

THOMAS PATRICK KEELY

Curriculum vitae (October 2023)

Tertiary Education:	<p>Bachelor of Laws, Melbourne University Master of Laws, Melbourne University Minor thesis submitted as part of LLM: <i>Native Title: Its Characteristics and Liability to Extinguishment at Common Law</i>.</p>
Legal Practice:	<p>Admitted to practice as a barrister and solicitor of the Supreme Court of Victoria Admitted to practice in Northern Territory</p> <p>Employed by Maddens Lawyers (formerly D. Madden & Co), Solicitors of Warrnambool, Victoria for nearly three years, initially as an articled clerk and, after admission, as a solicitor.</p> <p>Member of the Victorian Bar since 1 March 1981 and have since practised continuously as a barrister, save for the period from November 1986 to August 1989. During this period, leave of absence from the Bar was obtained in order to undertake employment with the Central Land Council (CLC) in Alice Springs as a legal officer.</p> <p>Appointed senior counsel in 2015.</p>
Areas of Practice:	<p>Prior to employment with the CLC, practised in Victoria in the Magistrates Court and, to some extent, the County Court doing a range of different civil and criminal work.</p> <p>During employment with the CLC, appeared in two land claims as counsel and worked on litigation arising out of other land claims, as well as giving advice on a range of matters to Aboriginal groups, the CLC Executive and CLC staff.</p> <p>Upon returning to the Bar after employment with the CLC, practised for many years in the area of personal injury law, including workers' compensation (both State and Commonwealth), veterans' entitlements and common law cases. Over time, an increasing proportion of my practice involved land claim and native title work. Statutory land</p>

claim work in the Northern Territory has now virtually come to an end. For the last decade or more, my practice has overwhelmingly involved native title and associated cases.

Land claims and associated proceedings under the *Aboriginal Land Rights (Northern Territory) Act 1976 (Cth)*

Briefs to appear – completed:

- ***McLaren Creek Station Land Claim***
 - Olney J's report to the Minister dated 28 February 1990.
- ***Wakaya / Alyawarre Land Claim***
 - Olney J's report to the Minister dated 8 May 1990.
- ***Kanturrpa / Kantajji Land Claim***
 - Settled after a preliminary hearing before Olney J, a Full Court appeal reported as *Jungarrayi v Olney* (1992) 34 FCR 496 and a further preliminary hearing before Gray J.
- ***Tanami Downs Land Claim***
 - Olney J's report to the Minister dated 30 March 1991.
- ***Wampana Land Claim***
 - Settled after witness proofing in 1993.
- ***Bauhinia Downs Land Claim***
 - Settled after witness proofing in 1995.
- ***Central Mount Wedge Land Claim***
 - Gray J's report to the Minister dated 31 March 1998.
- ***Carpentaria Downs / Balbirini Land Claim***
 - Gray J's report to the Minister dated 27 January 1999.
- ***Roper Valley (Kewulyi) Land Claim***
 - Olney J's report to the Minister dated 13 May 1999.
- ***Kenbi (Cox Peninsula) Land Claim***
 - Gray J's report to the Minister dated December 2000.
- ***Urapunga Station Land Claim***

- Olney J's report to the Minister dated June 2001.
- ***Maria Island and Limmen River Land Claim***
 - Olney J's report to the Minister delivered in early 2002.
- ***Lorella Land Claim***
 - Olney J's report to the Minister delivered in early 2002.
- ***Lower Roper River Land Claim***
 - Olney J's report to the Minister delivered on 7 March 2003.
- ***Lower Daly Land Claim***
 - Olney J's report to the Minister delivered on 30 April 2003.
- ***Kamu / Malak Malak Traditional Ownership Dispute***
 - Hearing before a committee of the Northern Land Council commenced in June 2002. Committee's report adopted by Full Council of the Northern Land Council in about October 2003;
 - ***Myoung v Northern Land Council*** (2006) 154 FCR 324, AD(JR) proceedings arising out of the NLC's adoption of the Committee's report (Mansfield J).
- ***Upper Roper River Land Claim***
 - Olney J's report to the Minister delivered in March 2004.
- ***Vernon Islands Land Claim***
 - Claim settled after a full hearing before Olney J, including expert evidence, in the latter half of 2008.

