

CURRICULUM VITAE

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Academic Record: B.A. (1985) and LL.B. (Hons) (1987) (Monash University)

Admission: 2 May 1988

Signed Bar Roll: 28 November 1991

Appointed Senior Counsel: 26 November 2008

December 1991 to March 1993 and February 1994 to Present
Barrister, Division A, Part I (Victorian Practising Counsel)

Main areas of practice: Appeals, Judicial Review, Equity, Property

General commercial and public law practice, including engagement in a series of test cases:
see attached list of cases

Rankings: Chambers and Partners, Native Title Bar (Band 1); Doyle's Guide, Leading Native
Title Barristers (Pre-eminent)

Previous experience

March 1993 to January 1994
Law Officer, Parliament of Victoria

November 1989 to July 1991
Law Officer, Parliament of Australia

March 1987 to November 1989
Articles of Clerkship and Solicitor, Minter Ellison, Melbourne

CASES

High Court

Appeals

Aboriginal Areas Protection Authority v Director of National Parks [2024] HCA 16 – Crown immunity

Harvey v Minister for Primary Industry and Resources [2024] HCA 1; 98 ALJR 168 – mining leases – statutory interpretation

Minister for Immigration v Montgomery [2022] HCATrans 51–52 (discontinued) constitutional law – aliens power and Indigenous Australians

Northern Land Council v Quall [2020] HCA 33; 271 CLR 394; 94 ALJR 904; 383 ALR 378 – administrative law – delegation and agency

Northern Territory v Griffiths [2019] HCA 7; 269 CLR 1; 93 ALJR 327; 364 ALR 208; 235 LGERA 212 – assessment of native title compensation (*Northern Territory v Griffiths (No 2)*) [2019] HCA 19; 93 ALJR 803; 368 ALR 77 – suppression orders

Tjungarrayi v Western Australia [2019] HCA 12; 269 CLR 150 93 ALJR 556; 366 ALR 603 – mining tenements

Queensland v Congo [2015] HCA 17; 256 CLR 239; 89 ALJR 538; 320 ALR 1; 147 ALD 1 – effect of war time military orders on native title

Wurridjal v Commonwealth [2009] HCA 2; 237 CLR 309; 83 ALJR 399; 252 ALR 232; 169 LGERA 108 – Northern Territory intervention – acquisition of property on just terms

Northern Territory v Arnhem Land Aboriginal Land Trust [2008] HCA 29; 236 CLR 24; 248 ALR 195; 82 ALJR 1099 – Blue Mud Bay Case – rights to exclude from tidal waters

Griffiths v Minister for Lands [2008] HCA 20; 235 CLR 232; 82 ALJR 899; 246 ALR 218; 161 LGERA 344 – compulsory acquisition powers and racial discrimination

News Ltd v South Sydney District Rugby League Football Club Ltd [2003] HCA 45; (2003) 215 CLR 563; 77 ALJR 1515; 200 ALR 157; 77; ATPR 41–943; Aust Contract R 90–176 – NRL merger – exclusionary provisions under *Trade Practices Act 1974* (Cth)

Western Australia v Ward [2002] HCA 28; 213 CLR 1; 76 ALJR 1098; 191 ALR 1; ANZ ConvR 446 – tests for extinguishment of native title

Risk v Northern Territory [2002] HCA 23; 210 CLR 392; 76 ALJR 845; 188 ALR 376 – title to bays and gulfs

Commonwealth v Yarmirr [2001] HCA 56; 208 CLR 1; 75 ALJR 1582; 184 ALR 113 – Croker Island Case – recognition of native title to waters of the sea

Special Leave Applications

Commonwealth v Yunupingu [2023] HCATrans 143 constitutional law – native title and just terms

Aboriginal Areas Protection Authority v Director of National Parks [2023] HCATrans 2023 – Crown immunity

Harvey v Minister for Primary Industry and Resources [2022] HCATrans 229 – mining leases – statutory interpretation

