

## CURRICULUM VITAE

### SUSAN BURTON PHILLIPS

Barrister

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**DOB** 14 March 1955

#### ACADEMIC QUALIFICATIONS:

##### **Bachelor of Arts**

University of Sydney, Graduated 1978

##### **Bachelor of Laws with First Class Honours**

University of Sydney, Graduated 1994

##### **Master of Laws**

University of Sydney, Graduated 2004

##### **Master of Administrative Law and Policy**

University of Sydney, Graduated 2010

Admitted to practice as a barrister in the NSW Supreme Court, the High Court, the Supreme Court of Queensland and nationally under the mutual recognition scheme.

Included on the Commonwealth's register of barristers briefed by AGS and on the Federal Attorney General's panel of native title experts. Member of the NSW and Queensland Bar Associations.

#### **Legal experience**

1994	Legal Research Officer, Equity Division, NSW Supreme Court
1994 November	Admitted as a Legal Practitioner
1995 February	Called to the NSW Bar – continuously at the Bar since 1995

Primary area of practice: **Administrative Law, Land Rights and Native Title**

#### **Related activities**

- 1998 Lecturer at the Universities of Sydney and New South Wales, Faculties of Law for the subjects "Indigenous Peoples and the Australian Legal System" and "Indigenous Australians and the Law";
- 2001, 2005, 2006, 2007 Lecturer at the University of Technology at Sydney, Faculty of Law on "Indigenous People, Race and the Law" and "Indigenous People and Land Law";
- Occasional lecturer at UTS, Sydney University and Macquarie University Law Schools;
- Speaker for the Indigenous Law Centre, University of New South Wales on the *Mabo*, and *Wik* decisions and related topics and for Wik-ed at Reconciliation rallies;
- Member of the Steering Committee of the NSW Bar's *Legal Forum on the Proposed Republic*, Convener of the Forum's Working Group on the 'Recognition of Indigenous People and the Source of Sovereignty in the Proposed Republic';

- 2005 - 2010 Member of the NSW Bar ADR Committee;
- 2009 included on the Federal Court's inaugural list of mediators for native title matters;
- NSW Bar advocacy coach for readers;
- Occasional advocacy coach for the Australian Advocacy Institute.
- 2018 – 2019 – member of the Australian Bar Association's Indigenous Affairs Committee and the NSW Bar Association's First Nations Committee;
- Co-presenter on behalf of the Australian Bar Association with Simeon Beckett and Phillip Boulten SC to the Joint Select Committee on Constitutional Recognition Relating to Aboriginal and Torres Strait Islander Peoples in October 2018.

**Examples of practice:**

Since 1994 representing Aboriginal people throughout Australia in native title claims, land rights claims and cultural heritage issues.

Counsel in matters involving complex expert evidence particularly anthropological and historical experts and large volumes of documents particularly drawn from historical and archival materials held by various local, State and Commonwealth institutions.

Extensive experience in remote location work all over Australia and in dealing with elderly witnesses. 15 years' experience representing young people charged with criminal offences in the Local Courts. 10 years' experience in matters involving administrative law.

Junior counsel to Brian Donovan QC and Robin Druitt in the prosecution of the Children of God sect.

Counsel in matters involving the *Family Provisions Act*, the Family Court and appeals under the *Migration Act* to the full Federal Court.

2002 participant at the invitation of the Social Justice Commissioner of HREOC to produce the principles for "*Corporate Responsibility - Developing principles on Resource Development on Indigenous land: A Human Rights based approach*" in Alice Springs.

2009 - 2019, commissioned to report to the Federal Minister for the Environment, Water, Heritage and the Arts under s 10 of the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth) in relation to sites of Indigenous significance under threat of injury or desecration in WA, Victoria and NSW.

2010 briefed to advise the Murray Darling Basin Commission on the impact of the MDB proposal on native title rights and water.

Counsel for complainants to the Anti Discrimination Board and Human Rights Commission in relation to complaints of workplace misconduct and sexual harassment.

