

CURRICULUM VITAE

Gregory Malcolm Grant McINTYRE SC

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MT LAWLEY. WA 6050

QUALIFICATIONS:

Bachelor of Laws Degree 1970-1973, University of Western Australia
Barristers Board Examinations 1974
Admitted to practice as a Barrister, Solicitor and Proctor of Supreme Court of Western Australia - February 1976
Admitted to practice as a Solicitor of Supreme Court of Queensland - December 1980
Admitted to practice as a Legal Practitioner in Federal Jurisdictions - 1981
Admitted to practice as a Barrister-at-Law of the Supreme Court of Queensland - 1993
Admitted to practice as Counsel before the Supreme Court of the Northern Territory – 1999
Appointed as Senior Counsel for the State of Western Australia – 13 November 2002
Successfully completed Mediation Workshop, LEADR, 19-22 October 2005

EMPLOYMENT HISTORY:

CROWN LAW DEPARTMENT, Perth, WA Articles of Clerkship 1974-1975

ABORIGINAL LEGAL SERVICE OF W.A., Solicitor, Kalgoorlie 1976-1977, Perth 1978, Principal Legal officer 1988-90

WARBURTON COMMUNITY, Central Australian Desert, Warburton WA, 1979, Community Development Adviser

AUSTRALIAN INSTITUTE OF ABORIGINAL STUDIES, Canberra, ACT, March - June 1980, Research Student
LAW AND GOVERNMENT GROUP COMMONWEALTH PARLIAMENTARY LIBRARY Canberra ACT June - December 1980, Research Lawyer

ABORIGINAL & TORRES STRAIT ISLANDERS LEGAL SERVICES OF QLD LTD Cairns, Q 1981-1982 Retained Solicitor

NJIKU JOWAN LEGAL SERVICE, Cairns, Q, 1983-1984 Retained Solicitor

McINTYRE & CO SOLICITORS, Cairns, Q 1984-1988 Sole Practitioner

CORSER & CORSER SOLICITORS, Perth, WA, July 1991 - February 1993, Associate July 1992 - February 1993

BARRISTER, Perth, WA, March 93 – present

UNIVERSITY OF NOTRE DAME AUSTRALIA, Sessional Lecturer, 2000 to 2012

CURRENT AND RECENT POSITIONS

- . Adjunct Professor, College of Law, University of Notre Dame Australia, 2001 to present; Adjunct Associate Professor, 2000
- . Adjunct Professor, School of Law, University of Western Australia, 2016 to present
- . Law Council of Australia: Executive Member 2020; Chair, Australian Environment and Planning Law Group, 2012 to 2015, Deputy-Convenor, 2005-2012; Member Access to Justice Committee 2016 to 2020; member, National Human Rights Committee 2014 to present.
- . Law Society of Western Australia: Immediate Past President 2020, President 2019, Senior Vice-President, 2018, Vice-President 2017, Councillor 2009 to 2020, Convenor, Human Rights and Equal Opportunity Committee, 2007 to 2018; Convenor, Access to Justice Committee, 2016-18; Deputy-Convenor 2007 to 2015; Administrative, Constitutional and Migration Law Committee, Convenor 2009 to 2018, Deputy Convenor, 2000-2009.
- . President, Western Australian Branch, Australian Section, International Commission of Jurists, 2012-2015; Vice-President, Australian Section 2012-2015; Chair of W.A. Branch Committee 2008-2012; Vice-President WA Branch, 1998-2008
- . President, Liberty & Justice (WA), an affiliate to Australian Council for Civil Liberties, 1999
- . President, Western Australian Society for Labor Lawyers and Executive member, Australian Society for Labor Lawyers, 2000; Vice-President, WASLL, 2001, 2007-8
- . President, National Environmental Law Association, 1993 to 1998; Executive Committee Member 1993 - 2005;
- . Head, Western Australian Native Title Support Team, 1998-2000
- . Executive Officer and Legal Adviser, Negotiating Team, Western Australian Aboriginal Native Title Working Group -1998-99
- . Committee Member, Australian Lawyers for Human Rights, Western Australian Committee, 2007.
- . Inquirer, appointed pursuant to the *Local Government Act 1995* (WA) to inquire into the operations and affairs of the City of South Perth, 17 October 2001 to 1 March 2002

Chair, *Rights in Water and Irrigation Act 1914* Tribunal, Water Licence Appeal, Old Pinjar Road, Greenfield, 2004.

Inquirer, appointed pursuant to the *Local Government Act 1995* (WA) to inquire into the operations and affairs of the City of Joondalup, 26 May 2004 to 27 September 2005

Ex officio Member, Legal Practice Board of Western Australia, 2004 to present; Deputy Convener, Professional Affairs Committee, 2006 to 2012

Associate Member, Institute of Arbitrators and Mediators, 2005-2006

Chairman, Appeals Committee, *Environmental Protection Act 1986* (WA), EPA Bulletin 1218: Landfill Footprint Modification, South Cardup Landfill, 2007.

Far North Queensland Law Association, President 1987, Vice-President 1986 and 1988, Secretary 1985, editor *Lawyer Vine* 1985-88

North Queensland Law Association, Executive Committee member 1987-88

Queensland Law Society, member Family Law Committee, 1986-88

PUBLICATIONS

"ABORIGINAL LAND RIGHTS AT COMMON LAW"

(1982) Published in "Black Australians - The Prospect for Change", Ed. E.Olbrei, James Cook University of North Queensland Union

"MABO CASE"

(1987) 24 ALB 8

"FREEHOLDING, RESORTS AND BARRIER REEF ISLANDS"

(1988) 13 Legal Services Bulletin 1, p 6.

"INDIGENOUS AUSTRALIANS: LITIGATION TOWARDS LEGAL PLURALISM"

(1990) International Convention on Folk Law and Legal Pluralism, Ottawa, Canada Published in *Law & Anthropology*, Vol 8, ed. R. Kruppe & R. Potz, Kluwer Law International 1996.

"RETREAT FROM INJUSTICE: Mabo -v- The State of Queensland",

(1993) Published in "Resource Development and Aboriginal Land Rights at Common Law", Ed. Prof R Bartlett, Centre for Commercial and Resources Law

"EQUAL RIGHTS AND THE RACIAL DISCRIMINATION ACT"

(1993) 16 UNSWLJ No. 1 p.57

"MABO AND SEA RIGHTS: PUBLIC RIGHTS, PROPERTY RIGHTS OR PRAGMATISM":

(1993) Published in *Turning the Tide*, Conference on Indigenous Peoples and Sea Rights,

Northern Territory University

"PROVING NATIVE TITLE":

(1994) Native Title Legislation in Australia, Ed. Bartlett and Myers: Centre for Commercial and Resources Law, Perth

"PEOPLE LIVING ON OTHER PEOPLE'S COUNTRY":

(1994) *Proof and Management of Title*, Australian Institute of Aboriginal and Torres Strait Islander Studies, Canberra

"RUNNING A FEDERAL COURT NATIVE TITLE HEARING",

(1995) Representative Bodies Workshop, Australian Institute of Aboriginal and Torres Strait Islander Studies, Canberra

"A NEGOTIATION PROCESS TO ESTABLISH AN AUSTRALIAN CONVENTION OF INDIGENOUS PEOPLES RIGHTS"

(1995) Occasional Paper No 43 co-written with C Pierluigi: Indian Ocean Centre for Peace Studies, University of W.A. and Centre for Aboriginal Studies - Curtin University of Technology

"PLAIN ENGLISH GUIDE TO THE WIK DECISION":

(1997) Aboriginal and Torres Strait Islander Commission

"HOW WIK APPLIES IN WESTERN AUSTRALIA"

(1997) *The Wik Case: Issues and Implications*, ed. G Hiley QC: Butterworths

"BRIEF SUMMARY OF MIRIUWUNG-GAJERRONG DECISION"

(1998) 3 Native Title News 194

"MIRIUWUNG-GAJERRONG - An Analysis":

(1998/99) Guest Desk article in *Minerals Gazette*, Vol 2, No 17

"FUTURE ACTS AFFECTING NATIVE TITLE OFFSHORE AND INJUNCTIVE RELIEF"

with Graham Carter in *Native Title in the New Millenium*, Bryan Keon-Cohen (ed): Aboriginal Studies Press 2001

"FIDUCIARY OBLIGATIONS OF GOVERNMENTS TOWARDS INDIGENOUS MINORITIES"

in *Native Title in the New Millenium*, Bryan Keon-Cohen (ed): Aboriginal Studies Press 2001

"LABELS, LANGUAGE AND NATIVE TITLE GROUPS: A Case Study of *Ben Ward v Western Australia*"

with Kim Doohan in *Native Title in the New Millenium*, Proceedings of the Native Title Representative Bodies Conference, Melbourne, 16-20 April 2000: AIATSIS (CD) and in John Henderson, J and David Nash(eds). 2002. *Language and Native Title*. Canberra: Aboriginal Studies Press.

"THE EBB AND FLOW OF CROKER ISLAND"

(2001) 5 Native Title News 22.

"PRESERVING CULTURE IN FEDERAL COURT PROCEEDINGS: GENDER RESTRICTIONS AND ANTHROPOLOGICAL EXPERTS"

with Geoffrey Bagshaw in *Land, Rights, Laws: Issues of Native Title*, Issues Paper no. 15, Vol. 2, Ed J. Weir, Native Title Research Unit, AIATSIS May 2002

"REPORT OF THE INQUIRY INTO THE CITY OF SOUTH PERTH"

Inquiry under Division 2 Part 8 of the *Local Government Act 1995 (WA)*, March 2002

"NATIVE TITLE RIGHTS AFTER *YORTA YORTA*"

(2002/2003) 9 James Cook University Law Review 268

"NATIVE TITLE HOLDING COMMUNITIES AS TREATY PARTIES"

Murdoch University, *Treaty - Advancing Reconciliation - A National Conference on Racism, Land and Reconciliation in a global context*, 26-28 June 2002 – www.murdoch.edu.au/Conference%20Papers

"ABORIGINAL CUSTOMARY LAW: CAN IT BE RECOGNISED?"

Background Paper No. 9 (February 2005): The Law Reform Commission of Western Australia

"REPORT OF THE INQUIRY INTO THE CITY OF JOONDALUP"

Inquiry under Division 2 Part 8 of the *Local Government Act 1995 (WA)*, October 2005

"AN IMBALANCE OF CONSTITUTIONAL POWER AND HUMAN RIGHTS: THE 2007 FEDERAL INTERVENTION IN THE NORTHERN TERRITORY"

James Cook University Law Review, Vol .14, 2007, p 81.

"UNCONSTITUTIONAL TAKEOVER IN THE NORTHERN TERRITORY"

National Environmental Law Review, Issue 2008:2, p 26.

"GENESIS OF A TEST CASE": *The Limits of Change: Mabo and Native Title 20 years On*, Ed Toni Bauman and Lydia Glick: A IATSI Research Publications 2012, Ch 3.

"AUSTRALIA'S ENVIRONMENT MINISTER COULD SOON BE ABOVE THE LAW"

The Conversation, 27 February 2014

<http://theconversation.com/australias-environment-minister-could-soon-be-above-the-law-23361>

CHAPLAINS TO CLIMATE CHANGE

<http://www.linkedin.com/pulse/20140904082542-136812794-chaplains-to-climate-change?trk=mp-reader-card>

NATIONAL SECURITY BILL OVER-RIDES FUNDAMENTAL FREEDOMS

<http://www.linkedin.com/pulse/20140915214219-136812794-national-security-bill-over-rides-fundamental-freedoms?trk=mp-reader-card>

ABORIGINAL HERITAGE AMENDMENT BILL 2014 (WA): TWO STEPS BACK

<http://www.linkedin.com/pulse/20140916025330-136812794-aboriginal-heritage-amendment-bill-2014-wa-two-steps-back?trk=mp-reader-card>

DUMPING ON THE GREAT BARRIER REEF: DOES IT COMPLY WITH INTERNATIONAL LAW?

