

## CURRICULUM VITAE

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**Date of Birth** 2 April 1962

### **EDUCATION & QUALIFICATIONS**

- Hold a current practising certificate
- Previously accredited as a mediator under the National Mediator Accreditation System, having completed the Lawyers Mediation Certificate course  
15 August 2019–14 August 2021
- Senior Fellow, Melbourne Law School, 2015, 2017–2022
- PhD: Melbourne Law School, University of Melbourne: 2014

My thesis is titled ‘Getting it Right for the Future: Aboriginal Law, Australian Law and Native Title Corporations’. My supervisors were Professor Lee Godden, Professor Marcia Langton and Associate Professor Maureen Tehan.

The thesis argues that the corporations that are required by statute to manage native title will be more effective if they can operate successfully under both Australian and Aboriginal laws. These corporations should be considered as new political entities arising in Bhabha’s third space between the colonised and the coloniser. This thesis considers particular engagements between Aboriginal and Australian law in such a third space, and contends that its boundaries should be semi-permeable to allow native title corporations shaped and influenced by both laws to operate across them in a manner controlled by the native title group. Based on a multisite case study of two native title corporations, the thesis concludes that native title corporations are more likely to achieve the aspirations of native title groups if they are conceived as operating in this third space. There, better recognition of Aboriginal law governing the native title group’s organisation and decision-making in corporate structures and operations, and its relationships with the group, governments and other parties would give these groups greater control of their engagement with the Australian society and economy through their corporations. In this way, it is likely that they will become new political entities, neither wholly creatures of Aboriginal law nor of Australian law, but something in-between, which can engage effectively with both. They

would thus become significant vehicles for Aboriginal people to achieve long-term economic, social and cultural aspirations: ‘getting it right for the future’.

- Signed the roll of counsel of the Victorian Bar,  
having completed the Bar Readers Course: 27 May 1999
- Masters in Environmental Science (Monash University): 1992–94

This degree included:

- A minor thesis titled ‘Law and the Aboriginal Relationship with Land: Accommodation or Expression of Difference’, which addresses the *Mabo* decision and the process of enacting the *Native Title Act 1993* (Cth); and
  - A multidisciplinary project working with a Victorian Aboriginal community on the commercial exploitation of eels.
- Admitted to practice in Victoria: 29 February 1988
  - Bachelor of Science (University of Melbourne),  
majoring in Biochemistry, with a minor focus on Chemistry: 1980–86
  - Bachelor of Laws (University of Melbourne): 1981–86
  - Higher School Certificate: 1979

## CAREER SUMMARY

I am currently practising as a member of the Victorian Bar, predominantly in native title matters on behalf of Aboriginal groups across Australia.

- Member of the Victorian Bar: 27 May 1999 – present

I signed the Bar Roll on 27 May 1999. Since then, I have been briefed in native title matters in Victoria, Northern Territory, Western Australia, Queensland and New South Wales. From April to December 2000, I took leave from the Bar and worked as a locum Senior Legal Officer for the Kimberley Land Council in Derby and Broome.

I have appeared in Courts and Tribunals including:

- the National Native Title Tribunal in exploration licence expedited procedure objection hearings (including *Moses Silver/Ashton Exploration Pty Ltd/Northern Territory* [2002] NNTTA 18);
- the Federal Court in:
  - native title hearings (including *Rubibi Community v Western Australia (No 7)* [2006] FCA 459);
  - consent determinations, which in each case included substantial preparatory advice, drafting and negotiations, including:

