

CURRICULUM VITAE

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Clerk John Dever (T 03 9225 7999; E jdever@vicbar.com.au)

Academic Record: B.A. (1985) and LL.B. (Hons) (1987) (Monash University)

December 1991 to March 1993 and February 1994 to Present

Barrister, Division A, Part I (Victorian Practising Counsel)

Appointed Senior Counsel: 26 November 2008

Main areas of practice: Appeals, Judicial Review, Equity, Property

General commercial and public law practice, including engagement in a series of test cases: see attached list of cases

Rankings: Chambers and Partners, Native Title Bar (Band 1); Doyle's Guide, Leading Native Title Barristers (Pre-eminent)

Previous experience

Law Officer, Parliament of Victoria: March 1993 to January 1994

Law Officer, Parliament of Australia: November 1989 to July 1991

Solicitor, Minter Ellison, Melbourne: March 1987 to November 1989

CASES

High Court

Appeals

Commonwealth v Yunupingu [2025] HCA 6; 99 ALJR 519; 421 ALR 604 – constitutional law – native title and just terms

Aboriginal Areas Protection Authority v Director of National Parks [2024] HCA 16; 98 ALJR 655; 259 LGERA 655 – Crown immunity

Harvey v Minister for Primary Industry and Resources [2024] HCA 1; 278 CLR 116; 98 ALJR 168; 259 LGERA 251 – mining leases – statutory interpretation

Minister for Immigration v Montgomery [2022] HCATrans 51–52 (discontinued) constitutional law – aliens power and Indigenous Australians

Northern Land Council v Quall [2020] HCA 33; 271 CLR 394; 94 ALJR 904; 383 ALR 378 – administrative law – delegation and agency

Northern Territory v Griffiths [2019] HCA 7; 269 CLR 1; 93 ALJR 327; 364 ALR 208; 235 LGERA 212 – assessment of native title compensation (*Northern Territory v Griffiths (No 2)* [2019] HCA 19; 93 ALJR 803; 368 ALR 77 – suppression orders)

Tjungarrayi v Western Australia [2019] HCA 12; 269 CLR 150 93 ALJR 556; 366 ALR 603 – mining tenements

Queensland v Congoo [2015] HCA 17; 256 CLR 239; 89 ALJR 538; 320 ALR 1; 147 ALD 1 – effect of war time military orders on native title

Wurridjal v Commonwealth [2009] HCA 2; 237 CLR 309; 83 ALJR 399; 252 ALR 232; 169 LGERA 108 – Northern Territory intervention – acquisition of property on just terms

Northern Territory v Arnhem Land Aboriginal Land Trust [2008] HCA 29; 236 CLR 24; 248 ALR 195; 82 ALJR 1099 – Blue Mud Bay Case – rights to exclude from tidal waters

Griffiths v Minister for Lands [2008] HCA 20; 235 CLR 232; 82 ALJR 899; 246 ALR 218; 161 LGERA 344 – compulsory acquisition powers and racial discrimination

News Ltd v South Sydney District Rugby League Football Club Ltd [2003] HCA 45; (2003) 215 CLR 563; 77 ALJR 1515; 200 ALR 157; 77; ATPR 41–943; Aust Contract R 90–176 – NRL merger – exclusionary provisions under Trade Practices Act 1974 (Cth)

Western Australia v Ward [2002] HCA 28; 213 CLR 1; 76 ALJR 1098; 191 ALR 1; ANZ ConvR 446 – tests for extinguishment of native title

Risk v Northern Territory [2002] HCA 23; 210 CLR 392; 76 ALJR 845; 188 ALR 376 – title to bays and gulfs

Commonwealth v Yarmirr [2001] HCA 56; 208 CLR 1; 75 ALJR 1582; 184 ALR 113 – Croker Island Case – recognition of native title to waters of the sea

Special Leave Applications

Commonwealth v Yunupingu [2023] HCATrans 143 constitutional law – native title and just terms

Aboriginal Areas Protection Authority v Director of National Parks [2023] HCATrans 2023 – Crown immunity

Harvey v Minister for Primary Industry and Resources [2022] HCATrans 229 – mining leases – statutory interpretation

Northern Land Council v Quall [2019] HCATrans 232 – administrative law – delegation

Western Australia v Manado [2019] HCATrans 132 – public access to beaches

Tjungarrayi v Western Australia [2018] HCATrans 124 – mining tenements

Commonwealth v Griffiths [2018] HCATrans 028 – assessment of native title compensation