Claims and associated proceedings under the *Native Title Act 1993* (Cth)

Briefs to appear – completed:

- ***Members of the Yorta Yorta Aboriginal Community v Victoria*** [1998] 1606 FCA
 - Native title claim heard by Olney J (limited role).
- ***Wandarang, Alawa, Marra & Ngalakan Peoples v Northern Territory*** (2000) 104 FCR 380 (St Vidgeon)
 - Native title claim heard by Olney J, determination made.
- ***Ngalakan People v Northern Territory*** (2001) 112 FCR 148 (Urapunga township)

- Native title claim heard by O'Loughlin J, determination made.
- ***Members of the Yorta Yorta Aboriginal Community v Victoria***
 - Special leave application in 2001.
- ***Members of the Yorta Yorta Aboriginal Community v Victoria*** (2002) 214 CLR 422
 - High Court appeal.
- ***Alyawarr, Kaytetye, Warumungu, Wakay Native Title Claim Group v Northern Territory*** (2004) 207 ALR 539
 - Native title claim heard by Mansfield J, determination made.
- ***Gumana v Northern Territory*** (2005) 141 FCR 457 (Blue Mud Bay)
 - Native title claim heard by Selway J, determination made by Mansfield J.
- ***Northern Territory v Alyawarr, Kaytetye, Warumungu, Wakay Native Title Claim Group*** (2005) 145 FCR 442
 - Full Court appeal from Mansfield J's above decision.
- ***King v Northern Territory*** (2007) 162 FCR 89 (Newcastle Waters)
 - Native title claim heard by Moore J, determination made.
- ***Hazlebane v Doepel*** (2008) 167 FCR 325 (Batchelor matters)
 - AD(JR) application re registration decision heard by Mansfield J.
- ***Hazlebane v Northern Territory*** [2008] FCA 291 (Batchelor matters)
 - Application for strike out / dismissal of competing claim before Barker J.
- ***Akiba v Queensland*** (2010) 204 FCR 1 (Torres Strait sea claim)
 - Native title claim heard by Finn J. Determination made 23 August 2010, determination made.
- ***Sampi v Western Australia (No 2)*** (2010) 266 ALR 537 (Bardi Jawi Peoples)
 - Full Court appeal from French J's decisions in *Sampi v Western Australia* at [2005] FCA 777, [2005] FCA 1567 & [2005] FCA 1716.
- ***Rose v Victoria*** [2010] FCA 460 (Gunai Kurnai People)
 - Native title claim heard by North J, claim dismissed.
- ***Mullett v Victoria*** [2010] FCA 1144 (Gunai Kurnai People)
 - Preservation evidence hearing before North J, then negotiations resulting in consent determination.

