

CURRICULUM VITAE

SUSAN BURTON PHILLIPS

Barrister

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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, on the Federal Attorney General's panel of native title experts and the Federal Court's panel of mediators in native title matters. 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: Native Title and Indigenous cultural heritage, Administrative Law, Land Rights

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;
- Since 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 – 2022 – 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.
- Lecturer or contributor at forums convened by the Centre for Native Title Anthropology, ANU.
- Since 2010 reporter to the Federal Minister for the Environment under s 10 of the ATSIHP Act.
- Editor of two chapters in the Lexis Nexis Native Title Service.

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. Provision of pro bono representation of young people charged with criminal offences in the Local Courts. 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 successful appeals under the *Migration Act* to the full Federal Court and Administrative Appeals Tribunal.

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).

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 appellants in:

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

Uriaere v Minister for Home Affairs [2019] FCAFC 235

CGNN and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2020] AATA 1252 7 May 2020

Native Title determinations

I. Matters in which I was counsel and appeared 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

Phillip George and Anor on behalf of Gkuthaarn and Kukatj People v State of Queensland [2020] FCA 1310

Western Australia

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

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

South Australia

Wilson, on behalf of the Wirangu People v State of South Australia (No 2) [2022] FCA 1460

Wilson, on behalf of the Wirangu People v State and Miller on behalf of Nauo People of South Australia listed for determination in Elliston on 10 February 2023

Miller on behalf of Nauo People of South Australia for consent determination in April 2023

Miller on behalf of Nauo People of South Australia for consent determination in August 2023

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 sitting:

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;
Gorrige 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.

2021- 2022 – some recent events

- Appeal successful in *District Council of Streaky Bay v Wilson* [2021] FCAFC 181 (Mortimer, Perry and Derrington JJ) from the decision secured at first instance in *Wilson v State of South Australia (No 4)* [2020] FCA 1805 (Charlesworth J) that native title was not extinguished over a golf course at Streaky Bay SA;
- Successful strike out of overlapping claim in *Sparrow v State of South Australia (Mirning Eastern Sea and Land Claim)* [2021] FCA 1357
- Appear in Torres Strait and Cairns at the hearing of the Warral and Ului claim (QUD9/2019) before Mortimer J, judgment pending;
- Appear at the hearing in 'corner country' of the Wongkumara claim (QUD851/2018) before Murphy J – part heard;
- Appear at the hearing of the Cobourg Peninsular Land Claim No 6 before ALC Mansfield AC, KC in the Northern Territory for the Agalda claimants represented by Midena Lawyers – part heard;
- Appear at the preservation of evidence hearing in Kununurra WA at the Koongie-Elvire claim WAD45/2019 before Colvin J;
- Secure an injunction before Halley J in *Blair v First Nations Bailai, Gurang, Gooreng Gooreng, Taribelang Bunda People Aboriginal Corporation RNTBC* [2022] FCA 1520

Counsel retained by SANTS for the Wirangu People and the Nauo 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.

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 3rd, 4th 5th and 6th
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 – 2022

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 – 2022

Presenter with Rob Blowes SC in February 2019 and August 2022 for AIATSIS NTRB Masterclass for NTRB/NTSP legal practitioners

Opening paper given at the CNTA invitation only workshop for anthropologists and lawyers at Alice Springs, 13 March 2019

2021 – Paper on *Trusts and Prescribed Bodies Corporate* co-written with Patricia Lane and delivered to the attendees at the Centre for Native Title Anthropology conference, Alice Springs April 2021 (also available on their site as a podcast)