Counsel for various local government bodies including councils in the Hunter region and Liverpool in relation to the *Aboriginal Land Rights Act 1986* (NSW) and the *Native Title Act 1993* (Cth).

Administrative law cases in which briefed by AGS:

- *Wyong-Gosford Progressive Community Radio Incorporated v Australian Communications Media Authority and Gosford Christian Broadcasters Limited* [2006] FCA 1691, Cowdroy J;
- *Wyong-Gosford Progressive Community Radio Inc v Australian Communications Media Authority (No 2)* [2006] FCA 1043, Cowdroy J;
- *Gardener v APRA* [2009] AATA 990.

Pro bono representation for unrepresented applicants in the Federal Court under the Court's referral scheme for legal assistance under Rule 4.12 of the *Federal Court Rules* including for the successful appellant in:

*Weti-Safwan v Minister for Home Affairs* [2019] FCAFC 173

Further appeal for another appellant before the Full Court, following Court referral, listed for hearing on 18 November 2019.

## **Native Title determinations**

### **I. Matters in which I appeared as counsel at the determination:**

#### **New South Wales**

*Bandjalang People No 1 v Attorney General of New South Wales* [2013] FCA 1278, Jagot J.

*Bandjalang People No 2 v Attorney General of New South Wales* [2013] FCA 1278, Jagot J.

*Yaegl People #2 v Attorney General of New South Wales* [2017] FCA 993, Jagot J

#### **Queensland**

*Budby on behalf of the Barada Barna People v State of Queensland (No 6)* [2016] FCA 1267, 29 June 2016, Dowsett J;

*Pegler on behalf of the Widi People of the Nebo Estate #2 v State of Queensland* [2016] FCA 1272, 29 June 2016, Dowsett J;

*Dempsey on behalf of the Bularnu, Waluwarra and Wangkayujuru People v State of Queensland (No 2)* [2014] FCA 528, Mortimer J;

*Kynuna on behalf of the Bar Barrum People #5 v State of Queensland* [2016] FCA 1504, Reeves J;

*Kuuku Ya'u People v State of Queensland* [2009] FCA 679, Greenwood J;

*Lampton on behalf of the Juru People v State of Queensland* [2014] FCA 736, Rares J;

*Lampton on behalf of the Juru People v State of Queensland (No 2)* [2015] FCA 609, Rares J;

*Malachi on behalf of the Strathgordon Mob v State of Queensland* [2007] FCA 1084, Greenwood J;

*Walker on behalf of the Eastern Kuku Yalanji People v State of Queensland* [2007] FCA 1907 Allsop J.

#### **Western Australia**

*Hunter v State of Western Australia* [2012] FCA 690, North J;

*Ward v State of Western Australia* [2006] FCA 1848, North J.

### **II. Matters of which I had carriage as counsel for the applicant leading to successful determinations native title exists but did not appear at the determination:**

#### **New South Wales**

*Barkandji Traditional Owners #8 v Attorney-General of New South Wales* [2015] FCA 604, Jagot J;

*Yaegl People #1 v Attorney General of New South Wales* [2015] FCA 647, Jagot J;

*Yaegl People #2 v Attorney General of New South Wales* [2015] FCA 647, Jagot J;

*Phyball on behalf of the Gumbaynggirr People v Attorney-General of New South Wales* [2014] FCA 851, Jagot J.

