

# **Curriculum Vitae**

**Hon Duncan Kerr SC**

**Barrister--Michael Kirby Chambers**

## **Contents**

Part I Legal Practice  
Part II Executive Government  
Part III Academic and Professional  
Part IV Parliamentary Service  
Part V International Law and Human Rights  
Part VI Other Employment  
Part VII Other Community Service  
Part VIII Publications and Cases  
Basic Biography and Contact Details

## **Part I Legal practice**

**Tasmania**--admitted 29 February 1980;  
**High Court of Australia**—enrolled 15 May 1980;  
**Papua New Guinea**—admitted 7 June 1983; and  
**Senior Counsel**—appointed silk 25 June 2004.

I practice from Michael Kirby Chambers in Hobart. I am also on Foley's List in Melbourne.

I began my legal career apprenticed to Roger Jennings QC SG (Tas). After my admission I worked for several years as Crown Counsel. I had particular responsibility for constitutional law. In that role I worked closely with former State Solicitors-General including Mary Gaudron QC and Daryl Dawson QC, both later Justices of the High Court.

As Crown Counsel for Tasmania I was briefed in civil and criminal trials and represented the State in foreign administrative law judicial proceedings conducted in Washington DC.

I have acted as counsel in the High Court of Australia, the Federal Court of Australia, the Family Court of Australia, the Supreme Court of Tasmania, the District and Supreme Courts of New South Wales and the National and Supreme Courts of Papua New Guinea. I have acted in Commonwealth administrative law proceedings before the Administrative Appeals Tribunal and have appeared in planning and environmental matters before the Resource Planning and Development Commission and the Resource Management and Planning Appeal Tribunal.

My opinion work has covered criminal, commercial, contract, torts, human rights and national security law as well equity matters and all aspects of public law.

I took silk in June 2004.

## **Litigation in the High Court of Australia**

Crispin Hull described *Plaintiff S157/2002 v The Commonwealth* (2003) 211 CLR 476 as one of the seven most far reaching and influential of the High Court's decisions on constitutional matters in the past one hundred years (*The Canberra Times* High Court Centenary Issue 10-11).

Writing in the Australian Institute of Administrative Law Forum (No. 53) Robert Lindsay noted that *Plaintiff S157/2002* 'will rank with cases such as the *Boilermakers*' case, the *Engineers*' case and the *Australian Communist Party* case as a significant development in the constitutional jurisprudence of Australia'.

I was leading counsel for the successful applicant. The decision in *Plaintiff S157* cemented the availability of judicial review of Commonwealth administrative decisions. Following the High Court's recent decision in *Kirk*, State Supreme Courts now have an analogous, constitutionally entrenched, jurisdiction.

Other matters in the High Court in which I have acted include *Attorney General (Vic) ex rel Black v Commonwealth* (1981) 146 CLR 559, *Hematite Petroleum Pty Ltd v Victoria* (1983) 151 CLR 599 and *Davis v Commonwealth* (1986-7) 68 ALR 18. I have been counsel in several special leave applications i.e. *MIMIA v Lobo* (High Court, 13 Feb 2004).

## **Part II Executive Government**

**Attorney General** (1 April 1993 to 27 April 1996); **Minister for Justice** (24 March 1993 to 11 March 1996).

In 1993 Prime Minister Paul Keating appointed me Commonwealth Attorney General and Minister for Justice. Although I held office as Attorney only for a short period until the appointment of the Hon Michael Lavarch MP after the delayed Dickson election I was Minister for Justice for the life of the Keating Government.

I had portfolio responsibility for criminal law, evidence law, copyright, bankruptcy, administrative law, legal aid, the Australian Federal Police and for the operation of the National Crime Commission.

As Minister for Justice I pursued reform of the legal aid system and supervised the development and settled the content of the Keating Government's *Justice Statement*. I instigated major reforms in copyright and administrative law and initiated a Law Reform Commission report on improvements to Freedom of Information laws.

I introduced and secured passage of the Commonwealth *Evidence Act 1995* and the *Criminal Code Act 1995*, secured the passage of legislation to counter child sex tourism and comprehensively restructured Commonwealth law enforcement arrangements.

**Parliamentary Secretary for Pacific Island Affairs** (3 December 2007 to 30 October 2009).

In late 2007 Prime Minister Kevin Rudd asked me to assist building stronger and more respectful relationships between Australia and the nations of our region. As Parliamentary Secretary I played a significant role in restoring relationships, which had come under strain, between Australia and Papua New Guinea—and in maintaining support for the constructive renegotiation of the basic development assistance treaty between our two countries. At a broader regional level I helped gain support for Australia to chair of the Pacific Islands Forum for 2009-2010.

### **Part III—Academic and Professional**

#### **Adjunct Professor, Faculty of Law, Queensland University of Technology**

I have held the position of Adjunct Professor, Faculty of Law, QUT since 1 July 2007.