Rirratjingu Aboriginal Corporation v Northern Land Council [2017] HCATrans 188 – mine royalties – statutory trusts

Western Australia v Banjima [2016] HCATrans 172 – mining tenements and proof of rights to exclusive possession

Queensland v Congoo [2014] HCATrans 271 – effect of war time military orders on native title

Reading Entertainment v Burstone Victoria [2008] HCATrans 208 – proof of contract damages

Northern Territory v Griffiths [2008] HCATrans 123 – disregarding historical extinguishment

Risk v Northern Territory of Australia [2007] HCATrans 472 – continuity in observance of traditional laws and customs in native title

Northern Territory v Arnhem Land Aboriginal Land Trust [2007] HCATrans – Blue Mud Bay Case – rights to exclude from tidal waters

Griffiths v Minister for Lands – compulsory acquisition powers [2007] HCATrans 320

Northern Territory v Alyawarr [2006] HCATrans 251 – disregarding historical extinguishment

Lansen v Northern Territory [2005] HCATrans 437 – statutory exceptions to Torrens title

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

Northern Territory v Olney [2003] HCATrans 811 – grant of foreshore

Risk v Northern Territory [2001] HCATrans 442– title to bays and gulfs

Person Charged v Director of Public Prosecutions [2001] HCATrans 441 – defence of claim as of right

Federal Court

Top End Aboriginal Corporation v Northern Territory [2025] FCA 22 – appeal from Tribunal – future acts

Energy Resources of Australia v Commonwealth [2024] FCA 1233 – derivative proceeding application

Northern Territory v Aboriginal Land Commissioner [2023] FCA 1183 – judicial review – whether bed of estuary land

Yunupingu v Commonwealth [2023] FCAFC 75; 298 FCR 160; 410 ALR 231 – constitutional law – native title and just terms

Davey v Northern Territory (No 2) [2023] FCA 455 – powers to order access and inspection

Davey v Northern Territory [2023] FCA 303 – pleadings

Harvey v Minister for Primary Industry and Resources [2022] FCAFC 66; 291 FCR 263; 401 ALR 578 – mining leases – statutory interpretation

Top End Aboriginal Corporation v Northern Territory [2022] FCA 74; 403 ALR 666 – variation of native title determinations

Friday v Minister for Primary Industry and Resources [2021] FCA 794 – mining leases

Northern Land Council v Quall (No 3) [2021] FCAFC 2 – procedure – further evidence on appeal

Friday v Minister for Resources [2020] FCA 984 – legal privilege

Roberts v Attorney-General (NSW) [2020] FCAFC 103; 277 FCR 170 – procedure – separate questions (*Roberts v Attorney-General (NSW) (No.2)* [2020] FCAFC 128 – procedure – time limits)

Bell v Queensland [2020] FCA 695 – practice – joinder

Fulton v Northern Territory [2019] FCA 2516 – pastoral improvements

Malone v Queensland [2019] FCA 2115 – practice – joinder

Ellis v Central Land Council [2019] FCAFC 1; 267 FCR 339; 64 ALR 446 – judicial review, evidence (*Ellis v Central Land Council (No 2)* [2019] FCAFC 11 – appeal costs)

Ellis v Central Land Council [2018] FCA 35; 355 ALR 93; 161 ALD 93 – judicial review

BHP Billiton v KN [2018] FCAFC 8; 258 FCR 521; 351 ALR 491 – native title: extinguishment

Northern Territory v Griffiths [2017] FCAFC 106; 256 FCR 478; 346 ALR 247 – native title compensation: principles for assessment

Warrie v Western Australia (No 2) [2017] FCA 1299; 366 ALR 467 – native title: form of relief

Warrie v Western Australia [2017] FCA 803; 365 ALR 624 – native title: extinguishment

Tjungarrayi v Western Australia [2017] FCA 587 – petroleum exploration licences

Rirratjingu Aboriginal Corporation v Northern Land Council [2017] FCAFC 48; 248 FCR 349; 352 ALR 589 – mine royalties – statutory trusts

Griffiths v Northern Territory [2016] FCA 900; 337 ALR 362; 152 ALD 72 – native title compensation: principles for assessment

Margarula v Northern Territory [2016] FCA 1018; 257 FCR 226; 338 ALR 464 – Kakadu Park: effects of Territory self-government

Hughes v Western Australia [2016] FCA 840 – principles leave to appeal summary disposition