#### **Queensland**

*Anderson on behalf of the Wulli Wulli People v State of Queensland (No 3)* [2015] FCA 821, Collier J;

*Aplin on behalf of the Pitta Pitta People v State of Queensland* [2012] FCA 883, Dowsett J;

*Baker on behalf of the Muluridji People v State of Queensland* [2011] FCA 1432, Logan J;

*Baker on behalf of the Muluridji People #2 v State of Queensland* [2011] FCA 1432, Logan J;

*Daphney on behalf of the Kowanyama People v State of Queensland* [2014] FCA 1149, Greenwood J;

*Elizabeth Dodd & Ors on behalf of the Gudjala People Core Country Claim #1 v State of Queensland & Ors (No 3)* [2014] FCA 231, Logan J;

*Elizabeth Dodd & Ors on behalf of the Gudjala People Core Country Claim #2 v State of Queensland & Ors (No 3)* [2014] FCA 231, Logan J;

*Greenwool & Ors on behalf of the Kowanyama People v State of Queensland* [2012] FCA 1377, Greenwood J;

*Gorringe on behalf of the Mithaka People v State of Queensland* [2015] FCA 1116, Rangiah J;

*Johnson on behalf of the Tableland Yidinji People #3 v State of Queensland* [2013] FCA 280, Dowsett J;

*Johnson on behalf of the Tableland Yidinji People #1 v State of Queensland* [2012] FCA 1417, Dowsett J;

*Kowanyama People v State of Queensland* [2009] FCA 1192; Greenwood J;  
*McKellar on behalf of the Budjiti People v State of Queensland* [2015] FCA 601; Mansfield J;  
*McLennan on behalf of the Jangga People v State of Queensland* [2012] FCA 1082, Rares J;  
*Miller on behalf of the Birriah People v State of Queensland* [201] FCA 271, Logan J;  
*Prior on behalf of the Juru (Cape Upstart) People v State of Queensland (No 2)* [2011] FCA 819, Rares J.  
*Morganson on behalf of the Warrungu People #2 v State of Queensland* [2013] FCA 957, Logan J;  
*Murgha on behalf of the Combined Gunggandji Claim v State of Queensland* [2011] FCA 1511, Dowsett J;  
*Sullivan on behalf of the Yulluna People #3 v State of Queensland* [2014] FCA 659, Dowsett J;  
*Wuthathi People #2 v State of Queensland* [2015] FCA 380, Greenwood J.

### **South Australia**

*Far West Coast Native Title Claim v State of South Australia (No 7)* [2013] FCA 1285, Mansfield J.

### **Victoria**

*Mullett on behalf of the Gunai/Kurnai People v State of Victoria* [2010] FCA 1144.

### **2019**

Currently counsel retained by SANTS for the Wirangu People; Carpentaria Land Council for Gkuthaarn and Kukatj People, North Queensland Land Council – various; Queensland South Native Title Services – various; Kimberley Land Council – various; YMAC - various and private solicitor for the Applicant in native title determination applications by the Wongkumara People.

### **2020**

Determinations to be made by consent in two matters that had been set down for trial where resolution of the proceedings was achieved in the weeks prior to commencement of the trial:  
*Phillip George and Anor on behalf of Gkuthaarn and Kukatj People v State of Queensland* QUD29/2019 (filed 28 November 2012);  
*Caroline Wilson and Ors v State of South Australia* SAD6019/1998 (filed August 1997)

### **Publications**

Case Note: *Eddie Mabo v The State of Queensland*  
(1993) 15 *Sydney Law Review*

*Essays on the Mabo Decision*, 1993

"The Mabo Case: Reconstructing the Rules for the Land Rights Contest"  
Opening Chapter of the Law Book Company first text on *Mabo*,

"The Beginner's Guide to the Native Title Act"  
4 *Polemic* (1994) 179

'National Parks and Aboriginal Land'  
[1995] Vol 2 *The Australasian Journal of Natural Resources Law and Policy*

'The *Wik* decision and Documents re the 10 Point Plan"  
*Environmental Law News* 1997 No 40 13

"Native Title" *Hot Topics* with Pat Lane  
Legal Information Access Centre 2001

"Native Title" entry in the *Oxford Guide to the High Court*  
Oxford University Press, 2002

"Like something out of Kafka" the Relationship between the NNTT and the Federal Court  
AIATSIS Issues Paper vol 2 No 14, April 2002

“Land Rights and Native Title” new chapter in the *Environmental Law Handbook* for 3<sup>rd</sup>, 4<sup>th</sup> 5<sup>th</sup> and 6<sup>th</sup> editions, Redfern Legal Centre Publishing, 2005 - 2019