Northern Land Council v Quall [2019] HCATrans 232 – administrative law – delegation
Western Australia v Manado [2019] HCATrans 132 – public access to beaches
Tjungarrayi v Western Australia [2018] HCATrans 124 – mining tenements
Commonwealth v Griffiths [2018] HCATrans 028 – assessment of native title compensation
Rirratjingu Aboriginal Corporation v Northern Land Council [2017] HCATrans 188 – mine royalties – statutory trusts
Western Australia v Banjima [2016] HCATrans 172 – mining tenements and proof of rights to exclusive possession
Queensland v Congo [2014] HCATrans 271 – effect of war time military orders on native title
Reading Entertainment v Burstone Victoria [2008] HCATrans 208 – proof of contract damages
Northern Territory v Griffiths [2008] HCATrans 123 – disregarding historical extinguishment
Risk v Northern Territory of Australia [2007] HCATrans 472 – continuity in observance of traditional laws and customs in native title
Northern Territory v Arnhem Land Aboriginal Land Trust [2007] HCATrans – Blue Mud Bay Case – rights to exclude from tidal waters
Griffiths v Minister for Lands – compulsory acquisition powers [2007] HCATrans 320
Northern Territory v Alyawarr [2006] HCATrans 251 – disregarding historical extinguishment
Lansen v Northern Territory [2005] HCATrans 437 – statutory exceptions to Torrens title
Dexcam v Deputy Commissioner of Taxation [2004] HCATrans 19 – taxation set-offs in insolvency
Northern Territory v Olney [2003] HCATrans 811 – grant of foreshore
Risk v Northern Territory [2001] HCATrans 442 – title to bays and gulfs
Person Charged v Director of Public Prosecutions [2001] HCATrans 441 – defence of claim as of right

Federal Court

Northern Territory v Aboriginal Land Commissioner [2023] FCA 1183 – judicial review – whether bed of estuary land
Yunupingu v Commonwealth [2023] FCAFC 75; 298 FCR 160; 410 ALR 231 – constitutional law – native title and just terms
Davey v Northern Territory (No 2) [2023] FCA 455 – powers to order access and inspection
Davey v Northern Territory [2023] FCA 303 – pleadings
Harvey v Minister for Primary Industry and Resources [2022] FCAFC 66; 291 FCR 263; 401 ALR 578 – mining leases – statutory interpretation
Top End Aboriginal Corporation v Northern Territory [2022] FCA 74; 403 ALR 666 – variation of native title determinations
Friday v Minister for Primary Industry and Resources [2021] FCA 794 – mining leases
Northern Land Council v Quall (No 3) [2021] FCAFC 2 – procedure – further evidence on appeal
Friday v Minister for Resources [2020] FCA 984 – legal privilege

Roberts v Attorney-General (NSW) [2020] FCAFC 103; 277 FCR 170 – procedure – separate questions (*Roberts v Attorney-General (NSW) (No.2)* [2020] FCAFC 128 – procedure – time limits)

Bell v Queensland [2020] FCA 695 – practice – joinder

Fulton v Northern Territory [2019] FCA 2516 – pastoral improvements

Malone v Queensland [2019] FCA 2115 – practice – joinder

Ellis v Central Land Council [2019] FCAFC 1; 267 FCR 339; 64 ALR 446 – judicial review, evidence (*Ellis v Central Land Council (No 2)* [2019] FCAFC 11 – appeal costs)

Ellis v Central Land Council [2018] FCA 35; 355 ALR 93; 161 ALD 93 – judicial review

BHP Billiton v KN [2018] FCAFC 8; 258 FCR 521; 351 ALR 491 – native title: extinguishment

Northern Territory v Griffiths [2017] FCAFC 106; 256 FCR 478; 346 ALR 247 – native title compensation: principles for assessment

Warrie v Western Australia (No 2) [2017] FCA 1299; 366 ALR 467 – native title: form of relief

Warrie v Western Australia [2017] FCA 803; 365 ALR 624 – native title: extinguishment

Tjungarrayi v Western Australia [2017] FCA 587 – petroleum exploration licences

Rirratjingu Aboriginal Corporation v Northern Land Council [2017] FCAFC 48; 248 FCR 349; 352 ALR 589 – mine royalties – statutory trusts

Griffiths v Northern Territory [2016] FCA 900; 337 ALR 362; 152 ALD 72 – native title compensation: principles for assessment

Margarula v Northern Territory [2016] FCA 1018; 257 FCR 226; 338 ALR 464 – Kakadu Park: effects of Territory self-government

Hughes v Western Australia [2016] FCA 840 – principles leave to appeal summary disposition

