

Nick  
Miller  
Corporate &  
Commercial Law



Nick specialises in corporate and commercial transactions, with a particular emphasis on acquisitions and disposals of businesses and companies. His expertise includes joint ventures, commercial contracts, governance, corporate law, due diligence and foreign investment.

Nick has represented Australian (private and also government), European, Asian and United States clients operating in various industry sectors, including clients in the manufacturing, distribution, health, logistics, electricity, agribusiness and various service sectors. He is highly regarded for his negotiation skills and pragmatic approach.

Nick has a particular focus on working with private business owners and for over 30 years has assisted clients achieve the best value upon the sale of their business, or work to successfully transition the business to the next generation. His specialised knowledge and experience with private businesses, joint ventures, governance and succession planning helps these clients prepare to secure their best exit or navigate the often difficult paths to achieve a successful hand over of a family business.

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Nick also undertakes governance and commercial work for a range of not-for-profit organisations.

Nick's work history is:

- 1989 – 1998: Clayton Utz Sydney then Melbourne, Lawyer then Senior Associate
- 1999 – 2013: Clayton Utz Melbourne, Partner, Corporate/M&A Group
- 2013 – present: Hunt & Hunt Melbourne, Partner and Practice Group Leader, Corporate & Commercial Group

## Experience

### Mergers & Acquisitions

- **Arden Building Maintenance:** acted for the owners of this privately held national retail fitout and facilities maintenance specialist on the sale to the listed SHAPE Australian Corporation Limited for consideration exceeding \$25 million.
- **Glen Cameron Group:** acted for long-standing client Glen Cameron on the sale of this national logistics and warehousing business to DHL. The Glen Cameron Group services customers such as Woolworths, Aldi, Chemist Warehouse, Asahi, GrainCorp, Grand Prix Corporation, Mondelez, Siemens and Bega. This was a complex and heavily negotiated sale, involving a substantial pre-sale restructure of this privately owned group to enable the sale to proceed as a series of share sale transactions. As well as drafting and negotiating the various sale documents, Nick coordinated the firm's work across the transaction, including property, employment and industrial issues, commercial contracts and disputes.
- **E.P. Robinson Pty Ltd:** acted for the second last early stage wool processor in Australia on the sale and lease of certain assets to the last remaining such processor, Michell Wool Pty Ltd, and the appointment of our client as a sales agent for Michell.
- **QEP Co Inc:** acted for this long-standing (approx. 25 years) client on the sale of its Australian and New Zealand flooring and hardware products distribution and retail businesses to Australian management. QEP's major customer is Bunnings, and it services other customers through an extensive, multi-state network of trade-focussed outlets. Sale consideration exceeded A\$14 million. As the sale was to existing management, achieving a satisfactory risk allocation for the seller was challenge, but an excellent outcome was obtained. Nick drafted and negotiated the asset sale and transition services agreements, and coordinated the firm's work across the transaction, including property (over 20 leased properties), employment, intellectual property, banking and commercial contracts.
- **Cabrini:** acted for Cabrini Health Limited:
  - On the restructuring of its Cabrini Pathology operations, to create a joint venture with Melbourne Pathology, including related service agreement arrangements.
  - On the divestment of Cabrini's laundry services business to Spotless, and in negotiating a long term linen services agreement to apply post sale.
  - On the sale of its "eCaptis" and "Eve" medtech interests to Streamline Solutions Pty Ltd, including earlier advice on structuring options.
- **ATIA Insurance Services Ltd:** acted for the private sellers of this general insurance broker to human.
- **SMS Broadcast:** acted for the private seller of this wholesale text messaging business on his sale to MessageMedia for in excess of \$20 million.
- **AICA Kogyo Co., Ltd:** acted for this Japanese multi-national on its divestment of its Australian laminate and decorative materials manufacturing and distribution business, including the related (and complex) matrix of supply, distribution and licensing agreements to apply following the sale.
- **QEP Australia:** advised on its acquisition of Queensland – based P.R. Floors' wholesale flooring and related products distribution business.