- *Mullett on behalf of the Gunai/Kurnai People v Victoria* [2010] FCA 1144 (22 October 2010);
- *Lovett on behalf of the Gunditjmara People v Victoria (No 5)* [2011] FCA 932 (27 July 2011);
- *Barkandji Traditional Owners #8 v New South Wales* [2015] FCA 604 (16 June 2015);
- *Western Bundjalung People v New South Wales* [2017] FCA 992 (29 August 2017); and
- *Nicholls on behalf of the Bundjalung People of Byron Bay v New South Wales* [2019] FCA 527 (30 April 2019)
- *Bandjalang People No 3 v New South Wales* [2021] FCA 386 (30 April 2021);
- native title procedural matters, including:
  - *Barunga v Western Australia (No 2)* [2011] FCA 755 (joinder); and
  - *Widjabul Wia-bal v New South Wales* [2020] FCAFC 34 (mediating in good faith); and
- a separate question on native title extinguishment matters:
  - *Roberts on behalf of the Widjabul Wia-bal v New South Wales* [2019] FCA 1158; and
  - on appeal: *Roberts on behalf of the Widjabul Wia-bal v New South Wales* [2020] FCAFC 103; and
- the Full Court of the Federal Court defending an appeal against a native title determination (*Western Australia v Sebastian* [2008] FCAFC 65).

My work has also involved taking instructions from Aboriginal people and drafting witness statements; analysing evidence of land tenure and its effect on native title; appearing in mediations; drafting submissions, agreements, corporate rules and trust deeds; advising on corporate structures; and negotiating native title settlements and the terms on which acts might take place on land and waters subject to native title rights and interests.

In addition, in my early days at the bar, I was briefed in summary criminal matters in the Victorian Magistrates Court and in property matters in the Supreme Court of Victoria.

I have also participated in law reform in the native title area over more than 20 years, including by advising the National Indigenous Working Group (NIWG) in relation to the Howard Government's Ten Point Plan in response to the *Wik* decision, and writing many submissions to the Law Reform Commission and to

government in relation to proposals for law reform. I have also attended Federal Court User Group meetings in Victoria and NSW.

While practising as a barrister, I have completed my PhD and undertaken sessional teaching work (see below).

- Federal Court Native Title External Mediator Panel List: December 2019 – present.
- Victorian Representative Body: November 1995 – February 1999

I was employed by the Victorian Aboriginal Legal Service and Mirimbiak Nations (consecutively, the Victorian native title representative body), which provided legal services to most of the native title applicants in Victoria. From September 1996, I was Principal Legal Officer of Mirimbiak. My tasks included supervising four other lawyers; providing legal advice to management and participating in developing strategy and policy for the organisation; and liaising with State and Commonwealth governments and industry, including the mining and farming industries.

The legal work I undertook included preparing submissions concerning proposed changes to cultural heritage legislation; environmental assessments for particular development proposals; and working on the 1998 amendments to the *Native Title Act 1993* (Cth) ('NTA'). Between April 1996 and July 1998, I was one of the legal team assisting the NIWG, formed in response to the Howard Government's Ten Point Plan and its proposed amendments to the *NTA*. I helped prepare the draft NIWG Bill, which was put to the ALP, Democrats and Greens, and was involved in discussions regarding their attitudes to it. I also assisted them, as directed by the NIWG and Mirimbiak, to draft amendments to the Government's Bill, explanatory memoranda, speaking notes, and other legal advice, in order to assist them to participate in the longest debate on a Bill in the Senate's history. As a result, I have substantial familiarity with Parliamentary processes.

- Community Legal Services + Study + Travel: January 1992 – January 1995

I held a number of locum positions as solicitor with Victorian Community Legal Centres and the Legal Aid Commission of Victoria, interspersed with full time study for a Masters Degree in Environmental Science at Monash University, and overseas travel.

- Price Brent: February 1987 – December 1991

Price Brent was a medium sized firm of solicitors, with a general commercial practice, including planning and local government law, insurance litigation, finance and conveyancing, corporate and commercial law, and general and commercial litigation. I undertook articles in 1987, and was admitted to practice in February 1988. I was then placed in the firm's General and Commercial Litigation Section. My practice included debt recovery in the Magistrates' Court; building disputes; enforcing mortgages and other security documents; commercial

tenancy disputes; general commercial disputes; and some crime and personal injury matters.

