

NAOMI SHARP SC

Barrister

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Date of admission to the Bar

2002

Date of appointment as Senior Counsel

2017

Qualifications

BA (Hons), LLB (UNSW)

MCL (McGill University, Montreal)

Background

In 1997, Naomi Sharp worked as an Associate to the Hon. Justice Mary Gaudron of the High Court of Australia. After receiving the Lionel Murphy Overseas Post-Graduate Scholarship in Law and the Max Stern Recruitment Fellowship, Naomi studied for her Masters degree in Comparative Law (MCL) at McGill University in Canada. Upon returning to Sydney, Naomi lectured at the University of New South Wales and Sydney University in *Contracts*, *Constitutional Law* and *Public Law*.

Naomi then practised as a solicitor in the Competition and Regulatory Group at Gilbert + Tobin before joining the NSW Crown Solicitor's Office as a senior solicitor in the Administrative Law Practice Group.

Naomi came to the Bar in 2002 and received the Bar Association's prize for coming top in the Bar exams.

Naomi has also undertaken a number of significant *pro bono* matters while at the Bar and has also published in the area of administrative law, including recently, N L Sharp, "Procedural Fairness: The Age of Legitimate Expectation is Over" (2016) 90 ALJ 797.

Practice Areas

Naomi has a wide-ranging trial and appellate practice at the Bar, with three key work streams and expertise in:

- competition law and trade practices

- public law, including merits review, judicial review, constitutional law and public interest immunity
- inquiries, inquests and disciplinary proceedings

Naomi also practices in commercial law, charitable trusts and discrimination law.

Naomi regularly appears in the NSW Court of Appeal and has appeared in the High Court of Australia on 14 occasions.

Recent matters

Naomi is currently appearing in the Federal Court on behalf of the ACCC in pecuniary penalty proceedings against Volkswagen and Audi in relation their diesel engine defeat devices and vehicle emissions scandal. These proceedings are being case managed with the class actions against Volkswagen and Audi

Other notable recent matters include:

- appearing as lead counsel in the High Court in the “data breach” case (*Minister for Immigration and Border Protection & Anor v SZSSJ* (2016) 333 ALR 653; (2016) 90 ALJR 90)
- acting for the ACCC in a number of merger clearance matters, and also in the Australian Competition Tribunal in the merger authorisation application in *Application by Sea Swift Pty Limited* [2016] ACompT 9 (28 July 2016)
- appearing for the ACCC at first instance and appeal in *ACCC v Valve Corporation* (eg [2016] FCA 196 and [2016] FCA 1553), in which the ACCC sought pecuniary penalties by reason of statements made in relation to refund rights for online video games
- acting as Counsel Assisting in Case Studies No.36, 39, 42, 51, 52, 53 and 55 in the Royal Commission into Institutional Responses to Child Sexual Abuse
- acting as Counsel Assisting in 2014 Australian Human Rights Commission Inquiry into Children in Immigration Detention

Selection of work at the Bar

High Court

Minister for Immigration and Border Protection v SZSSJ (2016) 333 ALR 653; (2016) 90 ALJR 901 (leading Hochroth and Hume for SZSSJ) (administrative law; immigration law)

Pollentine v Bleijie (2014) 253 CLR 629 (led by Sexton SC SG for State of New South Wales) (constitutional law)

Attorney-General for the Northern Territory v Emmerson (2014) 250 CLR 669 (led by Sexton SC SG for State of New South Wales) (constitutional law)

TCL Air Conditioning (Zhongshan) Co Ltd v Judges of the Federal Court of Australia (2013) 87 ALJR 410 (led by Walker SC for TCL) (constitutional law; commercial arbitration; model law)

O’Donough v Ireland; Zentai v Republic of Hungary; Williams v USA (2008) 234 CLR 599 (led by Sexton SC SG for State of New South Wales) (Extradition Act; constitutional law)

Elliott v R; Blessington v R (2007) 234 CLR 38 (led by Bennett QC SC for Commonwealth) (sentencing law; constitutional law)

ACCC v Baxter (2007) 232 CLR 1 (led by Sexton SC SG and Gageler SC for the State of New South Wales) (competition law; derivative crown immunity)

Forge v Australian Securities and Investments Commission (2006) 228 CLR 45 (led by Bennett QC SG for the Commonwealth) (constitutional law; independence of judiciary; Corporations Act)

ATSIC v The Commonwealth (2005) (Hayne J in original jurisdiction) (led by Bennett QC SG for the Commonwealth) (constitutional law)

Full Court of Federal Court

BBS15 v Minister for Immigration and Border Protection [2017] FCAFC 61 (leading Madgwick) (judicial review)

Commissioner of Police, New South Wales v Guo (2016) 69 AAR 74; [2016] FCAFC 62 (leading Bathurst) (public interest immunity)