<http://www.linkedin.com/pulse/20140917014602-136812794-dumping-on-the-great-barrier-reef-does-it-comply-with-international-law?trk=mp-reader-card>

AN ENVIRONMENTAL PROTECTION AND BIODIVERSITY BY-PASS

<http://www.linkedin.com/pulse/20140917022450-136812794-an-environmental-protection-and-biodiversity-by-pass?trk=mp-reader-card>

DISCIPLINE OF PRISON OFFICERS: A STEP TOO FAR

<http://www.linkedin.com/pulse/20140925015426-136812794-discipline-of-prison-officers-a-step-too-far?trk=mp-reader-card>

RETURN OF THE INQUISITION? THE RESURGENCE OF ROYAL COMMISSIONS OF INQUIRY

<http://www.linkedin.com/pulse/20140927233647-136812794-return-of-the-inquisition-the-resurgence-of-royal-commissions-of-inquiry?trk=mp-reader-card>

ASYLUM SEEKER CHILDREN NEED AN INDEPENDENT GUARDIAN

<http://www.linkedin.com/pulse/20141003221922-136812794-asylum-seeker-children-need-an-independent-guardian?trk=mp-reader-card>

TRADITIONAL RIGHTS

<http://www.linkedin.com/pulse/20141104090535-136812794-traditional-rights?trk=mp-reader-card>

RIGHTS, FREEDOMS, PRIVILEGES AND DISCRIMINATION

<http://www.linkedin.com/pulse/20141104092652-136812794-rights-freedoms-privileges-and-discrimination?trk=mp-reader-card>

TRADITIONAL FREEDOMS

<https://www.facebook.com/groups/521932177912176/permalink/602254259879967>

WORLD HERITAGE IN DANGER? INTERNATIONAL LAW AND THE BARRIER REEF?

<http://www.linkedin.com/pulse/20141124015525-136812794-world-heritage-in-danger-international-law-and-the-barrier-reef?trk=mp-reader-card>

CONSTITUTIONAL RECOGNITION OF ABORIGINAL PEOPLE

<http://www.linkedin.com/pulse/constitutional-recognition-aboriginal-people-greg-mcintyre?trk=mp-reader-card>

ETHICS: CLIENT CAPACITY & INTEGRITY

<http://www.linkedin.com/pulse/ethics-client-capacity-integrity-greg-mcintyre-5982654605975126016?trk=mp-reader-card>

ABORIGINAL HERITAGE: GUIDELINES WHICH MISGUIDE

<http://www.linkedin.com/pulse/aboriginal-heritage-guidelines-which-misguide-greg-mcintyre?trk=mp-reader-card>

ABORIGINAL HERITAGE: THE RAINBOW SERPENT – WHEN GUIDELINES MISGUIDE

Indigenous Law Bulletin, May/June 2015, Vol 8, No 18, pp 3-6.

NATIVE TITLE DEVELOPMENTS 2015

<http://www.linkedin.com/pulse/native-title-developments-2015-greg-mcintyre?trk=mp-reader-card>

RULE OF LAW - RESPECT FOR HUMAN RIGHTS

<http://www.linkedin.com/pulse/rule-law-respect-human-rights-greg-mcintyre?trk=mp-reader-card>

CONSTITUTIONAL PROTECTION OF HUMAN RIGHTS: PNG V AUSTRALIA

<https://www.linkedin.com/pulse/constitutional-protection-human-rights-png-v-greg-mcintyre?trk=prof-post> August 2016

THE HIGH COURT: LEGAL ANSWERS TO CONTEMPORARY POLITICAL, SOCIAL AND ADMINISTRATIVE ISSUES

2016 Sir Ronald Wilson Lecture, *Brief*, Volume 43, Number 8, September 2016, pp 32-40.

THE TOOHEY LEGACY: RIGHTS AND FREEDOMS, COMPASSION AND HONOUR UWA Law Review 2018/4

<http://138.25.65.17/au/journals/UWALawRw/2018/4.pdf>

JOINT SELECT COMMITTEE ON CONSTITUTIONAL RECOGNITION

RELATING TO ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLES SUBMISSION 196, 196.1linked

https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Former_Committees/Constitutional_Recognition_2018/ConstRecognition/Submissions

JUSTICE REINVESTMENT: BUILDING COMMUNITIES NOT PRISONS (with Justice Robert Mazza) *Brief* February 2020, pp 26-27

CONFERENCE AND SEMINAR PAPERS.

"ABORIGINAL LAND RIGHTS AT COMMON LAW"

(1980) Australian Institute of Aboriginal Studies Conference, Canberra, ACT

"PROTECTION OF ABORIGINAL HERITAGE - DEATH OF THE JURIDICAL GUERILLA"

(1990) WA Law Society Winter Conference

"JUDICIAL REVIEW OF ADMINISTRATIVE DECISIONS: RETURN OF THE JURIDICAL GUERILLA"

(1992) Law Society of WA Seminar

"ENVIRONMENTAL PROTECTION AND THE LAW: RENDERING UNTO CAESAR THAT WHICH IS GOD'S"

(1992) Seminar: *Review of the Environmental Protection Act (WA)*

"HERITAGE LEGISLATION IN WESTERN AUSTRALIA"

(1992) Seminar of National Environmental Law Association - W.A. Division

"MABO AND THE HIGH COURT: Trespassers on their own land?"

(1993) Australian Council of Churches Conference, Sydney University

"RUNNING A NATIVE TITLE CLAIM":

(1994) Environmental and Planning Law Association of New South Wales Annual Conference

"ENVIRONMENTAL MANAGEMENT: WESTERN AUSTRALIAN LEGISLATION":
 (March 1995) *Environmental Management Systems Programmes and Due Diligence Conference*, Sydney NSW.

"AMENDMENTS TO THE PROFESSIONAL CONDUCT RULES"
 (June 1995) *Implementing the Gender Bias Task Force Report*: Seminar of Law Society of Western Australia

"RESTORATION OF INDIGENOUS RIGHTS TO LAND - a recent development in Australia: THE MABO CASE and the Native Title Act 1993"
 July, 1995) International Geography Conference, University of Durban-Westville, South Africa

"COEXISTENCE OR EXTINGUISHMENT: THE IMPLICATIONS OF THE WIK DECISION":
 (February 1997) Wik Summit, Cairns, Qld

"ENVIRONMENTAL MANAGEMENT: WESTERN AUSTRALIAN LEGISLATION": (March 1995) Environmental Management Systems Programmes and Due Diligence Conference, Sydney, NSW

"ENVIRONMENTAL MANAGEMENT AFTER MABO":
 (3-5 April 1997) National Environmental Law Conference: *Managing Our Natural Environment - a Shared Responsibility*, Adelaide

"AUSTRALIAN NATIVE TITLE: DEVELOPING LONG TERM SUCCESSFUL MINERAL PROJECTS":
 (20-21 May 1997) WA Minerals Conference, Perth

"SATIRE, SARCASM, OFFENCE AND RACE IN CARTOONS AND TALK-BACK RADIO"
 (29 September 1999) Northern Territory University

"AN UPDATE OF RECENT LITIGATION"
 Native Title Conference, BLEC Conferences, Perth 7-8 August 2001

"NATIVE TITLE IS PROPERTY: PROPERTY IS NOT A BLOCK OF CHEESE"
 Native Title Representative Bodies Conference: *The Past and Future of Land Rights and Native Title*, Townsville, 28-30 August 2001

"AN UPDATE OF RECENT CASES"
 Seminar of the Law Society of South Australia, *Native Title: Case Law and Practical Developments for 2002*, 9 April 2002

"NATIVE TITLE – A BUNDLE OF WHAT?"
 Native Title Conference 2002: *Outcomes and Possibilities*, Geraldton, WA, 3-5 September 2002

"FROM THE INQUISITOR'S PERSPECTIVE – COMMISSIONS: an overview of their purpose and investigative powers"
The Return of the Inquisition? The Resurgence of Royal Commissions of Inquiry: The Law Society of Western Australia Seminar, 22 November 2006.

"ESSENTIAL ADVOCACY SKILLS"
 Legal Skills and Ethics, Legalwise Seminar, 19 September 2005, Perth, WA

"COMMUNAL, GROUP OR INDIVIDUAL RIGHTS"
 Native Title Conference 2007: *Tides of Native Title*, Cairns, 6-8 June 2007

"BALANCING THE HUMAN RIGHTS OF INDIGENOUS PEOPLES IN THE TERRITORY"
 Australian Law Teachers Association 62nd Annual Conference: *Law and Policy Taming the Unruly Horse*, University of Western Australia, 23-26 September 2007.

"NATIVE TITLE: ACHIEVING A BALANCE BETWEEN INDIGENOUS INTERESTS AND COMMERCIAL OBJECTIVES"
 Western Australia Mining and Resources Law, LexisNexis, 25 November 2008, Perth WA

"PRINCIPLES OF NATURAL JUSTICE IN THE DECISION-MAKING PROCESS"
 Administrative Law, Practice and Procedure, Legalwise Seminar, 26 August 2009, Perth, WA

"THE IMPACT OF HUMAN RIGHTS IN ADMINISTRATIVE LAW"
 Administrative Law: Improving the Decision- Making Process, Legalwise Seminars, 25 March 2010, Perth, WA

"THE CONFLICT BETWEEN WILD RIVERS AND NATIVE TITLE"
 National Native Title Conference 1-3 June 2010, Canberra, ACT

"ESSENTIAL ADVOCACY SKILLS"
 Legal Skills and Ethics, Legalwise Seminar, 24 August 2011, Perth, WA

"ESSENTIAL ADVOCACY SKILLS"

Kott Gunning CPD Seminar, 7 March 2012, Perth, WA

“DUTY TO DISCLOSE DOCUMENT”

Legal Skills and Ethics, Ethics and Professional Responsibility, Legalwise Seminars, 27 November 2012, Perth, WA

“COMPENSATION OR RESTITUTION FOR LOSS OF NATIVE TITLE”

National Native Title Conference 3-5 June 2013, Alice Springs, NT

“ABORIGINAL TITLE”

Curtin University, 21 May 2013

“THE PRACTISE OF NATIVE TITLE LAW AND EVOLUTION IN THE UNDERSTANDING THE NATIVE TITLE ACT 20 YEARS HENCE”

The 5th Annual Native Title Law Summit, Informa Legal Education, 17 June 2013, Brisbane, Qld

“AIDS IN ASSISTING WITH INTERPRETATION AND DECISION MAKING: THE ILLUSION OF BLUE SKY”

Statutory interpretation and Judicial Review, Legalwise Seminar, 13 June 2013, Perth, WA

“LEGAL ISSUES AFFECTING PUBLIC INQUIRIES”

Practice, Procedure and the Law of Parliament, Legalwise Seminar, 20 November 2014, Perth, WA

“INTERNATIONAL LAW AND PROTECTING THE ENVIRONMENT”

National Environmental Law Association National Conference 21 November 2014, Sydney

“PITFALLS OF DEALING WITH A CLIENT OF QUESTIONABLE CAPACITY OR INTEGRITY”

Legal Skills and Ethics for Lawyer, Legalwise Seminar, 10 March 2015, Perth, WA

“THE PAST 12 MONTHS: WHAT YOU NEED TO KNOW”

5th Annual Native Title Conference, Legalwise Seminar, 12 June 2015, Perth, WA

“PARLIAMENTARY PRIVILEGE” PRACTICE AND PROCEDURE”

Parliamentary Privilege, Immunities and Powers, Legalwise Seminar, 20 November 2015, Perth, WA

“THE HIGH COURT: LEGAL ANSWERS TO CONTEMPORARY POLITICAL, SOCIAL AND ADMINISTRATIVE ISSUES”

2016 Sir Ronald Wilson Lecture, Francis Burt Law Education Centre, 2 August 2016, Perth WA

OTHER PAPERS

- . **CUSTOMARY RIGHTS IN AUSTRALIA, 1980**
- . **POSSESSORY RIGHTS - AS ABORIGINAL CUSTOMARY RIGHTS, 1980**
- . **FORAGING RIGHTS - AT COMMON LAW, 1980**
- . **ABORIGINAL MINERAL RIGHTS - AT COMMON LAW, 1980**
- . **THE CLAIMANTS TO ABORIGINAL LAND RIGHTS, 1980**
- . **COMMUNITY SERVICES (ABORIGINAL) ACT 1984 VERSUS ABORIGINES ACT 1971-1979, 1984**
- . **COMMUNITY SERVICES LEGISLATION - THE RIGHT OF ENTRY AND LAND RIGHTS, 1984**
- . **PROSPECTS FOR LEGAL ACTION RE DAINTREE NATIONAL PARK AND CAPE TRIBULATION TO BLOOMFIELD ROAD, 1984**
- . **BLOCKADERS AND THE LAW, 1984**
- . **DEEDS OF GRANT IN TRUST AND FREEHOLD TITLE, 1987**
- . **QUEENSLAND DOMESTIC VIOLENCE TASK FORCE - RECOMMENDATIONS FOR LEGISLATIVE AMENDMENT, 1988**