### **TEACHING (selection)**

#### Melbourne University

1. Teaching on 'Prescribed Bodies Corporates', 'Future Acts', 'Extinguishment', 'Native Title Representative Bodies' in 'Native Title Law and Practice', Melbourne Law Masters, 2008; and 'Indigenous Peoples, Land and Resources Law', Melbourne Law Masters, 2010 and 2012
2. Various guest lectures on native title issues include Native Title Corporations, the native title extinguishment, the ethics of native title legal practice and native title compensation at Melbourne Law School and in the Australian Indigenous Studies program at the University of Melbourne, 2013–2019

The most recent of these presentations have been:

- a. 'Timber Creek Decision: Compensation for the Extinguishment of Native Title' at a Brown Bag symposium at Melbourne Law School, on 7 May 2019; and
  - b. 'Native Title: Compensation and Access to the Beach' in AIND30007 Critical Debates in Australian Indigenous Studies, on 25 September 2019
3. Proposing, developing and teaching a subject in the Melbourne Law Masters program 2015: 'Managing Public and Native Title Lands'
  4. Developing and teaching 'Native Title Law and Practice', Legal Research Topic in the JD program, Melbourne Law School, 1<sup>st</sup> semester 2017
  5. Teaching 'Native Title Law and Practice', Melbourne Law Masters, 23–29 May 2018
  6. Teaching 'Native Title Law and Practice', Legal Research Topic in the JD program, Melbourne Law School, 2019–2021 (I have agreed to teach this topic again in 2<sup>nd</sup> semester 2022)
  7. Teaching classes in 'Treaty', Melbourne Law School JD program, 2020, 2021

#### Aurora Project (which provided training for native title organisations until 2016)

1. 'Broader Land Settlements' and 'Prescribed Bodies Corporate' (lectures, Aurora Project Legal Masterclass, Sydney, 26 November 2009)
2. 'Future Acts' and 'Supporting Prescribed Bodies Corporate' (lectures, Aurora Project Community Liaison Practices program, Perth, 9 and 10 November 2010)
3. 'Agreement Making' (Lectures, Aurora Project Agreement Making Masterclass, Perth, 23 February 2011)

4. 'Understanding and Managing Native Title for PBCs: A Pilot Program for PBCs and NTRB Staff' (teaching sessions, Aurora Project, Cairns, 6–10 August 2012; Broome 3–6 September 2012) (This was a four day program I developed as part of a team)
5. 'Ethics in Native Title' and 'PBC Governance' (lectures, Aurora Project Legal Masterclass, Sydney, 17 October 2012)
6. 'PBC Support for NTRBs' (teaching sessions, Aurora Project, Perth 12–14 March 2013) (This was a three day program I developed as part of a team)
7. 'PBC Rulebooks for Sustainable Governance Outcomes' (lecture, Aurora Project Native Title Module, Adelaide, 16 May 2013)
8. 'Train-the-trainer for NTRBs Supporting PBCs' (teaching sessions, Aurora Project, Cairns, 5–8 August 2013) (This was a four day program I developed as part of a team)
9. 'How NTRBs Approach their Statutory Obligations to PBCs' and 'Taxation Update' (lectures, Aurora Project Legal Masterclass, Melbourne, 15 November 2013)
10. 'Free Prior & Informed Consent: Principles, Legal Status & Cultural Context' (lecture, Aurora Project Program: Achieving Informed Consent, Brisbane, 1 April 2014)
11. 'Structuring Entities to Achieve Group Aspirations' (teaching sessions, Aurora Project, Coffs Harbour, 5 & 6 June 2014) (This was a two day program I developed as part of a team)
12. 'Governance and Future Act Basics for [a PBC]' (teaching sessions, Aurora Project, Perth, 28 & 29 April 2015) (This was a two day program I developed as part of a team)
13. 'PBC Support' (teaching sessions, Aurora Project, Brisbane, 17–19 May 2016) (This was a three day program I developed as part of a team)

#### Other Professional Teaching

1. 'Aboriginal and Torres Strait Islander Peoples in Australia and Native Title' (guest lecture, Syracuse University, New York, USA, 9 March 2010)
2. 'Strengthening PBC Governance' (session taught on behalf of FaHCSIA, Thursday Island, 21 June 2012)
3. 'Legal Framework for Native Title Decision Making' (lecture to Federal Court Registrars' CPD, Melbourne, 18 June 2014)
4. 'Compliance with PBC Regulations' (seminar, QSNTS RNTBC National Building Summit, Stradbroke Island, 10 & 11 December 2014)
5. 'Native Title Decision Making', 'PBC Rulebooks & Native Title Decision Making' and 'Structuring Entities + Managing Tax and Risk' (seminars, NSW