I continue to contribute to DEST-rated publications and have been a regular guest lecturer in the Faculty's programme.

I have been and remain a regular contributor to academic and professional journals on matters of Australian constitutional, administrative, criminal and international law.

#### **Dean, Faculty of Law, University of Papua New Guinea**

I lectured in constitutional and administrative law at UPNG for three years (1982-1985) and was appointed Dean. After I obtained admission as a PNG lawyer UPNG granted me the right of private practice and in that capacity I advised private and government clients and appeared as counsel in the National and Supreme Court of Papua New Guinea in electoral, constitutional, tort and contract cases.

During my time at UPNG I authored two books; *The Annotated Constitution of Papua New Guinea* (with Brian Brunton) and *Essays on the Constitution* (eds) for the Tenth Independence Anniversary Advisory Committee, together with several monographs including *Criminal Practice and Procedure: Preparing for Trial* for the Faculty of Law.

In February 2010, at the invitation of Professor Ross Garnaut and Sir Rabbie Namiliu, I travelled to Madang as a facilitator for a round table attended by all PNG Vice Chancellors as part of the Independent Review of Papua New Guinea's University System.

I have also assisted in a review of the roles of the PNG Attorney-General, Solicitor General and the State law officers.

### **Public lectures and other writings**

I delivered the Victorian Criminal Bar Association's 2003 "Advocating for Justice" annual lecture and have been a keynote speaker at events such as the AIAL 2005 Administrative Law Forum *Administrative Law Horizons*, the National Judicial Conference of Australia *Confidence in the Courts* Conference (2007) and the University of New South Wales Gilbert + Tobin Centre of Public Law 2007 *Constitutional Law Conference*.

I will be a keynote speaker at the University of New South Wales Gilbert + Tobin Centre of Public Law 2011 *Constitutional Law Conference* 'Executive Power and the Theory of its Limits: Still Evolving or Finally Settled'

I remain an occasional lecturer in constitutional, administrative and criminal law in other tertiary institutions and professional organisations. These have included CLE accredited programs in New South Wales, Queensland and Victoria.

In 2010 I was a keynote speaker at (a) the Environmental Defender's Offices' Annual Conference in Sydney; (b) UN structures at the Conference on Democratic Climate Governance, Canberra; (c) a conference on Litigation and Dispute Management (Canberra), and delivered a guest lecture on the subject of Development Assistance at the University of Western Sydney.

I have reviewed legal books for *The Age* (Victoria) and *Law Letters* the journal of the Law Society of Tasmania.

I am the author of two non-legal books; *Reinventing Socialism* (ed) Pluto Press (1992) and *Elect the Ambassador, Building Democracy in a Globalised World* Pluto Press (2001).

## **Part IV--Parliamentary Service**

### **Member for Denison elected 11 July 1987—to 19 July 2010.**

I served as chair, Inter-governmental Committee, National Crime Authority (1993-1996); member House of Representatives Legal and Constitutional Affairs Committee (1987-1993; 1996-2007); member Joint Select Committee on Corporations Legislation (1988-1989); deputy chair Joint Committee on the (National Crime Authority Australian Crime Commission) 1998-2007 and the Joint Committee on (ASIO, ASIS and DSD) Intelligence and Security (2004-2007). I was secretary, ALP Caucus Legal and Constitutional Affairs Committee 1987-1993.

I initiated private member's Bills on legal issues including a Bill for an Act to amend the Parliamentary Privileges Act 1987 (2005) and a Bill for an Act to establish the

Parliamentary (Judicial Misbehaviour or Incapacity) Commission (2005): reintroduced in a slightly modified form in 2010.

I was chair of the House of Representatives' Aboriginal and Torres St Islander Affairs Committee (1990-1992) and a member of various other House and Joint Parliamentary Committees including Privileges, Family and Community Affairs, Environment, Public Accounts, Corporations and Securities and Migration. Between 1989 and 1992 I served as chair of the Joint Commonwealth and State Governments' Taskforce on Tasmanian Employment (TASPACT). More recently I served on the Joint Treaties Committee, the House of Representatives Standing Committee on Industry, Science and Innovation and the House of Representatives Standing Committee on Infrastructure, Regional Development and Local Government until the dissolution of the House on 19 July 2010.

While in Opposition (1996-2007) I served as a shadow minister, holding at various times the shadow portfolios of Immigration; Population and Immigration; Environment; Arts; Justice, and Customs.

## **Part V—International Law and Human Rights**

I led the third (2002) ICJ/Refugee Council of Australia mission to Papua New Guinea to prepare a report on the issue of refugees and border crossers from West Papua. Others in the mission were ICJ members, the Hon Elisabeth Evatt QC, Judge John O'Meally and Elisabeth Biok and Margaret Piper, representing the Refugee Council of Australia.