UNDERLYING ISSUES SUBMISSION TO ROYAL COMMISSION ENQUIRING INTO ABORIGINAL DEATHS IN CUSTODY, 1990

DRAFT CHAPTERS ON THE NATIVE TITLE ACT AND NATIVE TITLE TRIBUNAL OR THE REPORT OF THE ABORIGINAL AND TORRES STRAIT ISLANDERS SOCIAL JUSTICE COMMISSIONER PURSUANT TO SECTION 204 OF THE NATIVE TITLE ACT 1993 TO 30 JUNE 1994, prepared 1995

AN AUSTRALIAN HUMAN RIGHTS ACT Position Paper of the Law Society of Western Australia 2008

CASE NOTES

"BRANDY - AGAINST THE SPIRIT OF OUR LAWS?":

Brandy - v- Human Rights and Equal Opportunity Commission: published in *Aboriginal Law Bulletin*, Vol 3, No 73 April 1995

"CONFIDENTIALITY OF ENVIRONMENT GROUPS MEMBERSHIP LIST": South-West Forest Defence Foundation (Inc)

-v- Executive Director of the Department of Conservation and Land Management and the State of Western Australia: published *Australian Environmental Law News*, Issue No 2, 1995

"FRANCIS DJAIGWEEN AND OTHERS -V- MALCOLM DOUGLAS TRADING AS BROOME CROCODILE PARK; THE STATE OF WESTERN AUSTRALIA INTERVENING": *Aboriginal Law Bulletin* Vol 3 No 67, April 1994

DANN v STATE OF WESTERN AUSTRALIA: *Australian Indigenous Law Reporter*, Vol 3, No 2, June 1998

RISK ON BEHALF OF LARRAKIA PEOPLES V WILLIAMSON: 3 AILR, No 4, Dec 1998.

STRICKLAND ON BEHALF OF MADUWONGGA PEOPLE V MINISTER FOR LANDS: 3 AILR, No 4, Dec 1998

"COMMUNITY ACTIVITIES VERSUS MINING INTERFERENCE: *Smith on behalf of the Gnaala Karla Booja People v State of Western Australia*

[2001] *Indigenous Law Bulletin* 21

NOONGAR NATIVE TITLE CASE: published in *Brief*, Vol. 33, No. 10, November 2006.

SHIRE OF DERBY-WEST KIMBERLEY v YUNGNGORA ASSN INC [2007] WASCA 233 – WHEN IS LAND USED EXCLUSIVELY FOR CHARITABLE PURPOSES?

Local Government Law Journal, Casenotes, Vol. 14, Part 1, May 2008, p 8 at 11; Western Australian Bar Association Review, Issue 6, October 2008, 29.

THROUGH THE EYE OF A NEEDLE (Broome Camels Case and Claremont Showgrounds Case)

Local Government Law Journal, Casenotes, Vol. 14, Part 2, October 2008, p 75; Western Australian Bar Association Review, Issue 6, October 2008, 33.

Banjima People v Western Australia [2015] FCAFC 84 (12 June 2015) - NTA Section 47B

Native Title News, *LexisNexis* February 2016, Vol 12, No 1, p 300

McGlade v SWALSC (No 2) (with Peter Dawson) - FCAFC - challenges to Registration of Noongar Settlement ILUAs

Brief 1 April 2020 p 41

BOOK REVIEWS

- . **"THE PROCESS OF LAW IN AUSTRALIA, INTERNATIONAL PERSPECTIVES"** by Greta Bird, Published in "Brief" 1988
- . **"ABORIGINAL YOUTH AND THE CRIMINAL JUSTICE SYSTEM: THE INJUSTICE OF JUSTICE"** by Gale et al. Published in 21 U.W.A.L.R. 214, 1991
- . **"COMMON LAW ABORIGINAL TITLE"**, K McNeil, published in 2 ALB No. 55, 1992
- . **"COASTAL LAW IN WESTERN AUSTRALIA"**, ed. Sandra L. Boulter: Environmental Defender's Office; published in "Brief": Law Society of Western Australia, August 2003.
- . **"TREATY"**, Brennan, S., Berhendt, L., Strelein, L. and Williams, G; The Federation Press 2005; published in "Brief": Law Society of Western Australia, November 2005.
- . **"LIMITATION OF ACTIONS THE AUSTRALIAN LAW"** by Peter Handford, published in Western Australian Bar Association Review, March 2006.
- . **"DEFAMATION LAW IN AUSTRALIA"** by Patrick George, published in Western Australian Bar Association Review, November 2006.
- . **"INTERNATIONAL LAW, MUSEUMS AND THE RETURN OF CULTURAL OBJECTS"** by Anna Filipa Vrdoljak, published in Western Australian Bar Association Review, Issue 5, December October 2007, 27
- . **"ADMINISTRATIVE LAW IN AUSTRALIA"** by WB Lane and S Young, published in Western Australian Bar Association Review, Issue 5, December October 2007, 28
- . **"COMMERCIAL CONTRACT CLAUSES, PRINCIPLES AND INTERPRETATION"** by Thompson, Warnick and Martin, published in Western Australian Bar Association Review, issue 6, October 2008, 36.

LECTURES and CONFERENCE and SEMINAR PRESENTATIONS

- . **"KOOWARTA -V- BJELKE PETERSEN: THE ARGUMENTS"**,
1981 - University of New South Wales Law School
- . **"MINING AND THE LAW RELATING TO ABORIGINAL RESERVES AND ABORIGINAL HERITAGE"**
1988 - University of Western Australia Law School
- . **"BROPHO: THE SHIELD OF THE CROWN AND CORPORATIONS"**
1990 Parker & Parker Seminar
- . **"BROPHO: THE IMPLICATIONS FOR GOVERNMENT"**
1990 Corporate Lawyers Association.
- . **"PROPERTY LAW CONCEPTS AND THE MABO ARGUMENTS"**
1991 - Monash University
- . **"PROTECTION OF ABORIGINAL HERITAGE"**
1991 - John Huelin Memorial Lecture, Human Rights Day, 1991
- . **"MABO: A RETREAT FROM INJUSTICE"**

- (a) May 1992
Address to Kimberley Land Council
- (b) 1992 Seminar of Committee for the Recognition of the First Australians, WA
- (c) 1992 Annual Conference of Public Interest Advocacy Centre, University
of New South Wales
- (d) J B Were Seminar, Sydney 1992
- (e) J B Were Seminar, Perth 1993

. **"THE MABO DECISION"**, Queensland University of Technology, Law Teachers and Students 1992

. **"THE HIGH COURT DECISION AND NATIVE TITLE IN WESTERN AUSTRALIA"**, ATSIC WA State Advisory Committee
Conference, 1993.

. **"MABO"**

1993 Aboriginal Week Talk, Francis Burt Law Education Centre at Fremantle

. **"THE MABO DECISION AND ITS CONSEQUENCES"**

1993 Conference of National Association of Australian University Colleges

. **"MABO: THE CONCURRENCY OF TITLES TO LAND"**

1993 Australasian Law Students' Association Conference:

. **"MABO: FORESHADOWING FURTHER CHANGES TO COMMON LAW NOTIONS OF
OWNERSHIP"**

. **"MABO AND PROPERTY RIGHTS"**

Occasional Lecture, Business Law, Curtin University, 1993

. **"COMMONWEALTH ENVIRONMENTAL IMPACT PROCEDURES"**

Seminar, Property Law Group (NSW), General Practice Section, Law Council of Australia,
Sydney, August, 1995

. **"BEYOND A SPECIES APPROACH: OPTIONS FOR A NEW BIODIVERSITY CONSERVATION ACT IN
WESTERN AUSTRALIA"**

Public Forum, Taking Biodiversity Conservation into the New Millenium, Edith Cowan University, 31 July 1999

. **"NATURE, PROOF AND CONTENT: MAKING CLAIMS UNDER THE NATIVE TITLE ACT"**

Native Title Workshop, University of Western Australia, 22 September 1999

. **"THE RAINBOW SERPENT LITIGATION: A MICROCOSM OF ADMINISTRATIVE LAW"**

CLE Seminar, Northern Territory Law Society, 28 September 1999

. **"AN ALTERNATIVE LEGAL CAREER"**

Social Justice Forum 2006, Equity and Diversity Week, Blackstone Society, UWA.

. **"HUMAN RIGHTS LAW IN WESTERN AUSTRALIA"**

Amnesty International Legal Group (WA), Seminar, University of Western Australia Law School, 9 May 2007

. **"COMMENTS ON DRAFT HUMAN RIGHTS BILL 2007"**

Human Rights Forum with Consultation Committee for a proposed WA Human Rights Act, 6 August 2007

“SO YOU WANT TO BE A HUMAN RIGHTS LAWYER”

Murdoch University Law Students Association, Murdoch University 2008.

“THE MABO CASE: A PARTICIPANT REMEMBERS”

Legal History course, University of Western Australia, 5 September 2008

“SO YOU WANT TO BE A HUMAN RIGHTS LAWYER”

Law Students for a Just Community 2008 Annual Conference, 3-5 October 2008, Perth WA.

“INDIGENOUS PEOPLES: THE DUTIES OF GOVERNMENT AND INDUSTRY”

Address to the Centre for Water Resources, University of Western Australia, 26 November 2008.

“EXTINGUISHMENT: RESOLVING THE CONFLICT BETWEEN NATIVE TITLE AND STATE TITLE”

The Law of Customary Lands, Territories and Resource Rights: Bridging the Implementation Gap, Faculty of Law, University of Malaya, Kuala Lumpur, 25-26 January 2011

“ESSENTIAL ADVOCACY SKILLS”

Legal Skills and Ethics, Legalwise Seminar, 24 August 2011, Perth, WA

“MABO: A CATALYST FOR SOCIAL CHANGE”

National Centre for Indigenous Studies, ANU, 15 May 2013, Canberra, ACT

“NATIVE TITLE” – Case Study

Law, Society and Justice course, 21 May 2013, Curtin University, Bentley, WA

“WILD RIVERS: REGULATED NATIVES: Are the rivers ‘wild’ enough: are the natives too regulated?”

3rd Future of Environmental Law Symposium, Australian Environment and Planning Law Group, Legal Practice Section, Law Council of Australia, 8 November 2013, Sydney NSW

“MABO EXPERIENCE”

National Native Title Tribunal, 16 April 2014, Perth, Cairns, Brisbane, Sydney and Melbourne

“MABO AND THE VIBE”

The Castle, Piddington Society, 23 April 2015, Perth WA

“WHAT DOES IT TAKE TO OCCUPY AND EXCLUDE”

National Native Title Conference 16-18 June 2015, Port Douglas, Qld

“HOW HUMAN RIGHTS ARE PROTECTED IN AUSTRALIA”

Human Rights in Australia and Beyond, Politics and Law Teacher Professional Learning Day, Francis Burt Law Education Programme, 3 December 2015, Perth WA

“MABO: A CATALYST FOR CHANGE”

Applecross Senior High School, December 2016

“CONSTITUTIONAL RECOGNITION, RACIAL VILIFICATION AND NATIVE TITLE: THE LEGAL SOCIAL AND ECONOMIC CONSEQUENCES”

Keynote Address, Legal Aid WA Summer Series 2017 Civil Law Day February 2017

“MABO: A CATALYST FOR CHANGE: 25 YEARS ON”

National Native Title Conference, Broome 7 June 2017

“KEY CASE UPDATES IN THE LAST 12 MONTHS”

Native Title Conference: The New Landscape, Legalwise Seminars, 15 June 2017

“THE GOVERNMENT’S DUTY OF CARE”

Duty, Bias and Delegations in Decision Making Legalwise Seminars, 6 September 2017

“THE GOOD, THE BAD AND THE UGLY: LEGAL PROFESSION COMPLAINTS COMMITTEE CASES UNDER REVIEW” (with Jason Raftos)

Jackson McDonald CPD, 15 November 2017

“WHAT’S THE PRICE OF TRANSPARENCY IN NATIVE TITLE? ILUAs POST MCGLADE” (with Franklyn Gaffney)

8th Annual Native Title Law Conference, Legalwise Seminars 21 June 2018

“CROSS EXAMINATION FOR SUCCESS”

Advocacy and Evidence Seminar, Legalwise Seminars 19 September 2018

“INTERACTION OF THE *FINANCIAL MANAGEMENT ACT* AND THE *AUDIT ACT* IN RELATION TO THE SUPPLY OF INFORMATION BY MINISTERS TO PARLIAMENT AND THE ROLE OF THE AUDITOR GENERAL”

Practice, Procedure and the Law of Parliament, Legalwise Seminars, 13 November 2018

“THE PITFALLS OF LEGAL PRACTICE – RAKING OVER THE CINDERS: A discussion of a range of Professional Conduct cases in the context of the Professional Conduct Rules and how to avoid the boiling cauldron.”