- ***Barnes v Northern Territory*** (Brunette Downs)
 - [2011] FCA 879, hearing of separate question before Mansfield J;
 - [2012] FCA 38, extension of time application before Finn J;
 - [2012] FCA 699, further extension of time application before Lander J.
- ***Hazelbane v Northern Territory*** [2011] FCA 1186 (Batchelor matters)
 - Application for leave to discontinue proceedings before Mansfield J.
- ***Commonwealth v Akiba*** (2012) 204 FCR 260 (Torres Strait sea claim)
 - Full Court appeal from Finn J's above decision.
- ***Akiba v Commonwealth*** [2012] HCATrans 245 (Torres Strait sea claim)
 - Special leave application.
- ***Greenwool v Queensland*** [2012] FCA 1377 (Kowanyama People)
 - Outstanding issues resolved at mediation before Dr Stan Jones AO, resulting in consent determination.
- ***Busch v Queensland*** (QUD 6020/2001, Tagalaka People)
 - Outstanding issues resolved at mediation in 2013 before Deputy Registrars Fewings and Daniel, resulting in remainder of claim being discontinued.
- ***Akiba v Commonwealth*** (2013) 250 CLR 209 (Torres Strait sea claim)
 - High Court appeal.
- ***MT v Western Australia*** [2013] FCA 1302 (Bindunbur)
 - Application for strike out / dismissal of competing claim before Barker J.
- ***Barkandji Traditional Owners v Attorney General of New South Wales*** [2015] FCA 604
 - Native title claim the subject of various mediations before Deputy Registrar Irving and advice given in 2013 and 2014;
 - consent determination subsequently made.
- ***Hazelbane v Northern Territory*** [2014] FCA 886 (Batchelor matters)
 - Application for strike-out and amendment of competing claim before Mansfield J.
- ***Hatfield v Queensland*** (Darumbal People)

- Outstanding connection issues largely resolved at mediation in 2014 before Richard Lilley QC, resulting trial dates for connection hearing being vacated.
- Consent determination subsequently made by Collier J (see *Hatfield v Queensland (No 3)* [2016] FCA 723).
- ***MT v Western Australia (No 2)*** [2015] FCA 697 (Bindunbur)
 - Further application for strike out / dismissal of competing claim heard by Barker J.
- ***Atkins v Western Australia*** (WAD 6002 of 2003) (Gingirana)
 - Preservation evidence hearing before Bromberg J in 2015;
 - Consent determination subsequently made by Barker J (see *Atkins v Western Australia* [2017] FCA 1465).
- ***Murray v Western Australia (No 5)*** [2016] FCA 752 (Yilka)
 - Native title claim heard by McKerracher J between 2011 and 2015, determination subsequently made.
- ***Isaac v Northern Territory*** [2016] FCA 776, 339 ALR 98 (Borrooloola township)
 - Native title claim (limited issues, including scope of claimed resource rights) heard by Mansfield J. Determination subsequently made by McKerracher J: see *Isaac v Northern Territory (No 2)* [2016] FCA 908.
- ***Bulabul v Northern Territory*** [2017] FCA 461
 - Dismissal of various claims for want of prosecution (White J).
- ***Manado v Western Australia*** [2017] FCA 1367 (Bindinbur)
 - Overlapping native title claims heard together by North J between 2015 and 2017. Determination subsequently made on 2 May 2018: [2018] FCA 854.
- ***Henwood v Northern Territory*** [2017] FCAFC 182
 - Appeal from aspects of White J's decision in *Bulabul v Northern Territory* [2017] FCA 461 (see above).
- ***Agius v South Australia*** [2018] FCA 358 (Kurna People)
 - Preparation of native title claim for trial and negotiations with State resulting in consent determination (Mortimer J).
- ***Bright v Northern Land Council*** [2018] FCA 752 (Batchelor matters)

- Application under the AD(JR) Act to set aside a decision of a delegate of the Registrar to register an ILUA and a decision of the Northern Land Council to certify the ILUA (White J).
- ***Drill v Western Australia*** [2020] FCA 1510 (Purnululu)
 - Overlapping native title claims that proceeded to trial by way of separate questions (Mortimer J). Determination subsequently made: [2022] FCA 1538.
- ***Nyamal Palyku Proceeding*** [2020] FCA 428
 - Two applications, including a summary dismissal application in relation to a late overlapping claim on the basis that it constituted an abuse of process (Reeves J).
- ***Blackburn v Wagonga LALC*** [2021] FCAFC 210; 287 FCR 1
 - Appeal from *Wagonga LALC v Attorney General of New South Wales* [2020] FCA 1113 (Jagot J).
- ***Austin v Victoria*** [2023] FCA 739 (Eastern Maar People)
 - Acting for Indigenous respondent. Agreement between Applicant and this respondent ultimately reached after extensive mediation before Registrar Daniel.
 - Consent determination subsequently made by Murphy.
- ***Sansbury v South Australia*** [2023] FCA 196 (Narungga People)
 - Agreement negotiated with the State in relation to the terms of aspects of a consent determination;
 - Agreement on the terms of an ILUA addressing various other matters in issue reached at mediation before the Hon. John Mansfield AM QC;
 - Consent determination subsequently made by Charlesworth J.