TJ v Western Australia [2016] FCA 231 – procedure - abuse of process by delay

Wintawari Corporation v Western Australia [2015] FCA 1053; 238 FCR 428 – powers to vary native title determination

Rirratjingu Aboriginal Corporation v Northern Land Council [2015] FCA 36; 324 ALR 240 – statutory trusts

Congoo v Queensland [2014] FCAFC 9; 218 FCR 358; 310 ALR 28 – acquisition of property on just terms

Griffiths v Northern Territory [2014] FCA 256 – native title compensation: liability

Gondarra v Minister for Indigenous Affairs [2014] FCA 139 – costs in public interest litigation

Gondarra v Minister for Indigenous Affairs [2014] FCA 16; 311 ALR 21 – summary procedure for specific performance

Gondarra v Minister for Indigenous Affairs [2014] FCA 25; 220 FCR 202; 311 ALR 41 – judicial review – natural justice

Gondarra v Minister for Indigenous Affairs [2012] FCA 185; 127 ALD 288 – evidence – advance rulings on admissibility

Wong v Australian Pharmacy Authority [2011] FCA 52; 193 FCR 490 – judicial review – pharmacy approvals

Huddleston v Aboriginal Land Commissioner [2010] FCAFC 66; 184 FCR 551; 268 ALR 454 – judicial review – procedural fairness

Margarula v Northern Territory [2009] FCA 290; 175 FCR 333 – disqualification for apprehended bias

Lansen v Minister for Environment [2008] FCAFC 189; 174 FCR 14; 163 LGERA 145; 106 ALD 232 – judicial review – environmental law

Lansen v Minister for Environment (No.3) [2008] FCA 1367; 162 LGERA 258 – costs in public interest litigation

Lansen v Minister for Environment [2008] FCA 903; 102 ALD 558 – judicial review – environmental law

Foster v Que Noy [2008] FCAFC 56 – applications to replace native title claimants

Hazelbane v Doepel [2008] FCA 290; 167 FCR 325 – judicial review – registration of overlapping native title claims

Hazelbane v Northern Territory [2008] FCA 291 – principles for summary dismissal of native title claims

King v Northern Territory [2007] FCA 944; 162 FCR 89 – native title and pastoral enterprises

Griffiths v Northern Territory [2007] FCAFC 178; 165 FCR 391; 243 ALR 72 – principles for proof of exclusive possession

Gamogab v Akiba [2007] FCAFC 74; 159 FCR 578 – joinder of PNG parties

Jango v Northern Territory [2007] FCAFC 101; 159 FCR 531; 240 ALR 432 – pleading of native title claims and effect of Torrens title

Risk v Northern Territory of Australia [2007] FCAFC 46; 240 ALR 74 – continuity in observance of traditional laws and customs in native title

Gumana v Northern Territory [2007] FCAFC 23; 158 FCR 349; 239 ALR 272 – Blue Mud Bay Case – effect of fee simple grant of land to low water mark

Gumana v Northern Territory [2005] FCA 50; 141 FCR 457; 218 ALR 292 – claims to rights to exclude from waters

Lansen v Northern Territory [2004] FCAFC 257; 138 FCR 563; 211 ALR 365 – statutory exceptions to Torrens title

Raymond v Northern Territory [2004] FCAFC 258; 139 FCR 493; 210 ALR 496 – judicial review – jurisdictional conditions

Commissioner of Taxation v Dexcama Australia [2003] FCAFC 148; 129 FCR 582; 53 ATR 252; 46 ACSR 406; 2004 ATC 4598 – revenue – taxation set-offs in insolvency

Northern Territory v Olney [2002] FCAFC 280; 123 FCR 580; 192 ALR 116 – judicial review – recommendations for grant of foreshore and rivers

Director of Fisheries v Arnhem Land Aboriginal Land Trust [2001] FCA 98; 109 FCR 448; 185 ALR 649 – effects of fee simple grant of land to low water mark

Opal Maritime Agencies v Proceeds of Sale of the Vessel MV Skulptor Konenkov [2000] FCA 507; 98 FCR 519; 172 ALR 481 – *in rem* claims under *Admiralty Act* 1988 (Cth)

Arnhem Land Aboriginal Land Trust and Another v Director of Fisheries [2000] FCA 165; 170 ALR 1 – rights to fish and navigate tidal waters

Dexcama Australia Pty Ltd v Commissioner of Taxation [1999] FCA 1784; 43 ATR 187 – procedure on stating case