Anglo-Australasian Lawyers Society (Western Australia) Inc, 15 November 2018

“A CULTURE OF HUMAN RIGHTS: Freedom of Religion and an Australian Bill of Rights or Charter”

Curtin Law School 6 June 2019

“MABO: A CATALYST FOR CHANGE”

John Curtin College of the Arts, June 2019

“ALTERNATIVE SETTLEMENT ILUAs”

9th Annual Native Title Law Conference: Expansive Perspectives, Legalwise Seminars 13 June 2019

“A CONVERSATION FROM THE HEART”

NAIDOC Thought Week Leadership Event, King Wood Mallesons, 31 July 2019

“INDIGENOUS GRATUITOUS CONCURRENCE”

Gratuitous Concurrence workshop, Financial Services Council, Indigenous Outreach Program, Financial Capability

Australian Securities and Investments Commission 1 October 2019

“A CULTURE OF HUMAN RIGHTS: Rights and Freedoms and an Australian Bill of Rights”

A Human Rights Act for Western Australia, Aboriginal Legal Service of WA and Australian Lawyers for Human Rights, 6 November 2019

“NATIVE TITLE IMPLICATIONS OF *LOVE; THOMS V COMMONWEALTH*”

NTRB Legal Workshop 2020, 21 February 2020

INTERVIEWS

MABO CASE: INTERVIEW WITH GREG MCINTYRE, interviewed by Susan Varga: [1987] Aboriginal Law Bulletin 6, www.austlii.edu.au/au/journals/AboriginalLB/1987.6.html

NOONGAR NATIVE TITLE, interviewed by Karla Grant on *Living Black*, SBS TV, 27 September 2006,
www20.sbs.com.au/news/livingblack/index.php?action=proginfo&id=372

"THE COLLARD FAMILY VS THE STATE OF WESTERN AUSTRALIA"

<https://www.sbs.com.au/ondemand/video/957273667530/the-collard-family-vs-the-state-of-wa>

COURT PROCEEDINGS

HIGH COURT

Koowarta -v- Bjelke Petersen (1982) 153 CLR 168

The Racial Discrimination Act and the external affairs power of the Commonwealth - refusal by State Government to consent to transfer of Crown Lease.

Briefed A R Castan QC, P de Jersey QC and N A Skoien for Plaintiff; M H Byers QC, R I Hanger and R S French for Commonwealth; D F Jackson QC with M P Moynihan QC and R R Douglas for Queensland; D M Dawson QC and R M Sundberg for Victoria and WA

Mabo -v- State of Queensland & Commonwealth of Australia (No 1) (1988) 166 CLR 186

Invalidity of State Law operating to deprive a racial group of a right to property contrary to Racial Discrimination Act

Briefed A R Castan QC, B Hocking and B A Keon Cohen for Plaintiffs; G L Davies QC with M J White for Queensland; G Griffith QC with R W Gotterson for Commonwealth; D M J Bennett QC with D J Barrett for N.T.

Mabo -v- State of Queensland (No. 2) (1992) 175 CLR 1

A common law claim to native title.

Appeared for Firstnamed Plaintiff; briefed A R Castan QC with B A Keon Cohen for Second and Third-named Plaintiffs; G L Davies QC with H B Fraser and G J Koppenol for Queensland

Bropho -v- State of WA & WADC (1990) 171 CLR 1

Old Swan Brewery development - Crown bound by Aboriginal Heritage Act.

Special Leave Application (Deane, Dawson, Toohey, Gaudron and McHugh JJ.) Appeared, leading S C Churches for Applicant; K H Parker QC, Solicitor-General, and C A Wheeler for State of WA

High Court Appeal -

Appeared leading Dr S C Churches for the Appellant; J McKechnie QC and CA Wheeler for the First Respondent; D J Martino for Second Respondent; J.J. Doyle QC with B M Selway intervened for the State of South Australia; G L Davies QC with E D O'Donnell intervened for Queensland; G Griffith QC with D J Rose and M Sloss for the Commonwealth; K Mason QC with L S Katz for New South Wales

Isaacs -v- Bluegate Nominees (1995) High Court (Deane, Dawson and McHugh JJ)

Old Swan Brewery development

Special Leave Application to appeal against Supreme Court decision - Court replacing its decision for that of administrative body - proper test of apprehension of bias. Appeared for Applicant with C Fougere; C Zelestis QC and R Meadows for Respondent

Wororra Peoples -v- Western Australia, Western Australia v Commonwealth (1995) 128 ALR 1

Land (Titles and Traditional Usage) Act 1993 (WA) inconsistent with Racial Discrimination Act 1975 (Cth) and Native Title Act 1993 (Cth). Appearing with AR Castan QC and BA Keon-Cohen for Plaintiffs; K H Parker QC, D F Jackson QC, and C A Wheeler and K M Pettit for WA; G Griffith QC, D J Rose QC, H C Burmester, S J Gageler with R G Orr for Commonwealth

North Ganalania Aboriginal Corporation (on behalf of the Waanyi Peoples) -v- Qld (1996) 185 CLR 595

Native Title Act 1993 - Application acceptance process - Appeared seeking leave to intervene on behalf of Kimberley Land Council, A R Castan QC with B Keon-Cohen and R Blowes for Applicants; P A Keane QC with G J Koppenol and D A Mullins for A-G for Qld, H G Fraser QC with P L O'Shea for CRA and Century Zinc, G Griffith QC, S-G for Cth with D J McGill SC, M A Parry and C J Horan for A-G for Cth, K Mason QC, S-G for NSW with V B Hughston for A-G NSW, B M Selway QC, S-G for SA with E E David for A-G for SA, C A Wheeler QC with K M Pettitt for A-G WA, T Pauling QC with R J Webb for A-G, NT

Wik Peoples -v- Queensland (1996) 187 CLR 1

Native title and pastoral leases

Appeared for Napranum Aboriginal Council (7th Respondent) and for Kimberley Land Council, Nanga-Ngoona Moora-Joonga Association, Western Desert Puntukurnuparna Aboriginal Corporation, Ngaanyatjarra Land Council (Intervening), W Sofronoff QC, R Blowes and G C Newton for Wik Peoples, P A Keane QC with G J Gibson QC, D A Mullins and G J Koppennoll for Queensland, G Griffith QC - S-G for Cth with D J McGill SC and M A Perry for Cth, H.B. Fraser QC with P L O'Shea and J K Bond for Comalco, G A Thompson for Aluminium Pechiney, M Byers QC with J Greenwood QC, G Hiley QC and P M McDermott for the Thayorre Peoples, D J S Jackson QC with J D McKenna for Pastoralists, S L Doyle SC for ATSIC, P J Favell for Pormpurraw Aboriginal Council, J L Sher QC with B A Keon-Cohen for NLC and CLC (Intervening), R H Bartlett for ALS of WA (Intervening), D Graham QC with M Sloss for Victoria (Intervening), R J Meadows QC with C A Wheeler QC and K Pettitt for WA (Intervening), B M Selway QC with E E David for SA (Intervening), D M J Bennett QC with R J Webb for NT (Intervening)

Western Australia-v-Ward (1997) - Special Leave Application

Native title – gender restricted evidence - right to counsel of choice - judicial power

Appeared for Second Respondent (Northern Land Council) and Third Respondent (Kimberley Land Council);

Mr C J L Pullin QC and Mr K Pettit for State of WA; Mr M Barker QC and Ms A Sheehan for First Respondent (ALS);

Bridgetown Greenbushes Friends of the Forests & Ors -v- Executive Director of C.A.L.M. & Ors. Gaudron, McHugh, Kirby, Hayne and Callinan JJ., Hobart, 12 April 1998

Appeal against Strike Out of Causes of Action - Strike Out Test - Standing - Shield of the Crown - Natural Justice - Legal Duties/Relevant considerations arising out of CALM Act.

Appeared with Dr H T Schoombee for the Appellants, Mr R Meadows QC, S-G with Mr R M Mitchell for Defendants, (Judgment for Defendant)

Fejo and Mills (on behalf of the Larrakia People) v The Northern Territory & Ors [1998] HCA 58

Fee simple extinguishes native title

Appeared intervening for Kimberley Land Council & Ors, J Basten QC for Appellant, A R Castan QC intervening for Yorta Yorta, T Pauling QC and R Webb for Northern Territory and Ors.

Western Australia-v-Ward (1999) - Application to remove part of Appeal - Native title - occupation - extinguishment

Appeared for Third Respondent (Kimberley Land Council); C J L Pullin QC and K Pettit for State of W.A., M L Barker QC and A Sheehan for First Respondent (ALS); J Basten QC and K R Howie for Second Respondent (Northern Land Council)

Yarmirr v Northern Territory; Commonwealth v Yarmirr [2001] HCA 56 - Native Title to waters

Appeared Intervening on behalf of Yamatji Barna Baba Maaja Aboriginal Corporation and Kimberley Land Council with G M Irving and D L Ritter; D M J Bennett QC, S-G for Commonwealth with M A Perry and S B Lloyd, J Basten QC with K R Howie SC and S A Glacken for Yarmirr, T I Pauling QC, S-G for N T and R J Webb for NT, G E Hiley QC with N J Henwood for fishing interests; D F Jackson QC and S J Gageler SC intervening on behalf of Lardil and other peoples; R J Meadows QC, S-G for WA with K M Pettit for WA; B M Selway QC, S-G for SA with S E Carlton for SA; B Fraser QC with P J Flanagan for A-G for Queensland

Western Australia v Ward; A.-G. (NT) v Ward; Ward v Crosswalk Pty Ltd [2002] HCA 28, 8 August 2002– Nature of native title and extinguishment of native title

Appeared with W Sofronoff QC for Kimberley Land Council; Appeared leading D Ritter for Yamatji Barna Bab Maaja Aboriginal Corporation (Intervening); R J meadows QC, S-G for WA and C J L Pullin QC and Mr K Pettit for State of W.A., M L Barker QC and R H Bartlett for First Appellant (ALS of WA); J Basten QC with K R Howie SC and S A Glacken for Second Appellant (Northern Land Council); T I Pauling QC, S-G for NT and R J Webb for NT; N Johnston QC with M T McKenna for Crosswalk Pty Ltd; D W McLeod with P L Wittkuhn for seventh Respondents; H B Fraser QC with K R Jagger for Eighth Respondents; D M J Bennett QC, S-G for Commonwealth with M A Perry and J S Stellios intervening for Commonwealth; B M Selway QC, S-G for SA with S T Hellams intervening for SA; B W Walker SC with S E Pritchard intervening for HREOC; J L Sher with M T Ritter intervening for GLC; G E Hiley QC with G R Donaldson intervening on behalf of PGA of WA; C F Thompson intervening for Mirimbiak Nations

Bropho v HREOC and West Australian Newspapers (2005) HCA Special Leave Application

Racial vilification – exemption - cartoon as artistic work – whether published reasonably and in good faith.

Appeared for Applicant; WS Martin QC for WA Newspapers.

Bropho v Western Australia (2007) HCA Special Leave Application
Appeal against conviction for sexual assault – *Longman* warning
Appeared for Applicant.

