

NAOMI SHARP SC

Barrister

Sixth Floor Selborne Chambers
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Date of admission to the Bar: 2002

Date of appointment as Senior Counsel: 2017

Qualifications:

BA (Hons), LLB (UNSW) (1996)
MCL (McGill University, Montreal) (1999)

Practice Areas

Naomi has a broad trial and appellate practice, with the following key work streams and expertise in:

- trade practices and competition
- judicial review, merits review and constitutional law
- planning and development law
- environmental and regulatory prosecutions
- Royal Commissions, inquiries, inquests and disciplinary proceedings

Naomi regularly appears in the Federal Court of Australia (first instance and appeal), the NSW Supreme Court and Court of Appeal and the NSW Land and Environment Court. Naomi has appeared in the High Court of Australia on 14 occasions, two of which appearances were as lead counsel. In 2022, Naomi was lead counsel assisting in the Bell Inquiry into The Star and in 2019-2020, was one of two senior counsel assisting in the Bergin Inquiry into Crown Resorts.

Background

In 1997, Naomi Sharp was 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, the University of Technology and Sydney University in *Evidence, 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 joined the Bar in 2002 and received the Blashki award for topping the Bar exams.

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

Naomi was the Chair of the NSW Women Barristers Forum from February 2001 to August 2023 and was Co-Chair of the Human Rights Committee of the NSW Bar Association from July 2018 to June 2012.

Current matters

Current matters include:

- advising an Australian subsidiary of a large global multinational on a contractual dispute
- appearing for ASIC in *ASIC v Latitude & Harvey Norman* in the Federal Court
- appearing for the ACCC in *ACCC v Meta* in the Federal Court
- being retained in acquisition of property/valuation cases, as well as a number of class 4 (administrative law) and class 5 (prosecutions) in NSW Land and Environment Court
- appearing in two significant *pro bono* matters relating to mine approvals

Selection of work at the Bar

High Court

HT v The Queen (2019) 269 CLR 403 (leading Glover for NSW DPP) (public interest immunity)

Minister for Immigration and Border Protection v SZSSJ (2016) 259 CLR 180 (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 Conditioner (Zhongshan) Co Ltd v Judges of the Federal Court of Australia (2013) 251 CLR 533 (led by Walker SC for TCL) (constitutional law; commercial arbitration; model law)

Williams v Commonwealth [2012] 248 CLR 156 (led by Sexton SC for State of NSW) (constitutional 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)

NT Power Generation Pty Ltd v Power and Water Authority (2004) 219 CLR 90 (led by Gageler SC for New South Wales) (trade practices; derivative crown immunity)

Fardon v Attorney-General (QLD) (2004) 223 CLR 575 (led by Burmester QC for Commonwealth) (sentencing law, constitutional law)

Paliflex Pty Ltd v Chief Commissioner of State Revenue (NSW) (2003) 219 CLR 325 (led by Bennett QC for Commonwealth) (constitutional law, Commonwealth places)

New South Wales v Lepore (2003) 212 CLR 511 (led by Sexton SC, with Barry SC for NSW) (torts, non-delegable duties)

Full Court of Federal Court

Australian Competition and Consumer Commission v Quantum Housing Group Pty Ltd (2021) 285 FCR 133 (leading Forrester and Mossop for ACCC) (statutory systemic unconscionability)

Valve Corporation v Australian Competition and Consumer Commission (2017) 258 FCR 190 (led by Kirk SC)

BBS15 v Minister for Immigration and Border Protection (2017) 248 FCR 159 (leading Madgwick for BBS15) (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)

Australian Competition and Consumer 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 v Phoenix Institute of Australia [2023] FCA 859 (leading Forrester for ACCC) (civil penalties and other relief)

Australian Securities and Investments Commission v Select AFSL Pty Ltd (No 3) [2023] FCA 723 (leading Walker SC for ASIC) (civil penalties and other relief)

Australian Securities and Investments Commission v Select AFSL Pty Ltd (No 2) [2022] FCA 786 (leading Walker, Abdiel, Grenfell and Caristo for ASIC) (unconscionability, harassment, coercion, conflicted remuneration, breach of director's duties)

