

Sturt Glacken SC

*Owen Dixon Chambers West
205 William Street
Melbourne Vic 3000
Tel: 03 9225 8171
Fax: 03 9225 6787
Email: glacken@vicbar.com.au
Clerk: John Dever*

PROFILE

Academic Record: B.A. and LL.B. (Hons)

Admission: Victoria 2 May 1988; Northern Territory 30 October 2001

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: Judicial Review, Equity, Property, Native Title, Appellate Advocacy

General commercial and public law practice, including engagement in a series of test cases in judicial review, native title, environmental law and related areas: see attached list of select reported cases (note, unreported decisions other than special leave applications are not included)

Committees: Human Rights Committee

Previous experience

March 1993 to January 1994
Secretary, Law Reform Committee, 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

REPORTED DECISIONS
(And Related Special Leave Applications)

High Court Appeals

Wurridjal v Commonwealth (2009) 237 CLR 309; 83 ALJR 399; 252 ALR 232 – acquisition of property on just terms in the Territories (Northern Territory Intervention)

Northern Territory v Arnhem Land Aboriginal Land Trust (2008) 236 CLR 24; 82 ALJR 1099; 248 ALR 195 – rights to exclude persons from fishing in tidal waters (Blue Mud Bay)

Griffiths v Minister for Lands (2008) 235 CLR 232; 82 ALJR 899; 246 ALR 215 – compulsory acquisition of native title to land (Timber Creek)

News Ltd v South Sydney District Rugby League Football Club Ltd (2003) 215 CLR 563; 77 ALJR 1515; 200 ALR 157 - exclusionary provisions under *Trade Practices Act 1974* (Cth) (Rabbitohs)

Western Australia v Ward (2002) 213 CLR 1; 76 ALJR 1098; 191 ALR 1 - tests for extinguishment of native title under *Native Title Act 1993* (Cth) (Miriuwung Gajerrong)

Risk v Northern Territory (2002) 210 CLR 392; 76 ALJR 845; 188 ALR 376 - claims under *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) to bays and gulfs (Beagle Gulf)

Commonwealth v Yarmirr (2001) 208 CLR 1; 75 ALJR 1582; 184 ALR 113 - recognition of native title to sea and seabed (Croker Island)

Special Leave Applications

Reading Entertainment v Burstone Victoria [2008] HCAT 208 – proof of contract damages (joint venture)

Northern Territory v Griffiths [2008] HCAT 123 – disregarding historical extinguishment under *Native Title Act 1993* (Cth) (Timber Creek exclusive rights)

Risk v Northern Territory of Australia [2007] HCAT 539 – continuity requirement in observance of traditional laws and customs under *Native Title Act 1993* (Cth) (Darwin Larrakia claim)

Northern Territory v Arnhem Land Aboriginal Land Trust [2007] HCAT 324 – rights to exclude persons from fishing in tidal waters (Blue Mud Bay)

Northern Territory v Alyawarr [2006] HCAT 251 – disregarding historical extinguishment under *Native Title Act 1993* (Cth) (Hatches Creek)

Lansen v Northern Territory [2005] HCAT 251 – effects of Torrens title on claims under *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) (Borroloola Gulf Country)

Griffiths v Minister for Lands [2005] HCAT 223 & [2007] HCAT 685 – effects of compulsory acquisition of land under *Native Title Act 1993* (Cth) (Timber Creek)

Dexcam v Deputy Commissioner of Taxation [2004] HCAT 19 - taxation set-offs in insolvency

Northern Territory v Olney (D4-6 of 2002) – recommendation for grant of foreshore under *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth)

Risk v Northern Territory (D13 of 2000) - claims under *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) to bays and gulfs

Person Charged v Director of Public Prosecutions (D6 of 2000) – defence of claim as of right under traditional custom

Federal Court Full Court Appeals

Lansen v Minister for Environment (2008) 174 FCR 14; 163 LGERA 145; 106 ALD 232 - approval of McArthur River open cut mine under *Environment Protection and Biodiversity Act 1999* (Cth)

Griffiths v Northern Territory (2007) 165 FCR 391; 243 ALR 72 – proof of exclusive native title rights under *Native Title Act 1993* (Cth) (Timber Creek)

Gamogab v Akiba (2007) 159 FCR 578; 241 ALR 123 – practice and procedure for joinder of PNG parties to Torres Strait native title claims (Torres Strait sea claim)

Jango v Northern Territory (2007) 159 FCR 531; 240 ALR 432 - pleading and proof of native title claims and effect of Torrens title registration under *Racial Discrimination Act 1975* (Cth) and *Native Title Act 1993* (Cth) (Yulara-Uluru compensation claim)

Risk v Northern Territory of Australia (2007) 240 ALR 75 – continuity requirement in observance of traditional laws and customs under *Native Title Act 1993* (Cth) (Darwin Larrakia claim)