MetLife Insurance v Ward [2014] HCA (P35/2014) Special Leave Application
Income protection insurance – procedural fairness
Appeared for Respondent; G Hancy for Applicant

Baron v Walsh [2014] WASCA 124; [2014] HCASL 249 Violence Restraining Order

Dodd v State of Western Australia [2014] HCA (P24/2014) Special Leave Application
Unlawful killing – *Edwards* direction
Appeared for Applicant; J McGrath SC, DPP for Respondent

Kaur v Minister for Immigration and Border Protection (2015)
Defacto spousal visa – Certiorari – order nisi – conceded
Appeared for Applicant; P mClinger for Minister

Stillman v Rushbourne (2016) Special Leave and Appeal conceded
Advocate's immunity

AAR15 v v Minister for Immigration and Border Protection (2016) Special Leave to appeal granted. Appeal conceded
Refugee – reasonableness and speculation re country information

CHZ19 v Minister for Home Affairs (2020) Special Leave to appeal refused
Migration – adverse material not disclosed

FEDERAL COURT

Dann -v- Western Australia (1997) 144 ALR 1, Wilcox, Tamberlin and Nicholson JJ
Native Title Act - exploration licence - act attracting expedited procedure - meaning of "major disturbance" - burden and standard of proof - effectiveness of Aboriginal Heritage Act 1972 (W.A.)
Appeared for Appellant; Mr G Donaldson and Mr S Wright for State (Judgment for Appellant)

Fourmile -v- Justice French; Fourmile -v- Selpam Pty Ltd (1998) 152 ALR 294, Northrop, Drummond and Cooper JJ
Native Title Act - exercise of judicial power by National Native Title Tribunal - acceptance of claim - uncontested non-claimant application - meaning of "ownership" in Land Act 1962 (Q) post-Mabo - vesting of road reserve in Crown.
Appeared for Applicant, leading Mr J D McKenna; Mr P A Keane QC Solicitor General for State of Queensland with Mr G Koppenoll and Mr P Flannigan for Qld; Mr A Robertson SC and Mr D S Bell for Attorney-General for Commonwealth intervening

Evans (Koara Peoples) -v- Western Australia, Nicholson J, 8 August 1997
Native Title Act - Mining Lease Application - arbitral power - delegation of power - compensation. Appeared for Appellants, S Wright for W.A., H Burmeester intervening for Minister of Aboriginal Affairs (Judgment for Appellants)

Ward on behalf of Miriuwung Gajerrong People -v- Western Australia, (1998) 1478 FCA, Lee J
Native Title Application, Native Title Act - proof of native title - extinguishment; Appeared with J M Melbourne for Third Applicants & Kimberley Land Council; L Robert-Smith QC, M L Barker QC, R Bartlett A Sheehan, H W Ketley and C Crawford for First Applicants; K R Howie and R M D Levy (Northern Land Council) for Second Applicants, C J L Pullin, K M Pettit, K H Glancy and C Humphry for State of Western Australia; T J Pauling QC, S-G, R J Webb and S Begg for Northern Territory; T Riley QC for National Parks Commission (N.T.); and others.

Ward -v- Western Australia Hill, Branson and Sundberg JJ, 8 July 1997
Native title - restricted evidence - right to counsel of choice - judicial power
Mr C J L Pullin QC and Mr K Pettit for State of W.A., Mr M Barker QC and Ms A Sheehan for First Respondent (ALS); Appeared led by Mr B A Keon-Cohen QC for Second Respondent (Northern Land Council) and Third Respondent (Kimberley Land Council) and for Central Land Council seeking leave to intervene
J Basten QC for Attorney-General of NSW intervening, G Griffith QC and G Kennett for Commonwealth Minister for Aboriginal Affairs, R Meadows QC and R M Mitchell for Attorney-General for W.A. intervening; R Webb for Northern

Territory Government - Judgment for Respondents.

Western Australia - v - Ben Ward & Ors (1996) Northrop, Hill and Nicholson JJ

Native Title - Appeal against Order declining to refer pastoral lease questions to Full Court, Appeared for NLC and KLC, C Zelestis QC with K Pettit for WA, N Hasluck QC for ALS, R Webb for Northern Territory

Su, Su and Fu -v- Minister for Immigration (1996) Carr J, 24 April 1996

Review of Decision declining Refugee Status - Illegal departees from China - Persecution on ground of nationality or membership of special class, Appeared for Applicants, P McLiver for Minister

Austen -v- Ansett Transport Operations Ltd & Civil Aviation Authority (1990-1992) Federal Court, WA

Breach of Employment Contract - Breach Trade Practices Act - Defamation - Breach of Confidence - Breach of Privacy - Ultra vires Civil Aviation Act - Negligence; Appeared for Applicant in various interlocutory proceedings; K Martin for Second Defendant

Bropho -v- Tickner & Bluegate Nominees Pty Ltd (1993) 40 FCR 165, Wilcox J

Aboriginal and Torres Strait Islander Heritage Protection Act - Implied obligations - failure to comply with preconditions for exercise of discretion - unreasonableness - Application for Order to Review - Application for stay against third party; Appeared for Applicant, C J L Pullin QC and S Bhojani for First Respondent; N Hasluck QC, P D Evans and G Castledine for Second Respondent

Tickner -v- Bropho (1993) 114 ALR 409, Black CJ, Lockhart and French JJ

Appeal - Beneficial legislation - implied obligation as consequence of expressed purpose; Appeared for Respondent; E Wilhelm (AGS Canberra) for Appellant

Che -v- Minister for Immigration (1994) Carr J

Application for Review - Refugee status decision, natural justice, error of law, reasonableness; Appeared for Applicant, P McLiver for Respondent

Minister for Immigration -v- Che (1994) Jenkinson, Spender and Lee JJ

Refugee status - assessment of well-founded fear of persecution - consideration of political profile; Appeared for Respondent; S Owen-Conway QC and T Cowles for Appellant

Secretary, Department of Social Security -v- Saracik (1993) Jenkinson, O'Loughlin and Lee JJ

Appeal against AAT decision re waiver of recovery of assurance of support payment pursuant to Migration Regulations and Social Security Act; Appeared for DSS, SC Churches for Respondent

Djaiqween -v- Douglas (1994) Carr J

Broome Crocodile Farm development and Aboriginal initiation track

Application for Injunction pending determination of Native Title; Appeared for Applicant leading GM Irving; C P Stephenson for Respondent; C R Humphry for State of WA

Chen -v- Minister for Immigration (1995) 130 ALR 405. Northrop, Spender and Lee JJ

Refugee - genuine fear of persecution - real chance of being persecuted - task of Tribunal not to weigh probability of persecution; Appeared for Appellant; S Owen-Conway QC and P J Corbould for Minister and Tribunal

Strickland v Native Title Registrar (1999) 168 ALR 242, French J

Registration of Native Title claim – overlapping claim – authorisation
Appeared for Applicants; C J Thatcher for State of WA

State of Western Australia v Native Title Registrar [1999] FCA 1591, Carr J, 16 November 1999

Native Title Registration – statutory criteria - procedural fairness – transitional provisions – identification of area – description of group – edited reasons and s 13 ADJR Act
Appeared for Respondent; G Tannin and C J Thatcher for State of WA

Western Australia v Strickland (2000) FCR 33; [2000] FCA 652 Beaumont, Wilcox and Lee JJ
Combination of claims and date of lodgment – authorisation
Appeared for Respondent; G Tannin for WA, R Orr for Commonwealth (Intervening)

Sampi v Western Australia [2000] FCA 1862, Beaumont J (4 December 2000) ;[2001] FCA 110 Beaumont J (22 February 2001); [2001] FCA 288, Beaumont J (21 March 2001)
Native Title – Expert report – subpoena to produce field notes
Appeared leading G Irving and KJ Guest for Applicant; R Webb and T Crewell for WA;; K M Pettit with A Vivakis for Commonwealth; AR Beech and L Flynn for Telstra; P Quinlan for WAFIC; K White for Pearling interests

Western Australia v Ward [2000] 170 ALR 159; [2000] FCA 191, Beaumont, Von Doussa and North JJ (3 March 2000)
Native title – bundle of rights – cultural knowledge – continuing connection – extinguishment
Appeared for KLC and Gidja and Malngin peoples; C J L Pullin QC and K M Pettit for WA; M L B arker and R H Bartlett and A M Sheehan for Miriuwung and Gajerrong peoples; J Basten QC and K R Howie for Ningamarra and others; J D Allanson with M A Perry intervening for Commonwealth; R A Conti with M T McKenna for Pastoralists; D W McLeod AND P L Wittkuhn for Crosswalk Pty Ltd and others; H W Fraser with K R Jagger for Ashton Joint Venturers; T I Pauling with R J Webb for NT.

Serpentine-Jarrahdale Ratepayers and Residents Association Inc -v- Minister for Mines [2001] WASC 203 *Environmental Protection Act 1986* - Obligations of decision-making authority when considering a matter likely to have a significant effect on the environment
Appeared for Plaintiff; G T W Tannin for Defendant.

Nudding and Strickland on behalf of the Maduwongga People v State of Western Australia [2002] FCA 934, Lindgren J (23 July 2002). Native title – joint testimony – statement after consultation
Appeared for Applicants, S Walker and P Vincent for Wongatha; V Hughston with J Waters for WA; R Webb with A Rorrison for Commonwealth; F Van der Kooy for Local Government; D Parsons SC and D O’Dea for Ngaanytjarra; G Hiley QC with J McPherson for WMC Resources; M McKenna for Barrick Gold Corporation; G Donaldson and J Thompson for Pastoralists

Bropho v HREOC and West Australian Newspapers [2002] FCA 1510, Nicholson J
Racial vilification –exemption - cartoon as artistic work – whether published reasonably and in good faith.
Appeared for Applicant; S Edwards for WA Newspapers.

Bropho v HREOC and West Australian Newspapers (2003) FCAFC 16, French, Lee and Carr JJ
Racial vilification –exemption - cartoon as artistic work – whether published reasonably and in good faith.
Appearing for Applicant; WS Martin QC for WA Newspapers.

Jackson v Minister for Immigration and Multicultural and Indigenous Affairs [2003] FCA 225 (Nicholson J) Immigration Review Tribunal - Federal Court’s jurisdiction – privative clause – jurisdictional error of law
Appeared for Applicant; J D Allanson for Respondent

Jackson v Minister for Immigration and Multicultural and Indigenous Affairs [2003] FCAFC 203 (Lee, Carr and Moore JJ)
Immigration Review Tribunal – misconstruction of Regulation
Appearing for Appellant; J D Allanson for Respondent

McGlade v Human Rights and Equal Opportunity Commission [2000] FCA 1477 - Carr J

Whether Commission applied the correct test for summary dismissal
Appearing for Applicant; G S Pitt for Lightfoot

McGlade v HREOC and Lightfoot, [2002] FCA 752- Carr J
Racial vilification– Strike out application.

Appearing for Applicant; M C Hotchkin for Lightfoot

McGlade v HREOC and Lightfoot, (2003) EOC 93-252; [2002] FCA 1457 - Carr J

Racial vilification – whether Lightfoot caused statements to be published by newspaper- whether statement made was reasonable.

Appearing for Applicant; no appearance for Lightfoot.

Coulthard and others on behalf of the Adnymathanha people v South Australia and others SG6001/98, Mansfield J –NTA s 66B – application to remove registered applicants – Federal Court’s associated jurisdiction – Trustee Act (SA) application to remove trustees – Interpleader action by Heathgate Resources discontinued in District Court – application to pay money out of trust.

Appearing for applicants leading M Steele, S Berg and R Bradshaw; G Hiley QC with J Bolton for Stuart and others; J Cosoff and R Thompson for Andersons; N Page for Flinders Trustees; R O’Dea for A Coulthard; J Bashier for State of SA; G Stafopolous and A Steed for Heathgate Resources and others

Sampi v Western Australia 2001_ Beaumont J, Evidence and submissions on facts. Submissions on law.
Appeared with K Bell QC, G Irving and KJ Guest for Applicants; R Webb and T Creewell for WA; K M Pettitt SC with A Rorrison for Commonwealth; P Quinlan for WAFIC; K White for Pearlying interests

Daniel v State of Western Australia [2003] FCA 666 - Nicholson J

Native title determination

Appeared for Applicants with CL Tan (replacing ML Barker QC and W de Mars and A Murphy); E Ng for Yaburrara RI Viner AO QC for Wong-Goo-TT-OO; K Pettitt SC and S Wright for WA; JD Allanson with S Nash for Group 2A Resp.; AR Beech for Group 2B/3rd Resp.; M Gregory for 4th Resp.; G Hiley QC and D Martino for 5th Resp MT McKenna for 6th and 7th Resp.; CP Stephenson for 8th & 12th Resp.; G Gishubl for 9th & 10th Resp.; C Pullin QC and MT McKenna for 11th Resp and WAFIC; R Butler for 16th & 17th Resp.; MT McKenna with K White for 11th , 16th (part) and 17th (part) Resp.