SZSSJ v Minister for Immigration and Border Protection (2015) 234 FCR 1 (leading Hochroth) (administrative law; immigration)

Animals Angels' eV v Secretary, Department of Agriculture (2014) 228 FCR 35 (led by Kirk SC) (standing; judicial review)

O'Flaherty v City of Sydney (2014) 221 FCR 382 (leading Joyce for Mr O'Flaherty) (constitutional law, freedom of political communication)

Baker v Commonwealth (2012) 206 FCR 229 (led by Williams SC for the Commonwealth) (constitutional law – claim by Federal Magistrates to constitutional entitlement to pension)

Williams v USA (2007) 161 FCR 220 (led by Sexton SC SG for the State of New South Wales) (Extradition Act; constitutional law)

ACCC v Baxter Healthcare Pty Ltd (2006) 153 FCR 57 (led by Gageler SC for the State of New South Wales) (competition law; derivative Crown immunity)

Federal Court

Australian Competition and Consumer Commission v Valve Corporation (No 3) [2016] FCA 196 and *(No 7)* [2016] FCA 1553 (for ACCC) (misleading conduct and penalty in relation to the Australian consumer guarantees)

Animals' Angels eV v Secretary, Department of Agriculture, Forestry and Fisheries [2014] FCA 398 (for Animals' Angels eV) (judicial review)

O'Flaherty v City of Sydney (2013) FCR 484 (leading Joyce for Mr O'Flaherty) (constitutional law, freedom of political communication)

SZQJB v Minister for Immigration & Citizenship [2013] FCA 10 (for Minister) (migration law, judicial review)

SZQJH v Minister for Immigration & Citizenship [2012] FCA 297 (for Minister) (migration law, judicial review)

Makasa v Minister for Immigration & Citizenship [2012] FCA 321 (for Minister) (migration law, deportation, judicial review)

Huang v Abayawickrama & UNSW [2012] FCA 1504 (for UNSW) (discrimination law)

Killeen v Combined Communications Network Pty Ltd [2011] FCA 27 (for Director-General of the Department of Transport) (discrimination law)

ACCC v Original Mama's Pizza & Ribs Pty Ltd (2008) ATPR 42-236; [2008] FCA 370 (appeared on behalf of the ACCC) (ss.52 and 53, TPA)

Seven v ACCC & Foxtel [2007] FCA 1929 (Buchanan J) (for the ACCC) (telecommunications access regime under Part XIC of the TPA)

NSW Court of Appeal

Free Serbian Orthodox Church Diocese for Australia and New Zealand Property Trust v Bishop Irinej Dobrijevic [2017] NSWCA 28 (for the Attorney General of NSW, leading Hochroth) (charitable trusts)

Fraser v Health Care Complaints Commission [2015] NSWCA 421 (for HCCC) (disciplinary proceedings)

Paphos Providores Pty Ltd v Ladha (2015) 91 NSWLR 400 (for Commonwealth Attorney General) (constitutional law)

State of New South Wales v Donovan (2015) 90 NSWLR 389 (for State of New South Wales, leading Avery-Williams) (*Crimes (High Risk Offenders) Act 2006*)

Attorney General for New South Wales v Homeland [2015] NSWCA 15 (led by Newlinds SC for Attorney General) (charitable trusts)

Mine Subsidence Board v Jemena Ltd (2013) 86 NSWLR 161 (led by Hutley SC for Mine Subsidence Board) (judicial review, statutory construction)

NSW Court of Criminal Appeal

BUSB v Director-General of Security & Ors [2011] NSWCCA 39 (led by Sexton SC SG for the State of New South Wales) (constitutional law; implied power to make witness screening orders)

Supreme Court of New South Wales

State of New South Wales v Bastian [2016] NSWSC 331 (for State of New South Wales) (*Crimes (High Risk Offenders) Act 2006*)

State of New South Wales v Donovan [2015] NSWSC 1254 (for State of New South Wales leading Avery-Williams) (*Crimes (High Risk Offenders) Act 2006*)

White v Local Health Authority [2015] NSWSC 417 (for NSW Public Guardian) (habeas corpus application; operation of Guardianship Act 1987 and *Mental Health Act 2007*)

Bishop Irinej Dobrijevic v Free Serbian Orthodox Church-Diocese for Australia and New Zealand Property Trust [2015] NSWCA 637 (leading Hochroth for Attorney-General of NSW) (charitable trust law)

Paphos Providores Pty Ltd v Ladha [2014] NSWSC 1788 (for Commonwealth Attorney-General) (constitutional law)

Hunter Region SLSA Helicopter Rescue Service Limited v Attorney-General of NSW (for Hunter Region led by Coles SC for Helicopter Rescue Service) [2013] NSWSC 1749 (charitable trust law)

Attorney-General of NSW v Homeland Community Limited [2013] NSWSC 1748 (for Attorney-General of NSW) (charitable trust law)