Briefs to appear – not yet completed:

- ***Ngarrindjeri – First Nations of the South East Overlap Proceeding*** (SAD 180/2017, Charlesworth J)
 - Agreement reached at mediation before the Hon. Michael Barker QC after matter prepared for trial;
 - Matter proceeding towards a consent determination.
- ***Nyamal Palyku Proceeding*** (Colvin J)
 - Overlap proceeding heard in 2022 and evidence of all parties essentially complete;

- Various rulings given in relation to evidence and other matters: see [2020] FCA 788; [2021] FCA 215; [2022] FCA 284; [2022] FCA 478; [2022] FCA 666; [2023] FCA 528;
 - Following this hearing, the above rulings and mediation before Registrar McGregor, matter now proceeding towards a consent determination.
- ***Davey v Northern Territory*** (NTD25/2020) (McArthur River compensation claim)
 - Matter heard in June 2023 by Banks-Smith J; written submissions currently being prepared.
 - ***South Coast People v Attorney General of New South Wales*** (NSD1331/2017, Perry J)
 - In preparation and under discussion with State.
 - ***Tjiwarl (Aboriginal Corporation) RNTBC v Western Australia*** (WAD141/2020 and associated proceedings, WAD142/2020 & WAD269/2020) (Mortimer CJ)
 - Acting for the State. Matter largely resolved through negotiation and mediation before Registrar Daniel.
 - ***Fischer v Queensland*** (QUD121/2023 and associated matters, Gudjala People, Collier J)
 - In preparation.

Other matters

Jangala v Commonwealth, NLC & Others (VID433/2010) involved judicial review proceedings relating to the nomination by the NLC of land at the former Muckaty Station in the Northern Territory for a nuclear waste repository and the approval of that nomination by the Commonwealth. This matter was the subject of an interlocutory hearing in March 2012 in relation to the posing of separate questions and was part-heard over two weeks in May and June 2014, after which the matter was settled.

A consultant anthropologist and I conducted an inquiry under s 203BJ(b) of the *Native Title Act 1993* (Cth) into questions arising out of the making of a determination of native title in Queensland in 2014. More particularly, the questions related to whether or not additional apical ancestors should have been included in the determination. We prepared a written report to the registered native title body corporate and to the native title service provider.

In March 2018, I was engaged by the Commonwealth to prepare a report under s 10 of the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth) in relation to

Spear Hill (Solomon Mine Hub). This report was completed and provided to the Minister.

In addition to appearance briefs, I have given advice on numerous occasions in relation to native title, land rights and related matters involving areas in the Northern Territory, Queensland, Western Australia, Victoria, New South Wales and South Australia. Such advice has been given to NTRBs, NTSPs and others.

I have given short papers at the Native Title Conference in Townsville in 2001 and at Aurora Masterclasses and other classes in 2010 (Melbourne), 2012 (Sydney) and 2013 (Adelaide) on native title matters.

I was a member of the Victorian Bar's Indigenous Justice Committee for several years from about 2011 and was its Chair from 2014 to 2017 inclusive.

I was a member of the Law Council of Australia's Indigenous Legal Issues Committee for several years until about 2017.

I am currently, and have for several years been, a member of the Australian Bar Association's Indigenous Issues Committee.

For approximately five years from late 2014, I was General Editor of the Lexis Nexis newsletter *Native Title News*.