- Prescribed Body Corporate and Traditional Owner Corporation Workshop, Tweed Heads, 22–24 May 2016)
6. ‘Native Title Decision Making and Structuring your Corporation’ (seminar, NSW Prescribed Body Corporate and Traditional Owner Corporation Workshop, Coffs Harbour, 30 November 2017)
  7. ‘Timber Creek Decision: Compensation for the Extinguishment of Native Title’ (training seminar for NTSCORP Ltd (native title service provider for NSW, Sydney, 24 July 2019)

**PUBLICATIONS (selection) (\*refereed)**

1. Several submissions to Parliamentary and other inquiries in the context of proposed amendments to the *Native Title Act 1993* (Cth) in 1996 – 1998.
2. Frith, Angus, ‘Report on Future Acts in the Northern Territory’ (Paper prepared at the request of the Human Rights and Equal Opportunity Commission, December 2001)
3. Frith, Angus, Submission to Parliamentary Joint Committee on Native Title and Aboriginal & Torres Strait Islander Land Fund, Parliament of Australia, *Review of the Effectiveness of the National Native Title Tribunal*, 17 October 2002
4. Frith, Angus, ‘Legal Issues Arising from Aboriginal Involvement in the Horticulture, Nursery, Seed Collection and Bush Food Industries in Victoria’ (Paper prepared for the Ecological Sustainable Agriculture Initiative (Koori Caring for Country Enterprises Workshops (Horticulture)), September 2003)
5. Aboriginal and Torres Strait Islander Social Justice Commissioner, ‘Native Title Report 2005’. I prepared part of the report, being a comparative study of the Indigenous land rights legislation in Australia, having particular regard to the ability to grant leases and mortgages of Indigenous held land.
6. Wampan Wages, Victorian Stolen Wages Working Group, Submission to Senate Standing Committee on Legal and Constitutional Affairs, Parliament of Australia, *Stolen Wages Inquiry*, September 2006
7. Australians for Native Title and Reconciliation Victoria Inc, Submission to Victorian Environmental Assessment Council, *River Red Gum Forests Investigation*, 8 October 2007
8. Frith, Angus (with Ali Foat), ‘The 2007 Amendments to the *Native Title Act 1993* (Cth): Technical Amendments or Disturbing the Balance of Rights?’ (Research Monograph 3/2008, AIATSIS, 2008)
9. Godden, Lee et al, Submission to Department of Environment, Water, Heritage and the Arts Discussion Paper, Aboriginal and Torres Strait Islander Heritage Protection Act 1984 (Cth), August 2009

10. \*Frith, Angus, 'Postcolonial Action or Continued Colonisation? The Role of a *Gubbah* Lawyer in the Formation of Hybrid Indigenous Corporations' (2009) 3(2) *Sortuz: Oñati Journal of Emergent Socio-legal Studies* 35
11. Langton, Marcia, and Angus Frith, 'Legal Personality and Native Title Corporations: The Problem of Perpetual Succession' in Lisa Strelein (ed), *Dialogue about Land Justice: Papers from the National Native Title Conference* (Aboriginal Studies Press, 2010) 170
12. Australian Government, The Treasury, *Taxation of Native Title and Traditional Owner Benefits and Governance Working Group: Report to Government* (1 July 2013)  
<<http://www.treasury.gov.au/PublicationsAndMedia/Publications/2013/Taxation-of-Native-Title>>
13. Frith, Angus, and Maureen Tehan, 'Submission on "Australian Law Reform Commission: Review of the *Native Title Act 1993* – Issues Paper"', 14 May 2014
14. Frith, Angus and Maureen Tehan, 'Submission on the "Australian Law Reform Commission Discussion Paper (DP 82): Review of the *Native Title Act 1993*"', 19 January 2015
15. Frith, Angus, 'Case Note: *McGlade v Native Title Registrar*', (2017) 8(28) *Indigenous Law Bulletin*, 24
16. Frith, Angus, 'Submission to the "Technical Review of the *CATSI Act*"', 10 October 2017
17. Frith, Angus, 'Submission on the "Reforms to the *Native Title Act 1993* (Cth): Options Paper November 2017"', 1 March 2018
18. Frith Angus, chapters 1 (History of Common Law Recognition of Native Title in Australia) and 2 (Native Title), *Native Title Service*, LexisNexis, 2020 and continuing