Bropho v HREOC and West Australian Newspapers [2003] FCAFC 16;

McKenzie v State of South Australia & Ors [2005] FCA 22 - Finn J

Native title – strike out – claim group identification – authorization

Appeared for Applicants with J Keene; S Phillips for ALRM; D Seal with S McCaul for SA.

Harrington-Smith on behalf of the Wongatha People v State of Western Australia [2007] FCA 31 - Lindgren J (5 February 2007).

Native title – overlapping claims – native title claim groups - authorisation

Appeared for Maduwongga Applicants leading RW Bower, ML Barker Q (until 8 August 2002), BA Keon-Cohen QC, S Walker and P Vincent for Wongatha; V Hughston with J Waters for WA; R Webb with A Rorrison for Commonwealth; F Van der Kooy for Local Government; D Parsons SC and D O’Dea for Ngaanyatjarra; G Hiley QC with J McPherson for WMC Resources; M McKenna for Barrick Gold Corporation; G Donaldson and J Thompson for Pastoralists

Bropho v State of Western Australia [2007] FCA 519

Racial Discrimination – Lockridge Aboriginal reserve – *Reserves Act* revoking management order – RDA ss 9, 10(1), (2) and (3), 12.

Appeared for Applicant; G Tannin SC, S Wright and A Warren for State.

Moses v State of Western Australia [2007] FCAFC 78, Moore, North and Mansfield JJ

Native Title Act, ss 223(1), 56(2), 57(2), 47A(1)9b(ii), 47B(1)(b) and (c) and 25(2B)(b)

Appeared for Appellants with CL Tan; K Pettit SC with S Wright for State; T Houweling with J Steenhof for 2nd Resp.; R Webb QC for Cw.

Dale v Moses [2007] FCAFC 120, Moore, North and Mansfield JJ

Native Title claim of Wong-Goo-TT-OO

Appeared for 1st Resp. with CL Tan; RI Viner AO QC WITH g Kitto for Wong-Goo-TT-OO; K Pettit SC with S Wright for State; R Webb QC for Cw; F Bowd for 9th, 10th and 11th Resp.; MT McKenna for 12th Resp. and WAFIC.

Clark v Nationwide News [2012] FCA 900, Barker J

Racial vilification

Appeared for Applicant; Blackburn SC for Respondent

Banjima People v WA [2011] FCA 1454; (No 2) [2013] FCA 868; (No 3) [2014] FCA 201; [2015] FCAFC 84 Native Title

CHZ19 v Minister for Home Affairs (No 2) [2019] FCA 1112

Migration – adverse material not disclosed – procedural fairness

McGlade v South West Aboriginal Land and Sea Aboriginal Corporation (No 2) [2019] FCAFC 238 Indigenous and Use Agreement Registration

Bunuba #2 WAD535/2018 and Warlangurru #2 WAD744/2015 Consent orders March 2019

Taylor on behalf of the Yamatji Nation Claim v State of Western Australia [2020] FCA 42 Consent Determination of Native Title

Grace Mulligan & Ors on behalf of the Warlangurru Claim Group and State of Western Australia & Ors

WAD509/2015 – Consent Native Title Determination 2019-20

FEDERAL CIRCUIT COURT

Burns v Director General of the Department of Education [2015] FCCA 1769 Human Rights – Alleged disability discrimination – educational services – primary school – child with multiple disabilities – direct discrimination

Shockthorap v Electricity Network Corporation Trading as Western Power & Anor [2018] FCCA 1706 Industrial Law– non-dismissal general protections claims – mediated claim – alleged settlement agreement – whether binding contract – unilateral mistake – effect of subsequent communication

FIM18 v Minister for Home Affairs, Federal Circuit Court, PEG257/2018 - Refugee

Richardson v MBP (WA) Pty Ltd & Ors [2020] FCCA 1206 Fair Work Act 2009 - Application to strike out pleadings - party removed from proceeding

ATX16 v Minister for Immigration, Citizenship, Migration Services and Multicultural Affairs [2020] FCCA 167 Immigration Assessment Authority – application in a case for reinstatement
<http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FCCA/2020/167.html>

SUPREME COURT

Koowarta -v- Bielke Petersen (1984) Carter J

Discovery of documents – Crown privilege – Cabinet documents – Communications between Premier and Prime Minister
Instructed R O'Reagan QC and P A Keane for Plaintiff

Smallwood -v- Queensland (1985) 1 QR 477 Supreme Court Qld, (Kelly J)

Claim that the Community Services (Aborigines) Act disenfranchised the applicant, an Aborigine living on an Aboriginal Reserve, in respect to Local Government elections in breach of the Racial Discrimination Act 1975, Appeared for Plaintiff

Culbong -v- SECWA (1989) Supreme Court WA, SC WA Lib No 7944 (Franklyn J.)

Swan Brewery Development - Interlocutory Injunction Application - Breach of Aboriginal Heritage Act
Appeared led by R le Miere; M J Murray QC and CA Wheeler for First Defendant; D M Meagher and H Du Guesclin for Second Defendant

Bodney -v- Trustees of Museum (1989) Supreme Court WA, SC WA Library No 7959 (Franklyn J.)

Swan Brewery Development - Interlocutory Injunction Application - breach of Natural Justice, legitimate expectations - defective delegation of power - injunctive and declaratory relief against the Crown - security for undertaking as to damages
Appeared led by R le Miere; M Murray QC and C A Wheeler for Defendants

Van Leeuwin -v- Dallhold Investments (1990) 71 LGPR 348, Supreme Court WA, (1989) LGPR SC WA Lib No 8542 (9.10.90 Walsh J.) SCWA Lib No 7811 (30.8.89, Ipp J.) SCWA Lib No 8609 (20.11.90 Ipp J.) Rottnest Island Lodge development - Interlocutory injunction applications - admissibility of historical evidence - proof of breach of Aboriginal Heritage Act Appeared as Counsel for Plaintiff, C Steytler for Defendant

Mabo -v- Queensland (1992) Qd R 73 (Moynihan J.)

Admissibility of hearsay evidence of claim to traditional title.
Appeared with A R Castan QC, B Hocking and B A Keon Cohen; J Byrne, MJ White, GJ Koppnenol and P Smith for Queensland, G Griffith QC, S-G, D J Rose, R W Gotterson for Commonwealth

Western Women Management Pty Ltd (1991) Supreme Court WA (White J.)

- (a) Appointment of Receiver Manager
Appeared with R Pringle QC for Company; W S Martin for the A.S.C.
- (b) Appointment of Liquidator
Appeared for Company; W S Martin for the A.S.C.

- . Greenburg & WWM -v- McGloob & WA Newspapers (1991) Supreme Court WA (Anderson J; Owen J.)
Defamation - Interlocutory injunction -strike out application
Appeared for Plaintiffs; W Groves for Defendants
- . Bropho -v- Minister for Aboriginal Affairs, Minister for Environment & Ors (1990) Supreme Court of WA - Wallwork J.
Bennett Brook development - interlocutory injunction - Aboriginal Heritage Act and Environmental Protection Act
Appeared for Plaintiff C A Wheeler for Ministers
- . Bropho -v- Sattler & Western Broadcasting (1991) (White AJ) SC WA b (13. 8.91) No 8994
SC WA Lib (31.10.91) No 9125
re Swan Brewery development - Defamation - Imputations - Identification - strike out applications - discovery of tape recordings
Appeared for Plaintiff; J Ley for Defendants
- . Mundaring Residents & Ratepayers -v- Mundaring Shire Council and Swan Christian Education Association
(1991) Supreme Court of WA (Wallwork J.)
School development - Interlocutory injunction application - laches - security for undertaking
Appeared for Plaintiff, D McLeod for First Defendant, J Gilmour for Second Defendant
- . Coyne -v- Citizen Finance (1991) SC WA Lib No 9037(Anderson J.)
Garnishee Application - Appointment of Receiver and priority of debenture holder
Appeared for Applicant, C D Ryle for Respondent
- . Watson ex parte Bropho (1992) SCWA (Wallwork J)
Order nisi - Writ of Certiorari - Aboriginal Heritage Act, Appeared for Plaintiff; E M Corboy for Watson; NP Hasluck QC and PD Evans for Bluegate Nominees
- . Bropho -v- Minister for Heritage and Others SCWA No 2043 of 1992 (Owen J)
Heritage Council of WA and Bluegate Nominees, Heritage of Western Australia Act, Aboriginal Heritage Act and Racial Discrimination Act - natural justice - fiduciary duty - Interlocutory injunction application, Appeared for Plaintiff, EM Corboy for First & Second Defendants, NP Hasluck QC and PD Evans for Bluegate Nominees
- . Ngalia Heritage Research Council -v- Minister for Aboriginal Affairs and Dominion Mining (1991)
Supreme Court of WA Lib No 9147 (Anderson J.)
Yakabindie Nickel Mine project and Aboriginal sites - Expedited list - Springing Orders - Extension of Time - Standing
Appeared for Plaintiff, C A Wheeler for First Defendant, T E O'Connor QC and P C S Van Hattem for Second Defendant
- . Wonyabong -v- Minister Aboriginal Affairs & Dominion Mining (1991-1992) Supreme Court of WA (Anderson J.) Yakabindie Nickel Mine Project and Aboriginal heritage sites
Abuse of process - Privity of Interest - Res Judicata - Summary Judgment - Ultra Vires - Natural Justice - Declaratory relief
Appeared for Plaintiff; C A Wheeler for First Defendant; T E O'Connor QC and P C S Van Hattem for Second Defendant
- . Shire of Chittering -v- Chief Executive Officer, Environmental Protection Authority (1991 - 1992)
Supreme Court of WA (Rowland J.)
Ultra vires - Environmental Protection Act - Injunction and Declaration applications
Appeared for Applicant, J Allenson for Respondent, P C S Van Hattem for Tiwest Pty Ltd
- . Ashton -v- Wall (No 2) (1993) EOC 92 - 489 (Anderson J)
Security for costs of Appeal, Appeared for Respondent (Appellant), D McEvoy for Applicants (Respondents)

Re Warden V French SM; ex parte Serpentine-Jarrahdale Ratepayers and Residents Association (1994) 11 WAR 315

Re G Cash, Minister for Mine; ex parte Serpentine-Jarrahdale Ratepayers and Residents Association, 1994 WA Supreme Court (Kennedy, Pidgeon, Ipp JJ), Writ of Certiorari - "public interest" and competency of objections on environmental grounds to grant of mining leases; Appeared for Applicants; C A Wheeler for Minister for Mines

Djaigween -v- State of Western Australia & Douglas (1994) (Owen J) - Broome Crocodile Farm development
Application for Interlocutory Injunction to protect Aboriginal initiation track, pending trial of claim to Native Title (Anderson J)
Application of Interim Injunction pending Appeal against decision not to grant Interlocutory injunction; Appeared for Plaintiffs; CR Humphry for State of WA and CP Stephenson for Douglas

Bluegate Nominees -v- Isaacs 1995 Full Court, Supreme Court of Western Australia (Rowland, Wallwork, Owen JJ)
Appeal against Liquor Licensing Judge's decision refusing Restaurant Licences for Old Swan Brewery building - Apprehension of bias - unreasonableness - interpretation of "public interest" and other provisions in Liquor Licensing Act and effect of decisions under Aboriginal Heritage Act (W.A.) and A.T.S.I. Heritage Protection Act (Cth) 1994-1995

Barunga & Others -v- Commonwealth of Australia, State of Western Australia, BHP, CRAE and others, 1993-1994 Supreme Court of WA (Owen J)
Claim to Native Title, Possessory Title, breach of fiduciary/trust duty; denial of natural justice; breach of Racial Discrimination Act; breach of Constitution s 51 (xxxi); Constitution s 109 conflict; invalidity of Land (Titles and Traditional Usage) Act 1993 (WA); invalidity of Coastal Waters (State Titles) Act 1980 (Cth); Appearing for Plaintiffs, D Rose QC and K Martin for Commonwealth, C Wheeler and C Humphry for WA and others

Ejai & Others -v- Commonwealth of Australia, State of Western Australia, Barunga & Others, 1994 Supreme Court of Western Australia (Owen J)
Claim to Native Title; Appearing for Third Defendants, R O'Grady for Plaintiffs, D Rose QC and K Martin for Commonwealth, CA Wheeler and C Humphry for WA and others

Bridgetown Greenbushes Friends of the Forest and anor -v- C.E.O., CALM Minister for Environment and State of Western Australia 1995, Supreme Court W.A. (Parker J).
Declaration and Injunction application - Strike Out application - Standing - Natural Justice - Compliance with Ministerial conditions under Environmental Protection Act - Whether Wildlife Protection Act binding on the Crown re fauna. Appeared with A Gardner and P Rattigan for Plaintiffs: R Cock and R Mitchell for the Defendants.

