

# GLENN NEWTON QC

YEAR OF CALL: 1984 | YEAR OF SILK: 2006

Glenn Newton has practiced at the Private Bar since late 1984 and, since 2006, as senior counsel. He is an experienced trial and appellate advocate with a wide ranging commercial practice that extends to broader aspects of administrative law, insurance law, native title, practice and procedure and professional conduct. He appears in the State and Federal Courts of Australia and before Commissions of Inquiry.

Glenn's practice now has a heavy emphasis on advising clients – particularly in litigious matters – and in the conduct of mediations and ADR; and he has mediated disputes across a broad range, including those involving major construction and infrastructure projects; fraud and preference claims by liquidators; wrongful termination in the workplace; Governmental bodies and their contractors; intellectual property rights and numerous other commercial matters. He is listed in Doyle's Guide 2018 as a leading Queensland Mediator.

Glenn is a graduate of the University of Queensland from which he holds the degree of Master of Laws (LLM), and has been awarded admission to the Dean's Honour Roll for "outstanding academic excellence." His Master's dissertations reviewed:

- the scope of fiduciary duties under Australian Law. The dissertation was described by Edelman J as "... *the most comprehensive deconstruction of modern Australian fiduciary law that I have read*"; and as "*immensely valuable*": it was awarded a high distinction;
- the law of constructive trusts – for which Glenn received a distinction from the Hon. G N Williams QC (formerly of the Queensland Court of Appeal).

He has also undertaken the Australian Institute of Company Directors Intensive Course; is a member of the Australian Institute of Company Directors; is an associate member of the Australian Institute of Mediators and Arbitrators, and has been an accredited mediator since 1992 (Bar Association of Queensland/Bond University).

Glenn is also an active participant in various continuing professional development programmes, including by the presentation of seminars at firms such as Clayton Utz, Cooper Grace Ward, Corrs Chambers Westgarth, HopgoodGanim, King & Wood Mallesons, McCullough Robertson, Minter Ellison and Norton Rose Fulbright.

Prior to commencing practice at the Bar, he was an Associate to Mr Justice D.M. Campbell and Mr Justice Dunn of the Supreme Court of Queensland; and was then employed, as a law clerk, at Morris Fletcher and Cross (now Minter Ellison) in commercial litigation.

LEVEL

TWENTY  
SEVEN

C H A M B E R S



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## EXPERIENCE

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Glenn has recently been retained to advise the Government of Queensland - in particular, the Attorney-General - on the potential for publication of certain confidential reports; and he has also been retained to advise the Attorney-General on the potential for publication of the Youth Detention Report into the treatment of youths in detention in Queensland authored by Ms Kathryn McMillan QC and Professor Megan Davis. The principal concern was as to the confidentiality of its contents. He has also been retained to advise and appear in the Federal Court for the Torres Strait Regional Authority in the on-going Native Title claim in respect of the Torres Strait: *Akiba v State of Qld & Ors* Q6040 of 2001.

His commercial cases include:

- a recent appearance in the Court of Appeal to determine who was the “owner” of a Crown lease for the purpose of giving notice of a proposed development: *Bowyer Group Pty Ltd v Cook Shire Council & Anor* [2018] QCA 159;
- at the trial before Flanagan J to determine whether or not lawyers had reached a binding compromise: *Gailey Projects Pty Ltd v McCartney* [2017] QSC 185;
- advising and pleading the case for the *Oaks Hotel Group* in its litigation against a former senior employee: [2016] QSC 152 (on which challenge Glenn did not appear);
- at the trial before Peter Lyons J for the *Robinson Helicopter Company* to resist allegations of a breach of the TPA and negligence in the contents of its maintenance manual. The action was dismissed: [2014] QSC 34; and his Honour’s decision was affirmed by the High Court (in which Glenn did not appear): [2016] HCA 22;
- for the Brisbane City Council to have a claim brought against it for some \$400m dismissed as vexatious and an abuse of process: *Ross v Brisbane City Council & Ors* 3317/15, Douglas J, 10 June 2015;
- for the Brisbane City Council in the Court of Appeal to resist a stay of execution and various other relief: *Newton (no relation) v Brisbane City Council* [2014] QCA 242;
- for a number of the major insurance companies in the Queensland Floods Commission of Inquiry in 2012 chaired by the current Queensland Chief Justice, Holmes CJ;
- appearing, on over 40 occasions, in the long running *Virgtel v Zabusky* litigation in the Supreme Court and in the Federal Court, including in the Court of Appeal in relation to the proper constitution of derivative proceedings in cases of alleged fraudulent conduct and breach of fiduciary duty by some of those behind the company [2012] QCA 107. See also *Amalia Investments Ltd v Virgtel Global Networks N.V. (No. 2)* [2011] FCA 1270, per Greenwood J; [2011] QSC 270, per Daubney J; [2009] QCA 349 (Court of Appeal);