Gumana v Northern Territory (2007) 158 FCR 349 - effect of fee simple grant of Aboriginal land to low water mark on fishing rights and requirement of connection under *Native Title Act 1993* (Cth)

Lansen v Olney (2004) 138 FCR 563; 211 ALR 365 - effect of Torrens title on claims made under *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth)

Raymond v Northern Territory (2004) 139 FCR 493; 210 ALR 496 – jurisdictional conditions for claims under *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth)

Commissioner of Taxation v Dexcam Australia Pty Ltd (in liq) (2003) 129 FCR 582 - taxation set-offs in insolvency

Northern Territory v Olney (2002) 123 FCR 580; 192 ALR 116 - review of Commissioner's recommendations for grant of foreshore and rivers under *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth)

Director of Fisheries v Arnhem Land Aboriginal Land Trust (2001) 109 FCR 488; 185 ALR 649 - effects of fee simple grant of Aboriginal land to low water mark

Opal Maritime Agencies Pty Ltd v The Proceeds of Sale of the Vessel MV "Skulptor Konenkov" (2000) 98 FCR 519; 172 ALR 481 - *in rem* claims under *Admiralty Act 1988* (Cth)

Other Intermediate Appeals

McArthur River Mining v Lansen (2007) 21 NTLR 6, NT CA – effects of validating legislation on earlier court orders

Minister for Lands, Planning and Environment v Griffiths (2004) 14 NTLR 188; 133 LGERA 203, NT CA – use of powers of compulsory acquisition of land for purpose of alienation

Northern Land Council v Commissioner of Taxes (2002) 12 NTLR 86; 141 NTR 1; 51 ATR 365; 171 FLR 255; [2002] ATC 5117, NT CA - pay-roll tax exemptions for public benevolent institutions

Clancy v West [1996] 2 VR 647, Vic CA - jurisdiction of coroner

First Instance Decisions

Margarula v Northern Territory (2009) 175 FCR 333 Fed Ct – disqualification of Judge for apprehended bias

Lansen v Minister for Environment (No.3) (2008) 162 LGERA 258 Fed Ct – costs in public interest litigation

Lansen v Minister for Environment (2008) 102 ALD 558 Fed Ct – approval of McArthur River open cut mine under *Environment Protection and Biodiversity Act 1999* (Cth)

Hazelbane v Doepel (2008) 167 FCR 325, Fed Ct – judicial review of registration of overlapping native title claims

King v Northern Territory (2007) 162 FCR 89, Fed Ct – tests for extinguishment of native title in relation to pastoral enterprises

Lansen v Minister for Mines and Energy (2007) 20 NTLR 6, NT Sup Ct – approval of McArthur River open cut mine under *Mining Management Act 2001* (NT)

Gumana v Northern Territory (2005) 141 FCR 457; 218 ALR 292, Fed Ct – claims to rights to exclude from waters of Blue Mud Bay made under *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) and *Native Title Act 1993* (Cth)

Griffiths v Lands and Mining Tribunal (2003) 179 FLR 241, NT Sup Ct – whether powers of compulsory acquisition of land cover native title to vacant Crown land

Dexcam Australia Pty Ltd (In Liq) v Commissioner of Taxation (2002) 20 ACLC 1,372; 50 ATR 244; [2002] ATC 4559, Fed Ct – tax set-offs under deed of company arrangement

Radmanovich v Nedeljkovic (2001) 52 NSWLR 641, NSW Sup Ct – trusts for religious charitable purposes

Northern Land Council v Commissioner of Taxes (2001) 48 ATR 700, NT Sup Ct - pay-roll tax exemptions for public benevolent institutions

Arnhem Land Aboriginal Land Trust and Another v Director of Fisheries (2000) 170 ALR 1, Fed Ct – rights to fish and navigate tidal waters overlying Aboriginal land

Dexcam Australia Pty Ltd v Commissioner of Taxation (1999) 43 ATR 187, Fed Ct – procedure on stating case to Full Court

Patrick Stevedores No 2 Pty Ltd v Proceeds of Sale of the Vessel MV Skulptor Konenkov (1998) 161 ALR 651, Fed Ct – running account

O D Transport (Australia) Pty Ltd (In Liquidation) v O D Transport Pty Ltd (1997) 80 FCR 290, Fed Ct – leave to cross-claim against company in liquidation

Arnhem Land Aboriginal Land Trust v Minister for Mines and Energy (1997) 78 FCR 556; 158 ALR 427, Fed Ct – cross-vesting jurisdiction of Federal Court

Patrick Stevedores No 2 Pty Ltd v Proceeds of Sale of the Vessel MV Skulptor Konenkov (1997) 150 ALR 651, Fed Ct - shipping agent claims in admiralty

Re Marvin Manufacturers (Aust) Pty Ltd; New Zealand Steel (Australia) Pty Ltd v Burton (1994) 13 ACSR 610; 12 ACLC 586, Vic Sup Ct - examination of directors as an abuse of process