TJ v Western Australia [2016] FCA 231 – procedure - abuse of process by delay

Wintawari Corporation v Western Australia [2015] FCA 1053; 238 FCR 428 – powers to vary native title determination

Rirratjingu Aboriginal Corporation v Northern Land Council [2015] FCA 36; 324 ALR 240 – statutory trusts

Congoo v Queensland [2014] FCAFC 9; 218 FCR 358; 310 ALR 28 – acquisition of property on just terms

Griffiths v Northern Territory [2014] FCA 256 – native title compensation: liability

Gondarra v Minister for Indigenous Affairs [2014] FCA 139 – costs in public interest litigation

Gondarra v Minister for Indigenous Affairs [2014] FCA 16; 311 ALR 21 – summary procedure for specific performance

Gondarra v Minister for Indigenous Affairs [2014] FCA 25; 220 FCR 202; 311 ALR 41 – judicial review – natural justice

Gondarra v Minister for Indigenous Affairs [2012] FCA 185; 127 ALD 288 – evidence – advance rulings on admissibility

Wong v Australian Pharmacy Authority [2011] FCA 52; 193 FCR 490 – judicial review – pharmacy approvals

Huddleston v Aboriginal Land Commissioner [2010] FCAFC 66; 184 FCR 551; 268 ALR 454 – judicial review – procedural fairness

Margarula v Northern Territory [2009] FCA 290; 175 FCR 333 – disqualification for apprehended bias

Lansen v Minister for Environment [2008] FCAFC 189; 174 FCR 14; 163 LGERA 145; 106 ALD 232 – judicial review – environmental law

Lansen v Minister for Environment (No.3) [2008] FCA 1367; 162 LGERA 258 – costs in public interest litigation

Lansen v Minister for Environment [2008] FCA 903; 102 ALD 558 – judicial review – environmental law

Foster v Que Noy [2008] FCAFC 56 – applications to replace native title claimants

Hazelbane v Doepel [2008] FCA 290; 167 FCR 325 – judicial review – registration of overlapping native title claims

Hazelbane v Northern Territory [2008] FCA 291 – principles for summary dismissal of native title claims

King v Northern Territory [2007] FCA 944; 162 FCR 89 – native title and pastoral enterprises

Griffiths v Northern Territory [2007] FCAFC 178; 165 FCR 391; 243 ALR 72 – principles for proof of exclusive possession

Gamogab v Akiba [2007] FCAFC 74; 159 FCR 578 – joinder of PNG parties

Jango v Northern Territory [2007] FCAFC 101; 159 FCR 531; 240 ALR 432 – pleading of native title claims and effect of Torrens title

Risk v Northern Territory of Australia [2007] FCAFC 46; 240 ALR 74 – continuity in observance of traditional laws and customs in native title

Gumana v Northern Territory [2007] FCAFC 23; 158 FCR 349; 239 ALR 272 – Blue Mud Bay Case – effect of fee simple grant of land to low water mark

Gumana v Northern Territory [2005] FCA 50; 141 FCR 457; 218 ALR 292 – claims to rights to exclude from waters

Lansen v Northern Territory [2004] FCAFC 257; 138 FCR 563; 211 ALR 365 – statutory exceptions to Torrens title

Raymond v Northern Territory [2004] FCAFC 258; 139 FCR 493; 210 ALR 496 – judicial review – jurisdictional conditions

Commissioner of Taxation v Dexcam Australia [2003] FCAFC 148; 129 FCR 582; 53 ATR 252; 46 ACSR 406; 2004 ATC 4598 – revenue – taxation set-offs in insolvency

Northern Territory v Olney [2002] FCAFC 280; 123 FCR 580; 192 ALR 116 – judicial review – recommendations for grant of foreshore and rivers

Director of Fisheries v Arnhem Land Aboriginal Land Trust [2001] FCA 98; 109 FCR 448; 185 ALR 649 – effects of fee simple grant of land to low water mark

Opal Maritime Agencies v Proceeds of Sale of the Vessel MV Skulptor Konenkov [2000] FCA 507; 98 FCR 519; 172 ALR 481 – *in rem* claims under Admiralty Act 1988 (Cth)

Arnhem Land Aboriginal Land Trust and Another v Director of Fisheries [2000] FCA 165; 170 ALR 1 – rights to fish and navigate tidal waters

