codes and standards under the *Online Safety Act 2021* (Cth).

PRINCIPAL AREAS OF PRACTICE

COMMERCIAL LAW

Appellate
Banking and Financial Services
Bankruptcy and Insolvency
Class Actions
Competition and Consumer
Contracts
Corporations and Securities
Environment and Planning
Insurance and Reinsurance
Real Property
Shareholder class actions
Superannuation
Trade Practices

EQUITY

Appellate
Property
Trusts

COMMON LAW

Appellate
Class Actions
Insurance and Reinsurance
Defamation
Medical Negligence
Product Liability
Professional Indemnity
Professional Liability

INQUESTS AND INQUIRIES

Commissions of Inquiry

PUBLIC AND ADMINISTRATIVE LAW

Appellate
Constitutional Law
Judicial Review and Administrative Law
Public Law

CRIMINAL

Appellate
Fraud
Proceeds of Crime
White Collar and corporate crime