- **Private Self-Storage Operator:** acted on a restructure and sale for this multi-site operator as part of intergenerational succession planning.
- **Mustad Hoofcare SA:** advised the Mustad Hoofcare Group on the sale of its Australian retail equestrian business operations to EQ Saddleworld Pty Ltd, a joint venture vehicle in which Mustad holds 25% and interests associated with Geoff and James Sinclair hold the remaining 75%.
- **Agersens Pty Ltd:** advised a substantial shareholder in this Ag-Tech company on its proposed sale, and then on a highly contested board and shareholder dispute, culminating in a successful board restructure which in turn enabled a sale to NZ based Gallagher Group Limited.
- **Private Seller:** acted for the 50% owner of a large strata management service business on her sale to the remaining owner.
- **Britannia:** acted for the private owner on his sale of the Britannia sheet metal design, engineering and manufacturing business to the Design Group.
- **Wallenius Wilhelmsen Logistics:** advised on the sale of this international group's Australian vehicle and equipment logistics, processing and inland distribution business to PrixCar, in exchange for a 20% shareholding in the merged PrixCar group.
- **Private Sellers:** acted for the Dixon/Whitbourne family on the sale of their interest in Adbooth Pty Ltd (the operator of the telephone booth/outdoor advertising business under licence from Telstra) to the other shareholder, JCDecaux.
- **WorkLogic:** acted for the founders of this workplace advisory and consulting firm on their sale via a management buy-out.
- **Redstar Transport:** Acted on its merger with Zagami Transport.
- **VEC Civil Engineering:** acted for the private owners of this civil contracting business on their sale to Downer EDI Limited for sale consideration of approximately \$10 million. Our work for this long-standing client included advice over several years to assist in preparing the business so that proceeds were maximized on exit.
- **Hydro Tasmania:** advised on a range of merger & acquisition, commercial and strategic matters, including:
  - The establishment of the Roaring 40s Renewable Energy joint venture with China Light & Power, under which CLP contributed A\$120 million for a 50% interest in Hydro Tasmania's existing and planned renewable projects.
  - The subsequent sale of Roaring 40s' Chinese and Indian wind farm assets to CLP for approximately A\$170 million.
  - The acquisition of Momentum Energy Pty Ltd, a Victoria/South Australia electricity retailer in a two-stage transaction with a large proportion of consideration structured as an earn out.
  - Other strategic and commercial advice including regarding Basslink, the under-sea electricity cable between Victoria and Tasmania.
- **Wonderest/Sleepyhead:** advised this NZ privately owned group on its acquisition of the "Sleepmaker" and "Dunlop Foams" businesses. Total sale consideration was approximately \$55 million.
- **Private client:** advised a part owner of several Ballarat hotel/hospitality businesses on his successful exit. Our approach achieved a very "clean" exit for this client (with minimal post-exit risk) and secured the realisation of all related investments as part of a single transaction.