Aboriginal Child Care Agency (in liquidation); Whitby -v- Deputy Commissioner of Taxation (1996) Kennedy, Franklyn and Wallwork, JJ Sup Crt 24 May 1996, Lib No 960287
Winding up of Company and whether company had previously become an Aboriginal Corporation under Aboriginal Councils and Associations Act, Appeared with R W Bower for Whitby, M E Herron for Yorganup Child Care Agency (Aboriginal Corporation)

Serpentine-Jarrahdale Residents and Ratepayers Association (Inc) -v- Warden Heaney & Westralian Sands (1996-1997), Franklyn, Murray and Owen JJ
Writ of Certiorari - Standing of Residents and Ratepayers Association in Wardens Court to object to grant of Mining Lease, Appeared leading Mr M Bennett for Association, Mr N D Dillon for Westralian Sands, Mr R E Cock and Mr R M Mitchell as amicus curiae (Judgment Reserved)

Bridgetown Greenbushes Friends of the Forests & Ors -v- Executive Director of C.A.L.M. & Ors, unreported judgment 17 June 1997, Lib No 97031, Murray, Scott and Templeman JJ.
Appeal against Strike Out of Causes of Action and Cross Appeal - Strike Out Test - Standing - Shield of the Crown - Natural Justice - Legal Duties/Relevant considerations arising out of CALM Act.
Appeared with Mr A W Gardner & Dr H T Schoombee for the Appellants, Mr R E Cock with Mr R M Mitchell for Defendants, (Judgment for Defendant, Special Leave Application Pending)

Calder; ex parte Cable Sands (1998) Kennedy, Pigeon, White, Steytler and Wheeler JJ

Certorari - Wardens Court - jurisdiction to hear environmental objections
Appeared intervening for Denmark Environment Centre; W S Martin QC for Applicant.

State Housing Commission v Martin, Kennedy, White and Steytler JJ, 7 December 1998
Racial Discrimination - eviction
Appeared for Respondent; R E Cock and A J Sefton for Applicant

Marshall v Minister for Planning and Infrastructure [2002] WASCA 274, Murray, Anderson and Parker JJ 2002,
Whether Metropolitan Region Scheme and City of South Perth Town Plan inconsistent – whether discretionary decision
giving rise to right of appeal – Limitation Act s47A and extension of time.
Appeared for Applicants; R M Mitchell for Minister

Rowell Consulting Services Pty Ltd v Clark [2006] WASC 95 - Templeman J
Land – Agreement to develop strata lots – whether caveatable interest
Appeared for Applicant; DF Beere for Respondent

Rowell v Clark & Anor [2006] WASC 159 - Templeman J
Strata Titles – Appeal from SAT
Appeared for Applicant; DF Beere for First Respondent

Re Burton: Ex parte Rowell & Anor [2006] WASC 277 - Martin CJ
Application for Review – jurisdiction of Magistrate under *Residential Tenancies Act* – power of strata company to grant lease
of common property under *Strata Titles Act*
Appeared for Applicant; P Cahill for Respondent

McGeachie & Ors v Clark & Ors [2007] WASC 153 - Le Miere J
Issue estoppel - earlier District Court proceedings – stay – public policy – pending appeal
Appeared for Applicant; DF Beere for First Respondent

McGeachie & Ors v Clark & Ors 2007 Le Miere J
Interlocutory injunction application – AGM Strata Company
Appeared for Applicant; G Kelly for Respondents

Clark v Rowell Consulting Services 2046/2003
Breach of Contract – strata title development
Appearing for Defendants; DF Beere for Plaintiff

Mignacca v Angas Securities; Angas Securities v Gangemi, 2008 - Templeman J,
Application for injunction to restrain mortgagee sale – Application to remove caveat
Appeared for Mignacca; M Howard for Angas Securities

Robinson v Fortescue Metals Group 2008 - Templeman J
Application for injunction to restrain dredging of Port Hedland Harbour without consent under *Aboriginal Heritage Act*
Appeared for Applicants, M Zilko for FMG, M McKenna for Port Hedland Port Authority, J Hockley and C Tan for Roberts &
ors

Garlett v Jones [2008] WASC 292 – Hasluck J
Application for injunction - Right to arrange burial – De facto relationship – Aboriginal cultural traditions
Appeared with AC McIntosh for Applicants, Respondents in person

Legal Profession Complaints Committee v O'Halloran [2013] WASC 430
Unprofessional conduct – grossly excessive charging – strike off roll of practitioners
Appeared for practitioner; P Cahill SC and P Le Miere for LPCC

Collard v Western Australia [2013] WASCA 455
Stolen Generation – Guardianship – fiduciary duty
Appeared for Plaintiffs; R Mitchell SC for State

UGL Engineering Pty Ltd -v- Complete Power Solutions Pty Ltd [2014] WASC 211 Corporations Law

T v S [2015] WASCA 225 Enforcement Internationally of Family Court of WA Order

Robinson v Fielding [2015] WASC 108, Chaney J
Aboriginal Heritage Act – ‘sacred site’ – procedural fairness – Port Hedland
Appeared for Applicant; G Tannin SC for A-G.

Abraham v Collier, Minister for Aboriginal Affairs [2016] WAC 269
Aboriginal Heritage Act – procedural fairness – Certiorari – standing – Roe Highway extension
Appeared for Applicant; G Tannin SC for Minister

Lafferty v Waterton [2015] WASC 235; [No 2] [\[2017\] WASC 84](#); [No 3] [\[2017\] WASC 230](#); [No 4] [\[2017\] WASC 302](#) Equity

Stadler -v- Roberts [\[2018\] WASC 82](#) Estoppel by Acquiescence – Constructive trust - Strike Out

D -v- Edgar [\[2019\] WASC 183](#) Appeal against sentence - Mandatory minimum sentence - Repeat offender after October 2015 - Aggravated home burglary - Young offender

VB -v- Chief Executive Officer of the Department of Communities [\[2019\] WASC 315](#) – Child Placement Order

Nguyen Huynh (WA) Pty Ltd v Huynh & Nguyen SCWA COR 149 of 2018 Corporations Law

COURT OF APPEAL

Weinert & Ors v Clark & Anor [2006] WASCA 253 Pullin AJ
Application for stay of SAT Matter
Appeared for Applicant; DF Beere for 2nd Respondent

Ward v Metlife Insurance Ltd [2014] WASCA 119 – Income protection insurance

Baron v Walsh [2014] WASCA 124
Violence Restraining order
Appeared for Respondent; C H Thompson for Appellant

Stillman v Rusbourne [2015] NSWCA 410
<http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWCA/2015/410.htm>
Negligence – Advocate’s immunity – court ordered mediation
Appeared for Appellant with A E Maroya; M J Darke SC with F St John for Respondents

Christos -v- Curtin University of Technology [\[2017\] WASCA 110](#) Workers Compensation

COURT OF CRIMINAL APPEAL

R -v- Cox (1988) CCA (WA)
Appeal - fresh evidence - sexual penetration
Appeared for Appellant, M J Murray QC appeared for Respondent

Kelly -v- The Queen 1995, Full Court, Supreme Court of W.A. Malcolm CJ, Kennedy and Walsh JJ)
Appeal against sentence of two year’s imprisonment for Assaulting a Police Officer. Appeared for Appellant; J McKecknie QC for Crown

Healy -v- The Queen 1995, (Malcolm CJ, Kennedy and Steytler JJ)
Appeal against conviction on charge of attempting to pervert the course of justice. Appeared for Appellant; B Fiannaco for Crown, 1995

SUPREME COURT CRIMINAL JURISDICTION

R -v- Felton (1977) Supreme Court WA

Wilful Murder charge -

Briefed J Toohey QC at Mag.Court committal of 9 accused; Appeared for 9 accused upon successful bail application - special conditions - evidence of tribal punishment. Pre-trial issue of fitness to plead, Appeared for one of the accused; TA Walsh and AD Fenbury for co-accused; R Davies for the Crown

R -v- Angel (1989) Supreme Court WA - Port Hedland (Walsh J.)

Wilful murder trial - confessional evidence -alibi evidence

Appeared for accused, L Roberts-Smith QC and L Rayney for Crown

R -v- Bucktin (1989) Supreme Court WA - Kalgoorlie

Wilful murder trial and retrial - accident - lack of intent - provocation - self defence and negligence issues

Appeared for accused, M Muller for Crown

R -v- Garlett (1989) Supreme Court WA

Robbery retrial following High Court Appeal

Appeared for accused; M A Yeates for Crown

The Queen -v- Cao (1995) (White J).

Armed robbery in company trial.

Appeared for the accused; Mr R Bayly for Crown

Queen -v- Dallas (1996) Scott J

Jury trial - six counts of sexual penetration and six counts of indecent dealing with a child under 16 years. Appeared for accused, L L Davies for DPP

FAMILY COURT

Mcllwain -v- Mcllwain (1985) Family Court, Cairns, Qld

Custody to brain damaged father as against mother with undesirable lifestyle

Appeared for Applicant Father; G J Houston for Mother

Glover -v- Prior (1986) Family Court, Cairns, Qld

Custody to Grandparents as against father with undesirable lifestyle

Appeared for Applicant Grandparents with J Le P Darvall; G J Houston for Father

Taylor -v- Taylor, Horrigan & Dickie QC (1993) Family Court of Western Australia

Charge of Criminal Contempt of Court. Dismissed as not disclosing prima facie case of "flagrant challenge to the authority of the Court"

Appeared for Second Respondent, First Respondent unrepresented, D Monaghan for Third Respondent; D Chantler for Applicant

DISTRICT COURT

R -v- Greenburg (1992) Viol, DCJ

Plea to Corporations Law & Companies Code Offences, Stealing, Setting fire to bush

Appeared for accused with D Grace; S Hall for DPP

The Queen -v- Healy (1995) O'Dea, DCJ

Trial on charges of attempting to defraud Laurie Connell and attempting to pervert the course of justice. Appeared for accused; SP Pallaris for Crown

Clark v Weinert & Ors [2006] WADC 129 Wisbey DCJ

Strata Titles Act 1985 s 51 - unanimous resolution for re-subdivision

Appeared for 1st Defendant; P Cahill for Applicant

Clark v Weinert & Ors [2007] WADC Muller DCJ

Strata Titles Act 1985 s 51 - unanimous resolution for re-subdivision

Appeared for 1st Defendant; P Cahill for Applicant

R v Bropho (2007)

Trial by Judge alone – 6 counts of sexual penetration of child under 13 years – DNA evidence of paternity and continuing relationship – challenge to admissibility of Defense DNA expert evidence

Appeared for Accused; A Forrester, followed by L Petrusa and Junior for State.

Czernyszow -v- Abbott [2019] WADC 17 Agreement for purchase of horses - Whether a lay-by agreement - Breach of contract - Vendor's claim for loss of a bargain

Stobart v Al Hakeem [2017] WADC 127

STATE ADMINISTRATIVE TRIBUNAL

Grant and Owners of Rosneath Farm – Strata Plan 35452 [2006] WASAT 162

Strata Titles Act 1985 (WA) – validity of by-laws – s 77B certificate

Appeared for Respondent proprietors; DF Beere for Clark; P Cahill and M Atkinson for Applicant

Bird & Anor and Shire of Broome & Anor [2006] WASAT 338

Local Government – local law regulating trading in public place – tender for licences – licence fee

Appeared with RL Lord for Applicants; AR Beech SC and P Witkuhn for Shire; RE Birmingham QC for Red Sun Camels.