Australian Vaccination Network Inc v Health Care Complaints Commission [2012] FCA 1504 (for HCCC) (judicial review)

Crowle Foundation v NSW Trustee and Guardian [2010] NSWSC 647 (for Attorney General of NSW) (charitable trust law)

Redelman v State Property Authority [2010] NSWSC 486 (led by Bathurst QC for Redelman and others) (contract; rent review clause)

Land and Environment Court

Harrison v Perdikaris [2015] NSWLEC 99 (led by Jordan SC) (Prosecution and sentencing for contraventions of *Water Management Act 2000*)

Full Court of Industrial Relations Commission

Rail Corporation of New South Wales v Elleray [2013] NSWIR Comm 86 (appeal, employment law)

Commissioner of Police v Skelly [2010] NSWIRComm 18 (led by Kimber SC for the Commissioner of Police) (disciplinary; statutory review right)

Veta Ltd v Evans [2004] NSWIRCom 336 (appeared for the Attorney General for NSW) (constitutional law)

Australian Competition Tribunal

Application by Sea Swift Pty Limited [2016] A Comp T 9 (led by Burnside AC and with van Proctor for ACCC) (applicant for merger authorisation)

Application by Services Sydney Ltd [2005] A Comp T 7 (led by Bathurst QC for Sydney Water Corporation) (application for access under Part IIIA of TPA)

Administrative Appeals Tribunal

Guo and Minister for Immigration and Border Protection (Migration) [2016] AATA 125 (appear for NSW Police and NSW Crime Commission) (public interest immunity in context of review of visa cancellation on character grounds)

Makasa and Minister for Immigration and Border Protection [2013] AATA 790 (appeared for Minister) (review of visa cancellation on character grounds)

NSW Civil and Administrative Tribunal

Amos v Western NSW Local Health District [2017] NSWCATAD 176 (acted for Health District) (interlocutory application in context of merit review application under the *Government Information (Public Access) Act 2009* (NSW))

CNC v NSW Police Force [2017] NSWCATAD 43 (appeared for police) (application under *Privacy and Personal Information Protection Act 1998* (NSW) (legal professional privilege)

New South Wales v Whiteoak [2014] NSWCATAP 99 (appeared for State of NSW) (appeal, discrimination law)

Coroner's Court of New South Wales (Inquests)

Inquest in the death of Sandra Cree (ongoing) (counsel assisting)

Inquest in the death of Robert Peihopa (ongoing) (counsel assisting)

Inquest into the death of "Mr X" (2012) (counsel assisting)

Inquest into the death of Benjamin Hadley (2011) (counsel assisting)

Inquest into the death of Josefa Rauluni, David Saunders and Al-Alakabi (2011) (counsel assisting)

Inquest into the death of Jahan Hilliers (2011) (counsel assisting)

Inquest into the deaths of Simon Munnerley and Neil Smith (2011) (counsel assisting led by Hamill SC)

Inquest into the Death of Brian Peters ("Balibo 5 inquest") (2007) (counsel assisting led by Tedeschi QC)

Inquiries and disciplinary proceedings

Counsel Assisting in Case Study Nos.36, 39, 42, 51, 52, 53 and 55 in the Royal Commission into Institutional Responses to Child Abuse

Counsel Assisting in 2014 Australian Human Rights Commission Inquiry into Children in Immigration Detention

Various complaints in disciplinary tribunals such as Pharmacy Tribunal and NSW Midwifery Tribunal (now the Occupation Division of the NSW Civil and Administrative Tribunal)

Junior Counsel Assisting in the Matter of "A Magistrate" (2012) (led by Gormly SC)

Junior Counsel Assisting in the Matter of Magistrate Day before the Judicial Conduct Division (2002) (led by Blackett SC)

Publications and papers

"Procedural Fairness: The Age of Legitimate Expectation is Over" (2016) 90 *ALJ* 797.

(with D Manderson), "Mandatory Sentences and the Constitution: Discretion, Responsibility, and Judicial Process" (2000) 22 *Sydney Law Review* 585

"Procedural Fairness in Multi-stage Decision-making Processes" paper presented at LegalWise Administrative Law Seminar in Sydney on 29 March 2017

"Recent developments in the law of procedural fairness" paper presented at LegalWise Administrative Law Seminar in Sydney on 25 November 2017

"An Overview of the High Court's decision in *Tajour*" paper presented to the Gilbert + Tobin Centre of Public Law Australian Constitutional Law conference in Sydney on 23 February 2015

"Intersectionalities of Constitutional Law and Administrative Law" paper presented at LegalWise Administrative Law seminar in Sydney on 26 March 2013

“Open Justice and Administrative Proceedings” paper presented a paper to an Australian Government Solicitor conference in Melbourne on 13 October 2012,

“Ethical Issues Arising in Taking Independent Legal Advice” paper presented at LegalWise Government Lawyer seminar in Sydney on 26 November 2011