

NICOLA BAILEY | BARRISTER | 3 ST JAMES HALL

CURRICULUM VITAE

Nicola accepts briefs in all areas of commercial law and has a particular focus on insolvency and insurance.

She has over a decade of experience, having previously worked in firms at both the boutique and national level, including as a senior associate in Johnson Winter Slattery's insolvency team.

Nicola has frequently acted for liquidators, receivers and managers, and bankruptcy trustees in respect of their powers and obligations under the *Corporations Act 2001* and *Bankruptcy Act 1966*, including the conduct of public examinations, actions for voidable transactions and applications to Court for guidance under section 90-15 *Insolvency Practice Schedule*.

Nicola has also advised and acted in insurance matters, property and contract disputes and matters involving the *Personal Property Securities Act 2009*. She has appeared in Federal and State courts of various jurisdictions and has acted for a range of trade credit insurers and surety providers in respect of issues regarding policy response, subrogation and enforcement.

EDUCATION AND QUALIFICATIONS

- Advanced Certificate in Insolvency (2018): ARITA and University of Technology, Sydney
- Juris Doctor (2010): University of Technology, Sydney
- Bachelor of Arts/Master of Nursing (2008): The University of Sydney

Called to the Bar: 2021

Admission to Supreme Court of NSW as Solicitor: 2011

ROLES & MEMBERSHIPS

- ARITA, including being a former Deputy Chair – NSW Young Professionals Committee
- NSW Bar Association Practice Development Committee (2024-2025)
- UNSW Senior Witness Examination – judge (2024)
- Sydney University Law Society Ashurst Client Interviewing Competition – judge (2023)
- Advocacy coach in Diverse Women in Law Advocacy Program (2021)
- Mentor in the King & Wood Mallesons / Sydney University Law Society Women's Mentoring Programme (2020-2021)
- NSW Young Lawyers (NSWYL) – member (2011-2021)
- Mentor in the NSW Young Lawyers Graduate Mentoring Programme (2018)
- St John Ambulance (NSW) – State Youth Team (current); various roles from divisional to state level (from 2001)
- The Most Venerable Order of the Hospital of Saint John of Jerusalem – member (admitted 2015)

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SELECTED RECENT PUBLISHED DECISIONS

- **(2024) *Flemington Properties Pty Ltd v Alpha Distribution Ministerial Holding Corp*** [2024] NSWSC 1631; implied contractual terms and interpretation of indemnity clauses in long-term lease; construction and interpretation in commercial lease and consideration of *Valuation of Land Act 1916* (NSW) (led by Robert Dick SC).
- **(2024) *Boral Limited v Parkin*** [2024] FCAFC 169; successful appeal from evidentiary rulings; operation of ss 118, 122 and 126 *Evidence Act* (led by Chris Withers SC).
- **(2024) *Senatore; in the matter of MCF Group Pty Ltd (in liquidation)*** [2024] FCA 1131; successfully obtained 588FF(3)(b) orders over opposition; successfully obtained s 477(2B) approval for entry into solicitor retainer and funding agreement.
- **(2024) *Xu; in the matter of Sydney Carlingford Pty Ltd (admins appt)*** [2024] FCA 799; appointment of voluntary administrator as receiver.
- **(2024) *Re Mearth Pty Ltd*** [2024] NSWSC 656; successfully opposed application to set aside statutory demand; multiple debts and foreign currency conversion.
- **(2024) *Kelly; in the matter of Lutum Holdings Pty Ltd (admins appt)*** [2024] FCA 554; orders pursuant to s 443A and s 447A *Corporations Act* and s 90-15 *Insolvency Practice Schedule* justifying entry into funding deed and limiting personal liability of administrators, and s 65-45 regarding operation of single bank account where group operated through co-mingled funds.
- **(2024) *New Island Developments Pty Ltd v New Island Investment One Pty Ltd*** [2024] NSWSC 226 (and associated costs judgment [2024] NSWSC 454); succeeded in defending breach of contract claim and obtained indemnity costs (led by David Pritchard SC).
- **(2024) *Commissioner of Taxation v Iannuzzi (No 3)*** [2024] FCA 45; applications to vary and discharge reinstatement orders made under s 601AH *Corporations Act*; whether 601AH can be used to augment the reckoning of time for limitation purposes including s 588FF(3) *Corporations Act*.
- **(2024) *Eun Ju Park v Chong Eun Yi as executor of the late Young Ja Yi*** [2024] NSWSC 294 (and associated costs judgment [2024] NSWSC 372); breach of contract, undue influence. (Unsuccessful at first instance; judgment overturned on appeal).
- **(2023) *Deputy Commissioner of Taxation v Jackson Bell Pty Ltd*** [2023] FCA 916; successfully obtained orders terminating a winding up.
- **(2023) *Westpac Banking Corporation v Summerscales (No 2)*** [2023] NFSC 5; obtained summary judgment for Westpac in mortgage dispute.
- **(2023) *Michael Wilson & Partners Ltd v Cronan*** [2023] NSWSC 1050; succeeded in contested application for a transfer of proceedings under *Jurisdiction of Courts (Cross-Vesting) Act* where negligence and damages claimed against bankruptcy trustees.
- **(2023) *Re MC XXIV Pty Ltd (In Liquidation)*** [2023] NSWSC 767; obtained relief under s 588FM *Corporations Act* to extend the time for registration of various interests on the Personal Property Securities Register.
- **(2023) *AMP Bank Ltd v Doherty*** [2023] NSWSC 957; obtained possession orders and judgment in a contested summary judgment application.