Clark and Benstead & Ors [2007] WASAT 12

Strata Titles Act 1985 (WA) – application for re-subdivision

Appeared for Respondent proprietors; DF Beere and G Kelly for Applicant

Clark and Owners of Rosneath Farm – Strata Plan 35452 [2007] WASAT 85

Strata Titles Act 1985 (WA) – Management Statement – levy liability – issue estoppel

Appeared for Respondent proprietors; DF Beere for Applicant

The Owners of Rosneath Farm – Strata Plan 35452 and Rowell & Anor [2007] WASAT 95

Strata Titles Act 1985 (WA) s 31 – Occupation of house on Common property

Appeared for Respondents; P Cahill for Applicant

Minchin & ors v Town of Claremont [2008] WASAT 338 (10 April 2008, Chaney DCJ)

Fees for licences to operate stalls at Claremont Show Grounds owned by Royal Agricultural Society – jurisdiction of SAT to review setting of fee in budget

Appeared for Applicants; Mcleods for Respondent

Legal Profession Complaints Committee v O'Halloran [2011] WASAT 95

Unprofessional conduct – grossly excessive charging
Appeared for practitioner; P Cahill SC and P Le Miere for LPCC

Bowman and City of Wanneroo - SAT CC 137/2019, Retaining Wall dispute – settled in mediation, April 2019

VARIOUS TRIBUNALS, LOCAL GOVERNMENT AND LIQUOR LICENSING COURTS

- . Nicholson River Land Claim 1983 Aboriginal Land Commissioner, N.T.(Kearney J.)
Waanyi/Garawa Land Claim NT/Qld border pursuant to the Aboriginal Land Rights (Northern Territory Act)
Appeared for North Queensland Land Council; G Hiley QC and R Blowes for Northern Land Council
- . Mackellar Corporation -v- Mulgrave Shire Council & Ors (1986) - Local Government Court, Qld
An appeal by a Developer against the Local Council's refusal to re-zone to allow a Tourist Development
Appeared for Third party Objectors, K Cullinane QC and others for Appellant and Council
- . Hill -v- Douglas Shire Council & Daintree Rainforest Resort Pty Ltd (1987-1988) Local Government Court, Qld
Appeal against Council decision to allow Resort development in World Heritage Area; Appeared for Appellant
- . Commissioner of Police -v- Long (1992) Australian Federal Police Complaints Tribunal (Foster J.)
Order re publication and protection of informer - charges of misconduct by offering favour and misleading answers to interrogators;
Appeared for accused; C Erskine for Commissioner
- . Hyne and Others -v- Bluegate Nominees Pty Ltd (1994) Liquor Licensing Court (Greaves J)
Application to Review Directors decision - "Public interest" - "public worship" and Aboriginal Heritage - Admissibility of hearsay evidence to prove Aboriginal religious customs; Appeared for Applicants, R Meadows for Respondents
- . Ashton -v- Wall & Beechers Pty Ltd (1992) EOC 92 - 447 Equal Opportunity Tribunal (N Hasluck QC Presiding)
Sexual harassment complaint, Order suppressing publication of proceedings considering of Crown privilege
(1992) EOC 92 - 423
Application re bias of Tribunal President (1992) EOC 92 - 488
Consideration of "special circumstances" in making costs order; Appeared for Complainant; E M Heenan QC, J Walters & D McEvoy for Respondents; W Groves for WA Newspapers; P Bates for Commissioner for Police
- . Howard -v- Northern Territory of Australia & Ors (1995) EOC 92-672 (Sir Ronald Wilson, HREOC)
Discrimination on ground of sex in selecting Co-ordinator for schools programme in Central and Western Desert area - Commonwealth programme - Tri-State agreement signed by Education Ministers for N.T., S.A., W.A. and Cth - Whether unlawful conduct of N.T. Minister permitted by other Ministers; Appeared for Complainant; T Pauling QC with R Webb for the N.T., Mr Djudjevic for W.A.; A P Moss for S.A.; R Le Miere QC for Cth
- . Jia -v- Minister for Immigration (1996) (Dep Pres T Barnett) Administrative Appeals Tribunal
Application to review decision to deport for bad character following convictions for sexual penetration and deprivation of liberty and unsuccessful appeal to CCA (Lib No 950391), Appeared for Minister; Applicant represented by lay advocate and Cannon Bowden and Co
- . Kapila and City of Stirling [\[2016\] WASAT 59](#)
Town planning - Application for extension of term of development approval
Appeared for Applicant; A Roberts for Respondent
- . Williams v Commissioner of Police, Western Australia Police, 2018 WAIRC 00721

Subasinghe and Minister for Home Affairs (Migration) [2019] AATA 751 Mandatory visa cancellation – s 501CA(4) – substantial criminal record

Hayden Richardson v MBP (WA) Pty Ltd as trustee for the Sun Laundry Services Unit Trust [2020] FWCFCB 2219

MAGISTRATES COURT

- . Bluegate Nominees Pty Ltd and Multiplex Constructions Pty Ltd -v- Bropho and Others (1993) Gething SM
Orders restraining entry within 75m of Swan Brewery;
Appeared for Defendants; G Miller QC and White for Complainant
- . Police -v- Neal (1981) Spicer SM
Conviction and sentence of 2 months for assault by spitting; Appeared for accused (On Appeal High Court in Neal -v- Queen (1982) 149 CLR 305 reversed CCA decision to increase sentence to 6 months)
- . Tucker -v- Police (1977) Clark SM
Assault and on premises without lawful excuse; Appeared for Complainant, I Gunning for Defendants

CHILDREN'S COURT

Police v Cantello (2020)_Joondalup CC Crawford SM - Assault Public Officer – Automatism defence

Department of Child Protection v Garlett & McGlade (2018) Perth CC Vose SM – Child Protection Order

CORONER'S COURT

- . Inquest into the death of Amelia Jane EVERETT (an infant) Coroner McCann SM (1995)
Appeared with A Horrigan for the parents of the deceased; N Johnson Counsel assisting the Coroner; C Thatcher for Princess Margaret Hospital; K Hutchins for DPP; Manera for Pharmacist; G Miller QC, D Bourke and Patterson for Dr Ponos
- . Inquest into the death of Susan Ann Taylor Coroner A Hope SM (21 November, 2001)
Allegations of sexual assault – sexual abuse – solvent abuse – access to campsite
Appeared with C Tan for Bropho; R Bannerman for Family of deceased; C Thatcher assisting the Coroner
- . Inquest into the death of Ms J Dhu Coroner R Fogliani 2016
Death in Port Hedland Police cell/Pilbara Health campus
Appeared for Aboriginal Deaths in Custody Watch Committee with S Castan.

NATIONAL NATIVE TITLE TRIBUNAL

- . Selpam -v- Fourmile (1995) National Native Title Tribunal (Hon. F Chaney)
Non-claimant application - Native Title Act - gazetted unmade road - meaning of "ownership" in Land Act (Qld); Appeared for Fourmile; P Smith for State of Queensland

Objections to the Expedited Procedure

- . Thomas (Waljen People) / Western Australia / Savanna Minerals NL (Deputy President P Seaman QC delivered 24 November 1995 - 2nd such hearing under NTA)
Exploration Licence - Goldfields, WA
Appeared for Objector; C Humphry for WA

. Cheinmora / Western Australia / Striker Resources (Hon C J Sumner) – (1995)

Exploration Licence - Kimberley, WA

Appeared for Objector; C Humphry for WA

. Bropho / Western Australia / Empire Oil (Deputy President P Seaman QC) – (1995)

Petroleum Exploration Licence - South-West WA (first objection to petroleum licence under NTA)

Appeared for Objector; C Humphry for WA

. Van Leeuwin / Western Australia / Balde Exploration Consultants (Hon CJ Sumner)

www.nntt.gov.au/determination.files/W096_96Determination12021997.pdf

Arbitral hearings

. Evans (Koara People) -v- Mt Edon Gold Mines (Deputy President P Seaman QC, M McDaniel and D Smith) (first such hearing under NTA)

Mining Lease - Goldfields

Appeared for Koara Peoples and Maduwongga Peoples, Ngooldjarra Waljen and Waljen Peoples, Nanga Ngoona Moora Joorga Association, Western Desert Puntukurnpurna Aboriginal Corporation and Ngaanyatjarra Council; C Humphry and G Donaldson for WA, C Stevenson for Mt Edon Gold Mines and Cottee, Coltie and Townsend; P Van Hattem for Western Mining Corporation; A Sheehan for ALS)

. Thomas (Waljen People) -v- Austwhim Resources and Aurora Gold, (Hon C J Sumner, G Neate and P O'Neil - second such hearing under NTA)

Mining Lease - Goldfields,

Appeared for native title party, C Humphry and G Donaldson for WA, P Van Hattem for Austwhim Resources and Chesnutt for Dalla Costa)

. Thomas (Waljen People) -v- Anaconda Nickel (Hon C J Sumner - Third such hearing under NTA)

Mining Lease and Nickel/Cobalt processing plant

Appeared for native title party, C Humphry for Anaconda, G Donaldson for WA

ROYAL COMMISSIONS AND INQUIRIES

Banking Royal Commission – representing ASIC Indigenous Outreach Unit witness Nathan Boyle, July 2018

Inquiry into the City of Perth – representing Councillor Harley 2019-20

SIGNIFICANT AD HOC RETAINERS

. **NORTHERN LAND COUNCIL** (Darwin NT) - to advise on action for compensation for damage to sacred site – August 1996.

. **BANKWEST** (WA) to advise on security of mortgage granted by Aboriginal Corporation with constitutional limitation on disposition of property – March 1996.

. **University of Western Australia** - to advise on Age Discrimination and employment contracts, July 1996

. **ABORIGINAL AND TORRES STRAIT ISLANDER SOCIAL JUSTICE COMMISSION** - drafting chapters for statutory Report on the Native Title Act and Native Title Tribunal - 1995.

EDITH COWAN UNIVERSITY, PERTH - to advise on Vice-Chancellor's decision to institute investigation into allegations of sexual harassment by lecturer of broadcasting students.

NOONGAR LAND COUNCIL – to advise on dismissal of CEO and restructuring to comply with Native Title Act – May-Oct 2000

CARPENTARIA LAND COUNCIL – to represent the Land Council in the Federal Court and advise on agreements to resolve overlaps involving 6 native title claims in the Greater Mt Isa Region – Oct. 2001-May 2002

KARIJINI DEVELOPMENT CORPORATION - advising native title claim group on compensation agreements with resource companies, including BHP Billiton Iron Ore , and Pilbara Iron and Rio Tinto and Fortescue Metals Group – 2005 to present.

PEW CHARITABEL TRUSTS – Roe Legal – Advice re Pastoral Lease Renewals – 2014
Advice re Goldfields Renewal Forest Regeneration Project 2017

ALP - Maurice Blackburn Lawyers – Advice Eligibility of Candidates – Section 44(iv), Commonwealth Constitution (with Varun N Ghosh) 2019

LEGISLATIVE COUNCIL –

Brief to Advise - *School Boarding Facilities Legislation Amendment and Repeal Bill 2015* and *Constitution Acts Amendment Act 1899 s46(1)*, October 2016

Request for opinion - Standing Committee on Legislation - *Human Reproductive Technology and Surrogacy Legislation Amendment Bill 2018* – June 2019

PERPETUAL – Advice Buurabalayji Thalanyji Aboriginal Corporation Trust Deed and distribution discretion, June 2019

WIRRAWANDI/ YABURARA & COASTAL MARDUDHUNERA ABORIGINAL CORPORATION - Advice re Kuruma Madudhunera, Citic Pacific, BCI and Mardie Minerals Indigenous Land Use Agreements and Prescribed Body Corporate Rules 2018-20

MULLEWA WADJARI PEOPLE – Advice and Mediation re Yamatji Nation Indigenous Land Use Agreement 2018-20