Dexcam Australia Pty Ltd v Commissioner of Taxation [1999] FCA 1784; 43 ATR 187 – procedure on stating case

Patrick Stevedores No 2 v Proceeds of Sale of the Vessel MV Skulptor Konenkov [1998] FCA 16899; FCA 99; 81 FCR 16; 161 ALR 131 – running account in admiralty claims

O D Transport (Australia) Pty Ltd (In Liquidation) v O D Transport Pty Ltd [1997] FCA 1412; 80 FCR 290 – leave to cross-claim against company in liquidation

Patrick Stevedores No 2 Pty Ltd v Proceeds of Sale of the Vessel MV Skulptor Konenkov [1997] FCA 1634; 150 ALR 651 – shipping agent claims in admiralty

Arnhem Land Aboriginal Land Trust v Minister for Mines and Energy [1997] FCA 1015; 78 FCR 556 – cross-vesting jurisdiction of Federal Court

Supreme Courts

Ex parte Northern Land Council [2024] NTSC 34 – land law – unallocated trust funds

Aboriginal Areas Protection Authority v Director of National Parks [2022] NTFSC 1 – constitutional law: immunity of Crown from criminal prosecution

Free Serbian Orthodox Church-Diocese Property Trust v Bishop Irinej [2017] NSWCA 28; 94 NSWLR 340 – implied religious charitable trusts and cy pres

Free Serbian Orthodox Church-Diocese Property Trust v Bishop Irinej [2017] NSWCA 109 – loss of trustee's right to indemnity for costs

Secretary, Department of Health v AA [2017] VSC 34; 51 VR 714; 318 FLR 383 – constitutional law: migration and child welfare

Bishop Irinej v Free Serbian Orthodox Church-Diocese Property Trust No. 2 [2015] NSWSC 1976 – cy pres schemes

Bishop Irinej v Free Serbian Orthodox Church-Diocese Property Trust [2015] NSWSC 637 – implied religious charitable trusts

Plan B Trustees v Parker [2013] WASC 216; 11 ASTLR 242 – judicial directions to trustee of charitable trust

Lord Buddha v Harpur [2013] VSCA 101; 41 VR 159 – principles for proof of misleading and deceptive conduct

Free Serbian Orthodox Church-Diocese for Australia and New Zealand [2012] NSWSC 649 – directions to trustee of charitable trust

Fitzroy Football Club v Brisbane Bears Football Club [2010] VSC 180 – security for costs in public interest litigation

McArthur River Mining v Lansen [2007] NTCA 5; 21 NTLR 6 – effects of validating legislation on earlier court orders

Lansen v Minister for Mines and Energy [2007] NTSC 36 – costs in judicial review

Lansen v Minister for Mines and Energy [2007] NTSC 28; 20 NTLR 6 – judicial review – approval of open cut mine under *Mining Management Act 2001* (NT)

Reading Entertainment v Whitehorse Property Group [2007] VSCA 309 – proof of contract damages

Minister for Lands, Planning and Environment v Griffiths [2004] NTCA 5; 14 NTLR 188; 133 LGERA 203 – judicial review - improper use of powers of compulsory acquisition of land

Reading Entertainment v Burstone Victoria [2004] VSC 546 – joint venture claims in contract

Griffiths v Lands and Mining Tribunal [2003] NTSC 86; 179 FLR 241 – judicial review – compulsory acquisition of land

Northern Land Council v Commissioner of Taxes [2002] NTCA 11; 12 NTLR 86; 141 NTR 1; 171 FLR 255; 2002 ATC 5117; 51 ATR 365 – revenue - pay-roll tax exemptions for public benevolent institutions

Radmanovich v Nedeljkovic [2001] NSWSC 492; 52 NSWLR 641 – religious charitable trusts

Northern Land Council v Commissioner of Taxes [2001] NTSC 115; ATC 4040; 48 ATR 700 – revenue - pay-roll tax exemptions for public benevolent institutions

Attorney-General (Vic) v St John Prodromos Orthodox Community Inc [2000] VSC 12 – religious charitable trusts

Clancy v West [1996] VicRp 92; 2 VR 647 – judicial review – jurisdiction of coroner

Re Marvin Manufacturers; New Zealand Steel Australia v Burton [1994] VSC 262; 13 ACSR 610; 12 ACLC 586 – whether examination of directors an abuse of process