- **(2022)** *Re Hill, in the matter of Ovato Limited (Administrators Appointed)* [2022] FCA 903; obtained orders pursuant to ss 443A(1) and 447A *Corporations Act* and s 90-15 *Insolvency Practice Schedule (Corporations)* that the administrators were justified in entering into funding arrangements (led by David Sulan SC).
- **(2022)** *Michael Wilson & Partners Ltd v Porter* [2022] FCA 336; successfully defended applications for extension of time and leave to appeal (led by Steven Golledge SC) – see also (No 2) [2022] FCA 901 and (No 3) [2022] FCA 998 for related proceedings, all successful; successfully opposed an application for special leave to the High Court.
- **(2022)** *Re Tracy, in the matter of Linchpin Capital Group Limited (in liq)* [2022] FCA 104 (and see also [2022] FCA 739); twice successfully obtained orders pursuant to s 477(2A) *Corporations Act* for approval of the compromise of debts.
- **(2022)** *Jones v Riley* [2022] NSWDC 323; successfully defended an application to set aside a judgment.
- **(2021-2024)** various liquidator examinations pursuant to s 596 *Corporations Act* and various unfair preference proceedings (for liquidators and also for creditors)
- **(2021-2024)** acting for David Lombe as liquidator of Babcock & Brown Limited (In Liquidation) in various applications, including successfully resisting s 596C *Corporations Act* application (led by I Jackman SC, as his Honour then was).
- **(2021-2024)** Acting for Bond & Credit Co and Tokio Marine in respect of various trade credit insurance claims in Supreme and Federal Courts (led by Christopher Withers SC).
- **(2021-2022)** Various applications on behalf of the Receivers of the property of Melissa Caddick, including for the realisation of receivership assets (led and unled).
- **(2021)** *Porter as former trustee of the estates of Ghasemi and Kakhsaz v Ghasemi* [2021] FCAFC 144; consideration of the discretionary power to order an annulment of bankruptcy and the power of the Federal Circuit Court to make consequential orders as conferred by section 104(3) of the *Federal Circuit Court of Australia Act 1999* (Cth) (led by Daniel Krochmalik).
- **(2021)** Successfully obtained leave of the Court pursuant to section 490 of the *Corporations Act 2001* (Cth) for the voluntary winding up of a company and the fixing of the relation-back day pursuant to section 90-15 of the *Insolvency Practice Schedule (Corporations)* (unled).

SELECT PUBLICATIONS / PRESENTATIONS

- **2024:** Law Society of NSW, Property Law Subcommittee – presentation on insolvency
- **2023:** AIP Annual Conference – presentation debate on insolvency reform
- **2021-2023:** Various in-house law firm presentations on insolvency issues
- **2022:** ARITA Journal article: *Annulment v Dismissal on Review* (December issue)
- **2022:** Eastern Suburbs Regional Law Society presentation – *Insolvency, Law and Practice*
- **2022:** Benchmark / BenchTV – *Unfair Preference Claims, Peak Indebtedness and Statutory Set Off*
- **2022:** Hearsay, the Legal Podcast – *That's Just Unfair! Unfair Preferences in Insolvency Litigation*
- **2022:** AIP – *The Independence Obligation* (paper and presentation)
- **2021:** Presenter at the ARITA Online Expert Series: Bankruptcy – *Setting aside vs annulment*
- **2021:** Presenter at the ARITA NSW/ACT Division Conference, moderating a panel discussion on *Debtor driven restructuring: A consideration of the shift in Australia's distressed debt landscape to place more power with directors*
- **2021:** UNSW Edge Corporate Counsel Intensive Programme – *SME Restructuring and Insolvency Matters*
- **2020-2021:** Working with Marrickville Community Legal Centre to develop an ADR Assistance Pilot Programme
- **2019:** Presenter at St John Ambulance (NSW) 'Empowerment of Young Women' Summit