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Qualifications

B.A. (Econ), LL.B. (Macquarie University, Sydney, Australia), 1981.
M.B.A. (Pace University, New York, U.S.A.), 1995.

Admitted: Solicitor of the Supreme Court of New South Wales (1981-1993).

Admitted: Barrister and Solicitor of the High Court of Australia (1982 and continuing).

Admitted: Barrister of the Supreme Court of New South Wales (1993 and continuing).

Former member of the Law Society of New South Wales (1981 to 1993).

Current member of the Bar Association of New South Wales (since 1993).

Native Title Practice and Experience

I have acted and advised extensively in relation to native title and proceeding in which native title rights and interests are in issue. I have a close working knowledge of:

- The nature of native title at common law and under the *Native Title Act 1993* (Cth), the legal and anthropological underpinnings of native title.
- The means of proof and sufficiency of evidence of native title. The link between evidence and the content of native title, how and by whom native title is held, and of the means by which native title might be lost.
- Matters that ought to be addressed in native title proceedings by evidence of applicants and respondents, through the evidence of lay witnesses, experts (anthropologists, historians, archaeologists and linguists) or recorded events and the role and limitations of various forms of evidence.
- The relationship of native title with other interests in land.
- The special arrangements that are often called for in receiving and assessing evidence from indigenous witnesses and arising in the conduct of native title proceedings, (with an understanding of the difficulties these arrangements might impose upon parties and those assisting them).
- Native title jurisprudence and the sensitivity of outcomes to questions of fact which may be finely balanced or, subject to interpretation reasonable capable of supporting divergent inferences and conclusions.
- Aboriginal affiliation with land and interests in land and heritage issues arising independently of native title.

I have advised on, prepared for and appeared in final and interlocutory hearings as well as formal and informal mediation processes. I have been involved in matters that have concluded with the reaching and implementation of agreements as well as in matters where the parties have failed to agree and issues have been left unresolved or left for the Court to determine. In particular I have assisted in dealing with issues concerning:

- Compliance with formal requirements of the *Native Title Act*. Particularly in relation to requirements as to the content of applications, and the standing of parties to applications.
- The adequacy of evidence relied upon by native title claimants.
- The effect on native title of grants of rights to land and water and of works undertaken by government or with government approval: circumstances that might extinguish native title, compromise its exclusivity or impair the enjoyment of it.
- The effect of native title on the validity of grants of rights to land and water and of works undertaken by government or other parties which are or may be *future acts*.
- The resolution of proceedings by consent determinations or ILUAs.

I have appeared in proceedings of significance (final and interlocutory) concerning native title in which I have appeared include appearing on hearing of applications concerning native title and in interlocutory hearings including the following matters:

- Contested claimant applications and appeals.
- Mediations.
- Consent determinations and ILUAs.
- Preservation and early evidence hearings;
 - *Wilson (Bandjalang people) v New South Wales* (Unresolved – NG 6034/98),
 - *Dimer (Esperance Nyungar people) v Western Australia* (Unresolved – WAG 6097/1998),
 - *Sir Samuel and Tjupan claimants v Western Australia* (Unresolved – WAG 6001/98),
 - *Kokatha People v South Australia* [2007] FCA 1057,
 - *Ngadju and Ngadjungarra claimants v Western Australia* (Unresolved WAG 6020/98),
 - *Nuoorilma Clan of Gamilaroi People v Minister* (dismissed - [2009] FCA 1043),
 - *Torres Strait regional Sea Claim Group v Queensland* (Judgment 2-7-2010 QUD 6040/98),
 - *Kaanju, Umpita, Lamalama and Ayaputha people v Queensland* (Unresolved QG 6117/98),
- Early Neutral Evaluation by retired Federal Court Judge;
- Interlocutory proceedings including proceedings concerning,
 - Admissibility of respondents evidence of affinity for land,
 - Standing, and interests of respondents in proceedings,
 - Motion for ruling that determination recognizing native title of respondent not possible,
 - Motion by non-applicant members of applicant group to restrain entry into ILUA, costs,
 - Application for interlocutory injunction in respect of future act determination,
 - Application by applicant dismissed under self-executing order for reinstatement of claim,
 - Representation of applicant party by non-lawyer,
 - Evidence – joint testimony of indigenous witnesses,
 - Evidence – photographs,
 - Amendment of claimant applications,
 - Evidence – experts reports and objections,
 - Evidence – mission records, an
 - Parties, their status and participation in proceedings.
- Non-claimant applications (including applications asserting the existence of native title and applications asserting its absence);
- Future Act Determination Applications (National Native Title Tribunal)
- Proceedings in Courts other than the Federal Court in which native title is in issue:
 - Prosecutions of Aboriginal defendants under *Fisheries Management Act 1993* (NSW) for taking and possessing abalone where defendants assert native title and defence under NTA s.211;
 - Appeals to the District Court of New South Wales from prosecutions described above;
 - Applications to the *Coal Compensation Review Tribunal* for compensation under *Coal Acquisition Act 1983* (NSW) by parties asserting loss of native title rights and interests upon state acquisition of coal.
- ADJR Act proceedings to review decision that act attracted expedited procedure.

I have appeared and advised in other proceedings concerning aboriginal interests in land and heritage issues

- Appeals to the Land and Environment Court of New South Wales, the New South Wales Court of Appeal and the High Court in proceedings concerning claims to land by Aboriginal Land Councils under the *Aboriginal Land Rights Act 1983* (NSW).
- Provision of confidential reports to successive Commonwealth Ministers (2003, 2005, 2008, 2009) administering the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth) in relation to applications for protection of “significant Aboriginal areas” under section 10 of the Act.

Commercial Litigation

Broad experience in general commercial litigation; managing, conducting, supervising and preparing actions; appearing in State and Federal Courts, and before Arbitrators and mediators in commercial actions involving:

- Interpretation of agreements, securities, guarantees, leases and other instruments.
- Valuation cases.
- Land law – disputes as to interests in land and as to priority between encumbrancers, recovery of possession of property.
- Building and engineering disputes, contractual claims and quantum meruit actions representing principals, builders, and subcontractors, Insurance litigation, product liability, property, common law, professional negligence, sale of goods disputes.
- Prosecution and defence of recovery actions for financial institutions, asserting and resisting defences under the *Trade Practices Act (Cth)*, *Fair Trading Act (NSW)*, and *Contracts Review Act (NSW)* and equitable defences.
- *Trade Practices Act* advice and litigation, including actions relating to allegedly misleading and deceptive business names and marketing practices.
- Claims for injunctive relief to restrain former officers and employees from exploiting confidential information.
- Defending prosecutions under the *Clean Air Act*, *Clean Waters Act* and *Environmental Protection Act*.
- Actions for appointment and removal of receivers and trustees, disputes as to trustee's powers and obligations, trustee's entitlement to remuneration, powers and obligations.

Research and Communication Skills

- Wide experience in legal research and factual investigation. An ability to research and assimilate facts and information from multiple sources
- Competence with word processing, databases and spreadsheets (Word, Excel, WordPerfect, Quattro-Pro) and on-line information services.
- Strong written and verbal communication skills.
- A strong investigative instinct and an inclination to analyze and test information.

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