Patrick Stevedores No 2 v Proceeds of Sale of the Vessel MV Skulptor Konenkov [1998] FCA 16899; FCA 99; 81 FCR 16; 161 ALR 131 – running account in admiralty claims

O D Transport (Australia) Pty Ltd (In Liquidation) v O D Transport Pty Ltd [1997] FCA 1412; 80 FCR 290 – leave to cross-claim against company in liquidation

Patrick Stevedores No 2 Pty Ltd v Proceeds of Sale of the Vessel MV Skulptor Konenkov [1997] FCA 1634; 150 ALR 651 – shipping agent claims in admiralty

Arnhem Land Aboriginal Land Trust v Minister for Mines and Energy [1997] FCA 1015; 78 FCR 556 – cross-vesting jurisdiction of Federal Court

Supreme Courts

Patriarch of Antioch, Syrian Orthodox Church v Attorney-General [2025] VSC 756 – trustee directions – religious charitable trust

Ex parte Northern Land Council [2024] NTSC 34; 386 FLR 56 – land law – unallocated trust funds

Aboriginal Areas Protection Authority v Director of National Parks [2022] NTFSC 1 – constitutional law: immunity of Crown from criminal prosecution

Free Serbian Orthodox Church-Diocese Property Trust v Bishop Irinej [2017] NSWCA 28; 94 NSWLR 340 – implied religious charitable trusts and cy pres

Free Serbian Orthodox Church-Diocese Property Trust v Bishop Irinej [2017] NSWCA 109 – loss of trustee’s right to indemnity for costs

Secretary, Department of Health v AA [2017] VSC 34; 51 VR 714; 318 FLR 383 – constitutional law: migration and child welfare

Bishop Irinej v Free Serbian Orthodox Church-Diocese Property Trust No. 2 [2015] NSWSC 1976 – cy pres schemes

Bishop Irinej v Free Serbian Orthodox Church-Diocese Property Trust [2015] NSWSC 637 – implied religious charitable trusts

Plan B Trustees v Parker [2013] WASC 216; 11 ASTLR 242 – judicial directions to trustee of charitable trust

Lord Buddha v Harpur [2013] VSCA 101; 41 VR 159 – principles for proof of misleading and deceptive conduct

Free Serbian Orthodox Church-Diocese for Australia and New Zealand [2012] NSWSC 649 – directions to trustee of charitable trust

Fitzroy Football Club v Brisbane Bears Football Club [2010] VSC 180 – security for costs in public interest litigation

McArthur River Mining v Lansen [2007] NTCA 5; 21 NTLR 6 – effects of validating legislation on earlier court orders

Lansen v Minister for Mines and Energy [2007] NTSC 36 – costs in judicial review

Lansen v Minister for Mines and Energy [2007] NTSC 28; 20 NTLR 6 – judicial review – approval of open cut mine under *Mining Management Act 2001* (NT)

Reading Entertainment v Whitehorse Property Group [2007] VSCA 309 – proof of contract damages

Minister for Lands, Planning and Environment v Griffiths [2004] NTCA 5; 14 NTLR 188; 133 LGERA 203 – judicial review - improper use of powers of compulsory acquisition of land

Reading Entertainment v Burstone Victoria [2004] VSC 546 – joint venture claims in contract

Griffiths v Lands and Mining Tribunal [2003] NTSC 86; 179 FLR 241 – judicial review – compulsory acquisition of land

Northern Land Council v Commissioner of Taxes [2002] NTCA 11; 12 NTLR 86; 141 NTR 1; 171 FLR 255; 2002 ATC 5117; 51 ATR 365 – revenue - pay-roll tax exemptions for public benevolent institutions

Radmanovich v Nedeljkovic [2001] NSWSC 492; 52 NSWLR 641 – religious charitable trusts

Northern Land Council v Commissioner of Taxes [2001] NTSC 115; ATC 4040; 48 ATR 700 – revenue - pay-roll tax exemptions for public benevolent institutions
Attorney-General (Vic) v St John Prodromos Orthodox Community Inc [2000] VSC 12 – religious charitable trusts
Clancy v West [1996] VicRp 92; 2 VR 647 – judicial review – jurisdiction of coroner
Re Marvin Manufacturers; New Zealand Steel Australia v Burton [1994] VSC 262; 13 ACSR 610; 12 ACLC 586 – whether examination of directors an abuse of process