I attended the UN General Assembly as a Parliamentary Adviser (New York, September/October 2006) and the UN Framework Convention on Climate Change, Kyoto, Japan (December 1997) as a member of the Australian delegation.

I am a long-standing member of Amnesty International, the International Commission of Jurists, A Just Australia, Shelter and the International Society for the Reform of Criminal Law. I was president of the United Nations Association of Australia (Tasmanian Section) 2000-2008.

I assisted in developing the framework for Charter of Rights for Tasmania. The Attorney General, Lara Giddings has begun public consultations on the proposal.

## **Part VI—Other Employment**

### **Crown Counsel, Tasmania (1980-1983).**

In addition to the constitutional law work referred to above I prosecuted in criminal trials and appeals and conducted civil litigation and civil appellate work for the Crown in the Supreme Court of Tasmania. My opinion work was extensive—including advice to the Crown Solicitor on commercial litigation and opinions as to

the qualification and disqualification of Members of the Assembly and the Legislative Council. I advised the government and government agencies on a wide range of public law issues. I worked closely with the Solicitor General when providing advice to Premier Holgate on the prorogation of Parliament after his government suffered a loss of its parliamentary majority. I helped draft the terms of reference for a Royal Commission.

One of the more unusual opportunities I was given was to represent the State of Tasmania in Washington DC, United States of America, in an action filed under the *Administrative Procedure Act* (US). I undertook the initial research, filed the application and engaged law firm Cleary Gottlieb Stein and Hamilton as local counsel. The decision in that case overturned a proposed US regulation that would have destroyed the infant Tasmanian opium alkaloid industry by prohibiting the purchase of Australian poppy straw by United States companies.

### **Legal Counsel, Ombudsman Commission of Papua New Guinea (1983-1984).**

The Ombudsman Commission (PNG) combines the traditional role of ombudsman with the role of an anti-corruption commission. After the Commission lost its legal counsel following unexpected resignations, I became the Commission's Legal Counsel, a position I held concurrently with my UPNG Deanship for about six months, I advised and acted in Leadership Code (anti-corruption) matters and in relation to general administrative law issues during the interregnum until new legal counsel were recruited.

### **Principal Solicitor, Aboriginal Legal Service NSW (1986)**

I supervised the work of 20 employed lawyers in Sydney and 9 regional offices. I personally conducted major criminal trials in the Supreme Court of NSW and undertook civil and appellate litigation. I drafted the pleadings in, and appeared as counsel before, the High Court in *Davis v Commonwealth* (1986-7) 68 ALR 18.

## **Part VI Other Community Service**

I founded the Tenants' Union of Tasmania in 1975. I was a member of the Royal Hobart Hospital Board between 1980-1982, President, Tasmania University Union (1974) and Chairman, Student Association (TCAE) (1975).

I hold a degree in Social Work (1977) and have taught in social psychology (TAFE; 1977, 1980-82). I am a former prison visitor and honorary probation officer (Tasmania).

I have served as patron of the Tasmanian Deaf Society and the Tasmanian Environment Centre and am a member of many other Tasmanian community organisations.

I am a current board member of Greening Australia Ltd and the Salamanca Arts Centre.

## **Part VII Publications and Cases**

### **Journal Articles**

Kerr D., 'Public Interest Immunity; Power of the Houses of Parliament and Committees to require information' (1999) 18 *Aust Bar Rev* 283-284;

Kerr D., 'Mr Egan and the Legislative Council: Federal Implications' (2000) 19 *Aust Bar Rev* 67-88;

Kerr D. 'Marriage of True Minds? Trends of Resistance and Consistency in Administrative Law' in Creyke and McMillan (eds) *Administrative Law, the essentials AIAL* 2002, 19-26;

Kerr D., 'Deflating the Hickman Myth: Judicial Review after *Plaintiff S157/2002 v The Commonwealth*' (2003), 37 *AIAL Forum* 1-19;

Kerr D. and Williams G., 'Review of executive action and the rule of law under the Australian Constitution' (2003) 14 *PLR* 219-233;

Kerr D., 'Reclaiming equality in a globalised world' in Horton and Patapan (eds) *Globalisation and Equality* 2004 Routledge London 77-94;

Kerr D., 'Australia's legislative response to terrorism: Strengthening arbitrary executive power at the expense of the rule of law' (2004) 29(3) *Alt LJ* 131-134;

Kerr D., 'Privative Clauses and the Courts; Why and how Australian Courts have resisted attempts to remove the citizen's right to judicial review of unlawful executive action' (2005) 5(2) *QUTLJJ* 195-215;

Kerr D., 'Developers and Politics don't mix' (2007) 10 *Public Administration Today* 14-15;

Kerr D., 'State Tribunals and Ch III of the Constitution' (2007) 31 *MULR* 622-645;

Kerr D., 'The Red Queen's Law; Judicial Review and Offshore Processing after *Plaintiff S157/2001*' (2007) 9 *UTSLRev* 57-69; and,

Kerr D., 'The High Court and the Executive: Emerging Challenges to the Underlying Doctrines of Responsible Government and the Rule of Law' (2009) 28(2) *UTLR* 145-181.