- **Hotel Reservation Service Robert Ragge GmbH:** acted on its strategic investment in The Lido Group Pty Ltd, an Australia based corporate and government accommodation aggregator and integrated payment solutions provider. Our role included undertaking due diligence, documentation of the staged investment over several years, negotiation and transaction completion. Total sale consideration exceeded \$30 million.
- **Australian Gift and Homewares Association:** advised AGHA on its strategic acquisition of the “Fashion Exposed” trade fairs from Informa Group. This transaction was negotiated, signed and completed within less than two weeks.
- **L.H. Perry & Sons:** advised the half owner of this large South Australian petroleum retail and distribution business on his successful exit. This was achieved through the exercise of the other shareholder’s pre-emptive rights but precipitated by our client entering into an option agreement with an external party and that option being exercised.
- **NSR Australia:** acted for the private owner of the NSR Australian sports scouting and US college scholarships placement business on the restructure and partial sell down to a group of private investors lead by Stride Investments.
- **Private exits:** for over 30 years, Nick has acted in wide range of exit transactions for private owners. Examples include acting for the sellers of The Natural Confectionery Company (sold to Cadbury Schweppes) and the sellers of Ballarat Vibrated Concrete Industries (sold to Milnes Holdings Limited).
- **Rothschild Australia/Arrow Hawthorn:** acted for Arrow Hawthorn Pty Limited (a member of the Rothschild Australia Group) on its sale to Swinburne University of the student accommodation and retail/commercial businesses and premises located at Swinburne’s Hawthorn campus.
- **Laminex:** advised on the sale of Dynea Chemicals OY’s 50% shareholding in Dynea Australia Pty Ltd (JV company in which the Laminex Group is a 50% shareholder) to Momentive Speciality Chemicals Pty Ltd. Advice included as to whether the pre-emptive rights regime has been triggered by Dynea Chemicals OY “wishing to deal” with its interest in the JV and providing advice on whether the pre-emptive rights offer was on no less favourable terms than that made to the proposed third party purchaser.
- **Bastion Cycles Pty Ltd:** acted for a minority investor in this luxury bicycle manufacturer.
- **VCCC PPP:** advised Plenary Health in relation to its partial sell down (to Caisse de dépôt et placement du Québec) of its interest in the \$1 billion Victorian Comprehensive Cancer Centre Public Private Partnership.
- **TUI Travel Group:** advised TUI Travel PLC on its entry into a strategic venture with global tour operator Intrepid Travel. The venture combines Intrepid Travel’s and TUI Travel PLC’s international portfolio of adventure brands to create a global leader in adventure travel. TUI Travel acquired a 60% stake in the venture, with the remaining stake owned by Intrepid’s private shareholders.
- **Nylex:** acted on the sale of 20 businesses/companies over several years for proceeds of approximately \$260 million (excluding property). This included the sale of the Pryda and Reid (for \$79.5 million), Radiator (for \$22.5 million), D C Ross precision engineering (for \$14 million), Champion Compressors (for \$33 million), Toowoomba Festival Foundry (for \$18 million) and automotive divisions. Nick also acted on the sale of Austrim Nylex’s Australian textiles group of businesses (comprising four separate transactions), as well as the sale of several overseas businesses.

- **TUI Travel Group:** acted on the divestment of TUI's "Oz Experience" and "Oz Express" tourist bus service businesses.
- **Houghton Mifflin Harcourt Publishing Company:** acted for HMH on its acquisition from a group of shareholders of all of the shares on Fortunus Publishing Pty Ltd (the developer, publisher and distributor of the "Starship English" program for teaching English as a second language) and on a subsequent restructure of the HMH Group's Australian entities.
- **Laminex:** acted on its acquisition of the Central Tablelands Commercial Industries bathroom partition and laminate product manufacturing business, and the related joint venture arrangements with the founding shareholder of the business. We assisted Laminex in conducting legal due diligence on the target business, and drafted all of the transaction documentation (including the business sale agreement, shareholders' agreement, option agreement, management services agreement and lease).
- **Cencorp Corporation:** acted as Australian counsel to Cencorp Corporation (a Finnish-listed company) in relation to its acquisition of Savcor Pacific (a Hong Kong company) and certain assets from Savcor Group Limited (an ASX-listed company) and Intune Circuits Oy (a Finnish company). This private M&A transaction involved several jurisdictions (Australia, Finland, Hong Kong and PRC) because of the location of the parties and the target company. Nick was heavily involved in the negotiation of the sale documentation and also assisted with the completion process.
- **Knox City Council:** acted for the Council on the sale of its resident aged care business and related property assets.
- **Melbourne Pathology:** advised on its business acquisition from Dermopath Pty Ltd, which conducts a histopathology business.
- **Department of Education and Early Childhood Development (Vic), on behalf of the Ministerial Council for Education, Early Childhood Development and Youth Affairs:** advised on the consolidation of 2 ministerially-owned companies, Curriculum Corporation, now renamed Education Services Australia Limited (ESA) and Education.au Limited. This included advising on the transaction structure for the consolidation, having regard to the nature of the businesses involved and preparing and negotiating the consolidation documentation.
- **Various Australian, European, Asian and US purchasers/vendors:** acted on numerous mid-sized acquisitions and divestments for Australian, UK and US purchasers/vendors. The businesses concerned have operated in a range of sectors, principally manufacturing, distribution and primary production. The industries involved have included timber milling, quarrying, flooring, textiles, printing, concrete and plastics, automotive components, ventilation, household/ consumer goods, packaging products, digital signal processing, internet consultancy, pharmaceuticals, minerals processing and energy and power systems.