#### **PAPERS PRESENTED**

1. 'The Expedited Procedure Inquiry Process in the Northern Territory: Technicalities and Evidence' (Paper presented at Native Title Conference, Geraldton, June 2002)
2. 'A New Boundary? Corporations and Recognition of Indigenous Law and Custom' (Paper presented at Law & Society Association of Australia & New Zealand Conference, University of Melbourne, 30 November 2007)
3. 'The Challenges of Incorporation' (Paper presented at ATNS Tax Symposium, University of Melbourne, 26 February 2008)
4. 'Challenges for Prescribed Bodies Corporate' (Paper presented at Native Title Conference, Perth, 3 June 2008)



5. 'Plurality, Hybridity, Sovereignty: Indigenous Corporations in Australia' (Paper presented at New Worlds New Sovereignties Conference, University of Melbourne, 7 June 2008)
6. 'Postcolonialism and Action: Constructing Hybrid Aboriginal Corporations' (Paper presented at In search of Authority, Rebellion and Action Workshop, Melbourne Doctoral Forum on Legal Theory, Melbourne Law School, 19 December 2008)
7. 'Native Title Corporations: Clearing the Hurdles and Realising Opportunity' (Paper presented at Native Title Conference, Melbourne, 4 June 2009)
8. 'Indigenous Peoples in Australia and Climate Change: Organising for Action' (paper presented at Harvard: Climate Change: Science + Humanities conference, Harvard University, 4 March 2010)
9. 'The Mob Getting it Right for the Future — Structures and Processes of PBCs' (paper presented at Native Title Conference, Canberra, 2 June 2010)
10. 'Third Party Rights in the Regulation of Rights to Mine' (paper presented to Mongolian Government Study Tour Workshop on Australian Mining Laws, Melbourne Law School, 28 October 2010)
11. 'Sustainability of Prescribed Bodies Corporate' (paper presented at Native Title Conference, Townsville, 4 June 2012)
12. 'Native Title Corporations Achieving Capacity in both Aboriginal and Australian Legal Systems' (paper presented at ATNS Symposium, Melbourne Law School, 25 June 2013)
13. 'Native Title Corporations in a Third Space between Aboriginal and Australian Legal Systems' (paper presented at Law on the Edge, University of British Columbia, 2 July 2013)
14. 'Native Title Corporations Achieving Capacity in both Aboriginal and Australian Legal Systems' (paper presented at Australian Charities and Not-for-profits Commission Sector Seminar, Melbourne, 25 September 2013)
15. 'Australian Corporate Law and Aboriginal and Torres Strait Islander Laws: A Two-Way Contamination' (paper presented at Contamination, 6<sup>th</sup> Melbourne Doctoral Forum on Legal Theory, Melbourne Law School, 9 December 2013)
16. 'Getting it Right for the Future: Aboriginal Law, Australian Law and Native Title Corporations' (paper presented at Native Title Conference, Coffs Harbour, 4 June 2014)
17. 'Later Use and Control of Evidence Given in Native Title Hearings' (paper presented at Managing Information in Native Title Workshop, Canberra, 16 March 2015)
18. 'Legal Obligations regarding Native Title Litigation Materials' (paper presented at Native Title Conference, Port Douglas, June 2015)