*Retrospective Registration Following Judicial Review? – Wakaman People (No 2)* Native Title News, Butterworths Lexis Nexis, Vol 8 Iss 1, February 2007

2005 – 2019 – author of the Native Title chapter in the *Law Handbook*, various editions Redfern Legal Centre Publishing

2011 – present: author of Chapters 4 and 5 in Lexis Nexis Native Title Service

List of book reviews published available on request

### **General activities**

Mother of 3 adult children and grandmother of 4 small children.

2001 - 2016 – annually complete the 100km Sydney Trailwalker for Oxfam fundraising over \$100,000 for its aid projects

1983, 1988, 1994, 2004, 2008, 2009 – complete Melbourne and Sydney marathons

2003, 2007 – 6 Foot Track Marathon (46 kms)

2009, 2010, 2011, 2013, 2018, 2019 - 50km Trek for Timor in Kangaroo Valley and Blue Mountains

2004, 2006, 2009 sail yachts from the Sydney-Hobart Yacht Race back to Sydney from Hobart

Canyoning, skiing, bushwalking, rock climbing, sailing and other outdoor activities

1989 – 2010 host at home over 70 Australian and international students for 1 year or more each.

### **Papers delivered**

"Other Impacts of the Native Title Act"

Seminar Paper for the Aboriginal Law Centre Workshop

*Mabo and the Native Title Act Explained*

Presented 16th April 1994, University of New South Wales

‘The Rights and Recognition of Indigenous People - Consequential Land Management Impacts on the Environment’

Paper given at the Opening Session of the 14th National Environmental Law Conference, Sydney September 1995

The Proposed Amendments to the *Native Title Act*

Submissions to the Honourable Nick Minchin

Parliamentary Secretary to the Prime Minister, August and September 1996

‘Wreck Bay and Native Title’

Submissions invited by the Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund

Parliament House, Sydney, October 1996

“Sovereignty and the Recognition of Indigenous people in an Australian Republic”

Paper given at the Seminar *Curtain Raiser for the People’s Convention*

University of Sydney, 30 November 1996

“Understanding *Wik* - The Reconciliation Debate”

Twilight Seminar conducted for the Environmental Planning Lawyers Association

30 April 1997, NSW Bar Association

“*Mabo*, the *Native Title Act*, *Wik* and the 10 Point Plan”

1998, Speech given at Reconciliation rallies organised by Wik-ed and ANTAR also to High Schools and

the Society & Culture Teachers Association

“What goes in a native title claim book?”

Part of Seminar team at ANU with AIATSIS and NTU NSWALC

Monday 11 May 1998

“The responsiveness of the Legal System in achieving justice for Aboriginal and Torres Strait Islander Peoples”

Law Society and MESSTA Legal Studies Conference,

NSW Parliament House October 1998

“Native Title and Related Issues”, *Development in the Native Title Era*

Conference for Developers, organised by Department of Aboriginal Affairs, NSW

North Sydney, November 1998

“The new registration test – workshop for claimants”

Co-presenter with NNTT of workshop for native title claimants

Parramatta Town Hall and UNSW, November 1998

“Law and Anthropology in Australia”

Lecture given with anthropologist Dr W Dabrowski at the University of Warsaw

Warsaw, January 1999

Papers and or commentary at every NTRB national conference convened by AIATSIS 2000 – 2018

Paper given at AIATSIS NTRB Conference in 2017 was “Overlapping Claims and filling in the gaps”

Paper given at AIATSIS NTRB Conference in 2018 was “Revision and Resolutions”

Guest lecturer for Legalwise Seminars and NSW Bar Association on native title 2009 – 2018

Presenter at February 2019 AIATSIS NTRB Workshop for NTRB/NTSP legal practitioners

Opening paper given at the CNTA invitation only workshop for anthropologists and lawyers at

Alice Springs, 13 March 2019