## Commercial

- **Pacific Smiles Group Ltd:** acted for Pacific Smiles Group Ltd in the drafting and negotiation of a long-term exclusive management agreement with the leading WA private health insurer, HBF. The agreement covers the establishment and management of HBF-branded dental clinic in WA.
- **Fliteboard Pty Ltd:** acting for high growth Australian company, Fliteboard Pty Ltd, in a range of commercial matters including its initial \$4M fundraising by way of an excluded offering.
- **Leading logistics provider:** advised on logistics services contracts with a wide range of corporate customers including Woolworths/BigW, Coles/Kmart, BP, CUB, Asahi, Goodman Fielder, Air Liquide, Orora and Asaleo. Also advised on and negotiated documentation for a major enterprise resource management project.
- **Marketing/advertising review and compliance:** retained to advise a multinational personal care/cosmetics brand on all issues relating to marketing, advertising and promotions.
- **Melbourne City Council:** advised the Council on short and medium term funding support for its subsidiary, Queen Victoria Market Pty Ltd, in the context of COVID-induced trading downturn.
- **Large Melbourne private school:** over several years, advised the School on the drafting of and amendments to its Business Notice (i.e. terms and conditions applying to education services provided, the payment of fees, suspension of students including for non-payment and related matters) and its separate Terms for school fees paid in advance. Also reviewed and advised the School on a wide range of commercial contracts, including several pertaining to IT services and, specifically IT services and software in a secondary school environment.
- **TUI Travel Group:** provided advice in relation to the expansion into direct sales to consumers of the Intercruises Shoreside & Port Services cruise ship servicing business.
- **Open Universities Australia:** provided strategic advice to OUA regarding options for the development of a new business division as a series of joint ventures, including advice as to the governance, tax, intellectual property and privacy issues raised by a range of alternative structures.
- **Melbourne Business School:** advised on a range of commercial and IT contracts, strategic alliances, standard documentation and governance issues.
- **Local Government:** advised a range of Councils on a broad variety of commercial, IT and contractual issues and documents including advice on “tender contract” issues.
- **Kubota Australia:** advised on a wide range of contractual issues for this long-standing client.
- **FMP Group (Australia) Pty Ltd/Bendix:** advised this after-market motor vehicle products manufacturer over many years on a wide range of commercial, contractual, marketing, intellectual property and liability issues.
- **Self-Storage Association of Australia:** acted for SSAA on the re-write of its suite of Australian storer and ancillary agreements consequent upon the introduction of the enhanced unfair contract terms regime under the Australian Consumer Law, as well as related advices and re-drafts.
- **Private Self-Storage Operators:** acted for several operators in adapting the SSAA template storage agreements to their specific business model.

- **Wonderest/Australian Comfort Group:** advised regarding the Australian Consumer Law, including review and drafting of warranty documents, compliance and ancillary advices.
- **EnergyAustralia:** advised on the establishment (largely via a matrix of outsourcing agreements) of a new business division, including logistics, product supply and customer agreements.
- **Incitec Pivot:** acted on the re-negotiation of a large suite of raw material supply agreements with Orica Limited, preparatory to Orica's divestment of its 70% shareholding in Incitec Pivot.
- **Laminex Group:** acted on several acquisitions, joint ventures and supply arrangements for critical inputs.
- **Incitec Pivot:** advised on the wholesale fertiliser supply arrangements with ELF (a joint venture between Elders and Landmark) that added 10% to Incitec Pivot's total revenue.
- **Tatts Group:** reviewed and updated a series of template commercial agreements.
- **Toyota Motor Corporation Australia:** advised on a range of commercial contracts and trust issues.
- **Composite Materials Engineering:** acted for CME on the joint commercialisation arrangements for certain solar energy technology.
- **Incitec Pivot:** advised on a range of standard commercial agreements reflecting new marketing/distribution channels.
- **Adidas:** advised on structuring and preparation of proposed retail supply agreements, and the outsourcing of warehouse arrangements.
- **Various clients:** advised on other commercial agreements for a wide range of clients, including supply, transport, distribution and manufacturing agreements, technology licences and vineyard management, grape supply and wine processing agreements.