- for the administrators of certain Clive Palmer companies in the fight for control of what was then the *Hyatt Coolum Resort*. [2012] QSC 49;
- in the Court of Appeal and in the High Court in an important case involving s.54 of the Insurance Contracts Act dealing with “acts” or “omissions”: the *Triple C* litigation: [2010] QCA 282; [2011] HCATrans 125. See also the article “Section 54 Where Are You?” authored by Glenn and Matthew Hickey of Counsel at (2011) 22 ILJ 110;
- for the broking house *ABN Amro Morgans Ltd* in its litigation against Judith Margaret Davies [2009] QSC 18;
- as one of the Counsel for Ensham, the Australian subsidiary of the Japanese mining house, Idemitsu, in an important fiduciary duty case brought against its Australian CEO – who was found to have fraudulently preferred his own interests over those of his employer: *Ensham v Foots* [2005] QSC 233;
- as one of the Counsel for BP in its fight against Graham McDermott involving allegations of misuse by BP of its market power in relation to the supply of its fuel products: *McDermott v BP Australia Ltd* [1997] FCA 108; [1997] ATPR 41-547;
- in the Court of Appeal as one of the Counsel in *Idemitsu Queensland Pty Ltd v Agipcoal Australia Pty Ltd* [1996] 1 Qd.R. 26, [1993] QCA 565 involving whether a successful appellant was entitled to recover foreign exchange losses and currency conversion costs incurred in satisfaction of a judgment partly set aside on appeal;
- in *Re Gold Coast City Council By-laws* [1994] 1 Qd.R. 130, Thomas J, – as to the power of a local authority to prohibit commerce and seeking a declaration that a by-law was void;
- as one of the Counsel for Idemitsu in its fight for control of the Bowen Basin coal deposits in Queensland: the *Ensham* litigation: [1992] ATPR (Digest) 46-094; [1993] QCA 087;
- in *R v Windridge, ex parte Pacific Coal Pty Ltd* [1992] 2Qd.R. 180 (Full Court) – he appeared as one of the Counsel involving the rules of natural justice and whether they had been satisfied;
- in *Re Giant Resources Limited* [1991] 1 Qd.R. 107, Ryan J – an application to remove provisional liquidators because of a potential conflict;
- in *AGC(Advances) Ltd v Mack* [1989] 1 Qd.R. 482 (Full Court) – he appeared as Counsel in a Practice case dealing with the proper calculation of the time limited for appearance to a writ of summons;
- in *Prince v Yendex* (1989) 5 BCL 74 (Full Court) – he appeared as Counsel in a case concerning the validity of a show cause notice under a construction contract;

- in *Re Cotton Crops Pty Ltd*[1988] 1 Qd.R. 34 (Full Court) – he appeared as one of the Counsel concerning the liability of partners of a limited partnership under the provisions of the Mercantile Act 1867-1896;
- in *Shiel v Transmedia Production Pty Ltd*[1987] 1 Qd.R. 199 (Full Court) he appeared as Counsel in an appeal as to the principles governing injunctions in defamation cases;
- in *Re Brylyn No 2 Pty Ltd* (1987) 12 ACLR 697 – as to the principles governing the appointment of a provisional liquidator; and
- in *Bricar Nominees Pty Ltd v Rowella Pty Ltd*[1986] 1 Qd.R. 362, Connolly J – dealing with the dissolution of a limited partnership and the appointment of a receiver and manager pending trial.