### **Books**

Brunton B and Colquhoun-Kerr D., *The Annotated Constitution of Papua New Guinea* UPNG Press (1985)

Colquhoun-Kerr D. et al, *Essays on the Constitution* (eds) for the Tenth Independence Anniversary Advisory Committee PNG (1985)

Kerr D., *Reinventing Socialism* (ed) Pluto Press (1992);

Kerr D., *Elect the Ambassador, Building Democracy in a Globalised World* Pluto Press (2001).

## **Selected Reported Cases**

*Reg v City of Launceston* [1980] Tas R 1 (Supreme Court of Tasmania, Crawford J-certiorari);

*Brown v Itchins* [1980] Tas R 137 (Supreme Court of Tasmania, Green CJ, Neasey and Cosgrove JJ-nature of a ‘reasonable belief’ in criminal proceedings);

*R v Arnol* [1980] Tas R 222 (Supreme Court of Tasmania, Everett J—drunkenness as defence to rape);

*Smith v Commissioner of Stamp Duties* [1981] Tas R 14 (Supreme Court of Tasmania, Everett J-stamp duties);

*Motor Accidents Insurance Board v O’Neill* [1981] Tas R 113 (Supreme Court of Tasmania, Neasey J-claim by Motor Accident Compensation Board—whether liquidated demand);

*Attorney General (Vic) ex rel Black v Commonwealth* (1981) 146 CLR 559 (High Court of Australia) Barwick CJ, Gibbs, Stephen, Mason, Murphy, Aitkin and Wilson JJ-state aid to non-government schools);

*The Closer Settlement Board v Thomas* [1982] Tas R 179 (Supreme Court of Tasmania, Neasey, Nettlefold and Cosgrove JJ-principles governing dismissal of action for want of prosecution);

*Hematite Petroleum Pty Ltd v Victoria* (1983) 151 CLR 599 (Full Court, High Court of Australia—excise duties);

*Masive v Okuk* [1985] PNGLR 105 (National Court of Papua New Guinea, Pratt J-PNG electoral petition);

*SCR No 2 of 1985 Re Masive v Okuk* [1985] PNGLR 263 (Supreme Court of Papua New Guinea, Kidu CJ, Pratt, Amet and Woods JJ—PNG electoral laws);

*Ombudsman Commission of Papua New Guinea v Donohoe* [1985] PNGLR 438 (Supreme Court of Papua New Guinea, Pratt, Amet and Woods JJ-judicial review);

*Davis v Commonwealth* (1986-7) 68 ALR 18 (High Court, Gibbs CJ—constitutional law—inherent powers of nationhood--resisting application to strike out pleadings);

*Rimbink Pato v Umbu Pupu* [1986] PNGLR 310 (Supreme Court of Papua New Guinea, Woods, Los and Wilson JJ- defamation);

*Patten v Justice of the Peace, Redfern Court* (1986) 22 A Crim R. 94 (Supreme Court NSW, Foster J-quashing of search warrants);

*Plaintiff S157/2002 v The Commonwealth* (2003) 211 CLR 476 (Full Court, High Court of Australia—purported removal of judicial review—Constitution s 75 (v));

*Commonwealth v Wood* (2006) 148 FCR 276 (Federal Court of Australia, Heerey J—constitutional law—judicial power—Chapter III, state courts and state tribunals), and:

*Commonwealth v Anti-Discrimination Tribunal (Tasmania)* (2008) 169 FCR 85; 248 ALR 494 (Full Court, Federal Court of Australia, Goldberg, Weinberg and Kenny JJ—capacity of state tribunals to exercise authority over the Commonwealth)

## **Basic Biography and Contact Details**

Date of Birth: 26 February 1952

Place of Birth: Hobart

Citizenship: Australian

Spouse/partner: Anna Pafitis

E-mail: [duncan.kerr@tasmanianbar.com.au](mailto:duncan.kerr@tasmanianbar.com.au)

Web: [www.duncankerr.com](http://www.duncankerr.com)

Mobile 0418125161

Mail GPO Box 1696 Hobart, Tasmania 7001

Michael Kirby Chambers, 49 Davey St, Hobart 7000

Clerk

Foley's List (Melbourne)

+61 3 92257777

E [foleys@foleys.com.au](mailto:foleys@foleys.com.au)

<http://www.foleys.com.au>