## Governance

- **Presentation College, Windsor:** advised the Council of this private school following the decision of the Presentation Sisters to close the School, including advice on and negotiation of a funding/ support agreement with the Sisters to allow the continued operation of the School until its scheduled closure.
- **Ministerially-owned company:** advised on options in the context of a potential consolidation/ merger as part of a regular Federal Government review.
- **NFP (large private school):** assisted with a significant restructure of a not for profit organisation, including rewriting its core governance documents.
- **Wesley Mission Victoria:** advising on its merger with 25 separate Uniting Church community agencies and services, including providing advice and documentation in the areas of corporate governance, tax and due diligence.
- **Department of Education and Early Childhood Development (Vic), on behalf of the Ministerial Council for Education, Early Childhood Development and Youth Affairs:** advised on the consolidation of 2 ministerially-owned companies, Curriculum Corporation, now renamed Education Services Australia Limited (ESA) and Education.au Limited. This included advising on a new governance structure for ESA, preparing and negotiating the consolidation documentation and preparing the notices and explanatory material provided to members of each company to approve the consolidation.

- **Sunshine Coast University Hospital Project:** advised the consortium on its successful bid to construct and operate the Sunshine Coast University Hospital, including advising on and documenting complex corporate structuring and equity funding arrangements.
- **Peak sporting body:** advised the board of a Sport Australia - funded national administrative body responsible for a major Olympic sport on director issues pertaining to the proposed merger of this body with its State - based member bodies and also the national bodies for two closely aligned sports.
- **Melbourne City Council:** advised on various governance issues relating to a wholly owned subsidiary.
- **The Salvation Army:** acted on the establishment of a series of new entities to hold the Army's Southern Territory's affordable housing operations then undertook a significant governance review and implementation project to address compliance with both the Community Housing Providers National Law and also the separate Victorian low cost housing regulatory regime. Also provided strategic commercial advice on various aspects of a telecommunications tender by the Army.
- **NFP Governance:** provided strategic, operational and transactional governance advice over many years to a wide range of not for profit entities including:
  - Melbourne Business School
  - Sorrento Sailing Club
  - Wesley Mission Victoria
  - Beyond Blue
  - World Vision Australia
  - Committee for Melbourne
  - Ardoch Youth Foundation
  - RSPCA
  - Several private schools.
- General Advisor, **Lexis Nexis Practical Guidance (Corporations Law)** service for:
  - Company meetings
  - Financial reporting and disclosure
  - Shares and share capital transactions
  - Related party transactions
  - Foreign companies

## Insolvency

- **Distressed Sales:** acted on the divestment aspects of a range of administrations / receiverships / liquidators including Bremont Watches, Werribee Fresh, Range River Gold, GMC, Automotive Components, MelbaTex, Ajax Fasteners and Coö'ee on St Kilda.
- **Ajax Fasteners:** acted for the administrators of this car components business on an "underwrite" agreement with its major car company customers, to secure ongoing supply to those customers.

## Professional qualifications

- Bachelor of Economics (University of Sydney)
- Bachelor of Laws (University of Sydney)
- Masters of Laws (University of Sydney)

## Memberships and appointments

- Member, Law Institute of Victoria
- Member, Australian Institute of Company Directors

## Awards

- Best Lawyers in Australia (Since 2014):
  - Mergers and Acquisitions Law
  - Commercial Law
  - Corporate / Governance Practice
  - Corporate Law
- Who's Who Legal – selected as a leading Corporate Governance Lawyer 2020 (and prior years)
- Woodside Better Business Award Victoria: for Nick's role as Chair of Experimenta Media Arts Inc