Although Glenn’s practice is predominantly commercial in nature, there have been some notable exceptions, including:

- as one of the Counsel for the *Wik Peoples* in the seminal native title case in the High Court: *Wik Peoples v State of Queensland* (1996) 187 CLR 1, [1996] HCA 40;
- as one of the Counsel in the High Court in *Yanner v Eaton* [1999] HCA 53; 201 CLR 351; 166 ALR 258; 73 ALJR 1518 – as to the native title right to hunt crocodiles;
- for the Criminal Justice Commission on many occasions including:
  - o in the Court of Appeal in *Criminal Justice Commission & Ors v Parliamentary Criminal Justice Commissioner*[2002] 2 Qd R 8, [2001] QCA 218 – as to whether it was possible to review a report of the Parliamentary Criminal Justice Commissioner, or whether such a report was a proceeding in Parliament;
  - o in the Court of Appeal in *Heery v Criminal Justice Commission*[2001] 2 Qd.R. 610, [2000] QCA 511 as to the authority to use listening devices;
  - o in its apprehended bias case against two former Supreme Court Judges conducting what was known as the Connolly Ryan Inquiry – a major administrative law case which resulted in the commissioners being restrained from continuing with their Inquiry: [1998] 1 Qd R 339; and
  - o in *Criminal Justice Commission v Connolly*[1997] 2 Qd.R. 586, [1997] QSC 48, Thomas J – dealing with questions of legal professional privilege;
- in cases alleging improper conduct by practitioners:
  - o he appeared as Counsel in *Le Mass v De Vere & Anor (No 2)*[2010] QSC 140, before Daubney J, on an application for contempt against a practitioner; and

- o in *White Industries (Qld) Pty Ltd v Flower & Hart (a firm)* [1998] FCA 806, 156 ALR 169, Goldberg J; [1999] FCA 773, 163 ALR 744 (on appeal), he appeared as one of the Counsel in a dispute as to whether solicitors should personally be liable for the costs of an unsuccessful action pursued by their clients as an abuse of process. See also (2001) 109 FCR 280, [2002] HCATrans 340 on an incidental issue;
- in a number of cases involving the powers of the Queensland Chief Magistrate:
  - o as one of the Counsel in *Cornack v Fingleton* [2003] 1 Qd.R. 667, [2002] QSC 391, Mackenzie J – as to the powers of the Chief Magistrate generally;
  - o as one of the Counsel in *Gribbin v Fingleton* [2003] 1 Qd.R. 698, [2002] QSC 390, Mackenzie J – as to the powers of the Chief Magistrate to call on a Magistrate to show cause why he should remain in his position; and
  - o in *Payne v Deer* [2000] 1 Qd.R. 535, [1999] QSC 124, de Jersey CJ – as to the grounds for review of a decision of the Chief Magistrate to transfer a Magistrate;
- in the Court of Appeal in a number of cases involving allegations of negligence in aviation cases:
  - o in *Meandarra Aerial Spraying Pty Ltd v Hill and Ors* [2012] QCA 315 – a negligent crop dusting case dealing with the essentials of an action in negligence, including the effect of the apportionment provisions of the Civil Liability Act 2003 (Qld);
  - o in *ATA & Anor v St Clair* [2011] QCA 188 – involving an appeal in a negligence case arising out of a helicopter crash and dealing with the elements of the cause of action, including vicarious liability and non-delegable duties; and
  - o in *St Clair v Timtalla Pty Ltd* [2010] QCA 30;
- for Brendon Abbott – The “postcard bandit” – in seeking to challenge the terms of his continuing incarceration:
  - o in *Abbott v Chief Executive, Department of Corrective Services* [2000] QSC 492, GN Williams J; and
  - o in *Abbott v Chief Executive, Department of Corrective Services* [1995] QSC 233, de Jersey J.

## APPOINTMENTS

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Accredited Mediator.

Associate Member, Institute of Arbitrators and Mediators Australia.

Member, Australian Institute of Company Directors.

## CAREER

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**2006** Appointed Senior Counsel.

**1984** Barrister at Law, admitted.

**1981** Morris Fletcher and Cross (now Minter Ellison) in commercial litigation.

**1980-81** Associate to Mr Justice D.M. Campbell and Mr Justice Dunn of the Supreme Court of Queensland.

## EDUCATION

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St Joseph's College, Gregory Terrace.

LLM, University of Queensland. Awarded admission to the Dean's Honour Roll for "outstanding academic excellence."

## PUBLICATIONS

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**Section 54 – Where are you?:** (2011) 22 ILJ 110.

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