Australian Competition and Consumer v Uber BV [2022] FCA 1466 (for Uber BV) (misleading conduct and civil penalties)

Clarence City Council v Commonwealth [2022] FCA 1492 (leading Lenehan for Commonwealth) (contract, valuation, parliamentary privilege)

Australian Competition and Consumer Commission v SmileDirectClub LLC [2022] FCA 1343 (leading Cunliffe for ACCC) (systemic statutory unconscionability)

Australian Competition and Consumer Commission v Phoenix Institute of Australia [2021] FCA 956 (leading White and Forrester for ACCC) (systemic statutory unconscionability)

Australian Competition and Consumer Commission v Panthera Finance Pty Ltd [2020] FCA 340 (leading Brigden for ACCC) (misleading conduct, harassment)

Australian Competition and Consumer Commission v Volkswagen Aktiengesellschaft [2019] FCA 2166

Secretary in Secretary, Department of Health v Peptide Clinics Australia Pty Ltd [2019] FCA 1107 (for Secretary, leading Grace) (civil penalty proceeding for contraventions of *Therapeutic Goods Act 1989*)

Australian Competition and Consumer Commission v Ultra Tune Australia Pty Ltd [2019] FCA 12 (for ACCC, leading Peden) (civil penalty case for contraventions of ACL and Franchising Code)

Australian Competition and Consumer Commission v Valve Corporation (No 3) [2016] FCA 196 and *(No 7)* [2016] FCA 1553 (for ACCC) (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 (for Mr O'Flaherty leading Joyce) (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 Abayarwickrama & 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)

NSW Court of Appeal

Tourist Accommodation Pty Ltd v Independent Liquor and Gaming Authority [2022] NSWSC 1277 (for ILGA, leading Patterson) ((administrative law, liquor licensing)

Independent Liquor and Gaming Authority v Auld [2019] NSWCA 88 (for ILGA, leading Forrester) (administrative law, liquor licensing)

Free Serbian Orthodox Church Diocese for Australia and New Zealand Property Trust v Bishop Irinej Dobrijevic (2017) 94 NSWLR 340 (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

Environment Protection Authority v Eastern Creek Operations Pty Limited [2022] NSWCCA 97 (leading Rabsch for EPA) (validity of notice; powers of courts in summary prosecutions)

BUSB v Director-General of Security (2011) 80 NSWLR 170 (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

Health Administration Corporation in Joyce v Health Administration Corporation [2018] NSWSC 1679 (for HAC, leading Grace) (judicial review relating to compulsory acquisition of land)

Austar Plumbing Services Pty Ltd v Sydney Water Corporation [2018] NSWSC 864 (judicial review and contract)

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] NSWSC 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)

NSW Land and Environment Court

Class 5: *Environment Protection Authority v Mouarwad (No 4)* [2023] NSWLEC 76

Class 3: various matters including *Hogan v Health Administration Corporation*

Class 4: *Nerringillah Community Association Inc v Laundry Number Pty Ltd* [2018] NSWLEC 157 (for NCA, leading Grace) (judicial review, protective costs order)

Class 5: *Harrison v Perdikaris* [2015] NSWLEC 99 (led by Jordan SC) (Prosecution and sentencing for contraventions of *Water Management Act 2000*)

Australian Competition Tribunal

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

Coroner's Court of New South Wales (Inquests)

Inquest in the death of Sandra Cree (2018) (counsel assisting)

Inquest in the death of Robert Peihopa (2017) (counsel assisting)

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

Royal Commissions and Inquiries

2022: Counsel Assisting in Review of The Star Pty Ltd under ss.143 and 143A of the *Casino Control Act 1992* (“Bell Inquiry”)

2019-2021: Counsel Assisting in Inquiry into Crown Resorts under s.143 of *Casino Control Act 1992* (“Bergin Inquiry”).

2016-2018: Counsel Assisting in Case Studies No.36, 39, 42, 51, 52, 53 and 55 in the Royal Commission into Institutional Responses to Child Abuse

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

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

Publications and papers

“Procedural Fairness: The Age of Legitimate Expectation is Over” (2016) 90 *Australian Law Journal* 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