19. 'Free, Prior and Informed Consent and Native Title' (paper presented with Laurelea McGregor at Native Title Conference, Darwin, 2 June 2016)
20. 'Locke in Australia: the social contract, terra nullius and treaty' (paper presented by invitation at the Centre for Contemporary Photography, Collingwood, 9 June 2016)
21. 'Imperfect Mechanisms for Expressing Decisions of Native Title Holders — *McGlade v Native Title Registrar*' (paper presented at Native Title Conference, Townsville, 6 June 2017)
22. 'Australian Law and the Co-Existence of Many Laws' (paper presented at Native Title Conference, Broome, 6 June 2018)
23. 'The Mystical Corporation: the Medieval Church, Native Title Corporations and Rivers' (paper presented at the Australian & New Zealand Law and History Society annual conference, Melbourne, 11-14 December 2019)
24. 'Legal Issues in Transferring Research Materials from NTRB/SPs to RNTBCs' (paper presented at the AIATSIS Summit 2021, Adelaide, 3 June 2021)

#### **WORKSHOPS AND CONFERENCES ATTENDED (selection)**

- I have attended conferences (without presenting papers) regarding Indigenous Sea Rights (July 1993); native title and compensation (August 1997); and general native title conferences (in August 1996 and 2000)
- Association of Transnational Law Schools (ATLAS) 2008 Agora, Osgoode Hall Law School of York University, Toronto, 7–25 July 2008
- Agreements, Treaties and Negotiated Settlements Project Section 223 *Native Title Act* Workshop, University of Melbourne, 14 May 2009
- Emerging Leaders Seminar: part of the Native Nations Institute Executive Education Seminar Series, University of Arizona, 23 & 24 March 2010
- Native Title: A Vehicle for Change and Empowerment? Workshop, UNSW Law School, 5 & 6 April 2013
- Research Workshop on Indigenous Water Rights in Comparative Law, University of Canterbury, 7 December 2018
- 2019 Native Title Conference: Land, Rights and Recognition, Melbourne Cricket Ground, 3 June 2019

#### **COMMUNITY ENGAGEMENT**

- National Vice President, ANTaR Inc: 2006 – present

ANTaR is a non-government, not-for-profit, community-based organisation, dedicated to supporting Aboriginal and Torres Strait Islander peoples in asserting their human rights. ANTaR's focus is on changing the attitudes and behaviours of non-Indigenous Australians so that the rights and cultures of Aboriginal and Torres Strait Islander peoples are respected and affirmed across all sections of society. It campaigns nationally on key issues including treaty and constitutional recognition, incarceration and Close the Gap.

ANTaR is co-hosting the National Treaty Summit 2020 with Melbourne Law School in April 2020.

- Member of Wampan Wages, Victorian Stolen Wages Working Group: 2004 – present

Wampan Wages conducts research and education work concerning wages and other entitlements withheld from Aboriginal people in Victoria.

- Member of the Council of the Australian Conservation Foundation: August 1999 – October 2000
- Member of the National Management Committee/Board of ANTaR: 1998 – 2003, 2004 – present
- Member of the Co-ordinating Committee of ANTaR (Vic): 1997 – present
- Member of Environmental Issues Committee, Law Institute of Victoria: 1992 – 99
- Treasurer of Fitzroy Legal Service: August 1991 – July 1994
- Fitzroy Legal Service Management Committee: May 1988 – May 1989 & May 1991 – July 1994
- Tuesday night volunteer at Fitzroy Legal Service: 1986 – 94

#### **GOVERNMENT APPOINTMENTS & ENGAGEMENT**

- In 2013, I was appointed by the Commonwealth Government to the Taxation of Native Title and Traditional Owner Benefits and Governance Working Group, which reported to the Commonwealth Government on 1 July 2013: Australian Government, The Treasury, *Taxation of Native Title and Traditional Owner Benefits and Governance Working Group: Report to Government* (1 July 2013) <<http://www.treasury.gov.au/PublicationsAndMedia/Publications/2013/Taxation-of-Native-Title>>
- I attended a Court as Archive Symposium at ANU on 17 February 2016, which addressed the management of evidence held by the Federal Court of Australia as the result of hearing native title applications
- In September 2017, the South African Commission on Restitution of Land Rights approached me to present on Australian native title law at a national Land

Restitution Colloquium on 5–9 November 2017, which was to be attended by approximately 2 000 delegates, representing stakeholders from the South African Government, civil society, private sector, international speakers and beneficiaries of land restitution programs. The colloquium was postponed, apparently for political reasons, and has not proceeded.