

# **Curriculum Vitae**

**Hon Duncan Kerr SC  
Duncan Colquhoun-Kerr**

**Barrister**

## **Part I 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 Duncan Kerr Commonwealth Attorney General and Minister for Justice. Although he held office as Attorney only for a short period (until the appointment of the Hon Michael Lavarch MP after the delayed Dickson election) Duncan served as the Minister for Justice for the life of the Keating Government.

Within the Attorney General's Department he had portfolio responsibility for criminal law, evidence law, copyright, bankruptcy, administrative law, legal aid, law enforcement and for the operation of the National Crime Commission.

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

Kerr also introduced and secured passage of the Commonwealth *Evidence Act 1995* and the *Criminal Code Act 1995*. He proposed and 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 appointed Duncan Kerr to the position of Parliamentary Secretary for Pacific Island Affairs with the explicit task of rebuilding stronger and more respectful relationships between Australia and the nations of our region. Duncan Kerr was successful in gaining support for Australia to assume the chair of the Pacific Islands Forum for 2009-2010. He played a significant role in restoring relations, which had come under strain, between Australia and Papua New Guinea—and in maintaining support for constructive renegotiation of the basic development assistance treaty between the two countries.

As Parliamentary Secretary Duncan Kerr requested and obtained the support of the G8 for a programme of assistance to UPNG. He was instrumental in persuading the

two governments to establish a comprehensive Independent Review of PNG's University System

## **Part II Parliamentary Service**

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

Duncan Kerr 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). He was secretary, ALP Caucus Legal and Constitutional Affairs Committee 1987-1993.

Kerr has 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.

He 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 Kerr served as chair of the Joint Commonwealth and State Governments' Taskforce on Tasmanian Employment (TASPACT). He most recently 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..

### **Shadow Minister**

During the period when Labor was in Opposition Duncan Kerr served as a shadow minister in a variety of capacities, holding at various times the shadow portfolios of Immigration; Population and Immigration; Environment; Arts; Justice and Customs.

## **Part III Legal practice**

**Tasmania**--admitted 29 February 1980;  
**High Court of Australia**—enrolled 15 May 1980;  
**Papua New Guinea**—admitted 7 June 1983; and  
**New South Wales**—admitted 20 December 1985.

**Senior Counsel**--appointed 25 June 2004.

## **Litigation**

The landmark High Court case *Plaintiff S157/2002 v The Commonwealth* (2003) 211 CLR 476 has been described 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 (Crispin Hull, *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'.

Duncan Kerr acted as leading counsel for the successful applicant. The decision in *Plaintiff S157* cemented the availability of judicial review of Commonwealth administrative decisions.

In *MIMIA v Lobo* (High Court, 13 Feb 2004) Kerr was successful in opposing the Commonwealth's special leave application seeking to wind back the impact of that decision by cutting down the scope of jurisdictional error.

Duncan Kerr has acted as counsel in 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. He appears regularly in Commonwealth administrative law proceedings before the Administrative Appeals Tribunal and the Federal Court. He has acted in a number of matters before the Resource Planning and Development Commission and the Resource Management and Planning Appeal Tribunal (Tasmania).

Before entering the Federal Parliament Duncan Kerr represented Tasmania in trade and administrative law proceedings in the United States of America (see below—previous employment).

Duncan Kerr maintained a current practicing certificate as a barrister throughout his time as a Member of Parliament. He took silk in June 2004.

## **Part IV—Academic and Professional**

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

Duncan Kerr lectured in constitutional and administrative law at UPNG (1982-1985). He had a right of private practice and in that capacity he 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. A number are reported in the PNGLR series.

During his time at UPNG he published 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, Duncan Kerr 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.

### **Adjunct Professor, Faculty of Law QUT**

On 1 July 2007 Duncan Kerr was appointed Adjunct Professor, Faculty of Law, Queensland University of Technology.

He has since contributed to DEST-rated and other publications and has been an annual guest lecturer in the Faculty's programme—see list of publications.

He is a regular contributor to academic and professional journals on matters of Australian constitutional, administrative, criminal and international law.

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

Kerr remains 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.

Duncan Kerr delivered the Victorian Criminal Bar Association's "Advocating for Justice" annual lecture (2003) and has 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*.

In the current calendar year Duncan Kerr has been a keynote speaker on public interest environmental law at the EDO Annual Conference in Sydney; on UN structures at the Conference on Democratic Climate Governance, Canberra and will be a keynote speaker at conferences on Litigation and Dispute Management (Canberra) and will deliver a guest lecture Development Assistance (UWS) later in the year.

Kerr is a member of the Course Advisory Committee (CAC) for the sociology programme, School of Sociology and Social Work, University of Tasmania.

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

Kerr has also contributed a large number of non-refereed articles and opinion pieces to local and national newspapers and on-line journals.

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

## **Part V—Other Previous Employment**

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

Working with the Tasmanian Solicitor-General, Roger Jennings QC Duncan Kerr had carriage of constitutional litigation on behalf of the Tasmanian government and appeared as counsel for Tasmania in State courts and before the High Court of Australia e.g. *Hematite Petroleum Pty Ltd v Victoria* (1983) 151 CLR 599.

He also prosecuted criminal trials and appeals and conducted civil litigation and appellate work for the Crown in the Supreme Court of Tasmania.

Duncan Kerr represented the State of Tasmania in the United States of America in an action filed under the *Administrative Procedure Act* (US). He undertook the initial research, filed the application and travelled to Washington DC where he engaged law firm Cleary Gottlieb Stein and Hamilton as local counsel.

The outcome of 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, Kerr became the Commission's Legal Counsel, a position he held conjointly with his University post for about six months while new staff was recruited. He advised and acted in Leadership Code (anti-corruption) matters and in relation to general administrative law issues.

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

As Principal Solicitor Duncan Kerr supervised 20 employed lawyers, personally conducted criminal trials and undertook civil and appellate litigation including appearing before the High Court in *Davis v Commonwealth* (1986-7) 68 ALR 18.

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

As an executive member of the International Commission of Jurists (Australian Section) Duncan Kerr 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.

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

## **Part VI Other Community Service**

He was a member of the ALP state executive/administrative committee 1976-80, 1993-6 and 1998-2002, treasurer 1980-1982, vice president 1996-1997 and served as a member of the national executive of the Australian Labor Party from 1998-2004.

Between 2002-2007 Kerr was the national convener of Parliamentarians for Drug Law Reform and a member of the Tasmanian Community Alliance which was established to campaign for an end to clear-felling Tasmania’s old-growth forests.

Prior to entering Parliament Kerr founded the Tenants’ Union of Tasmania (1975). He was a member of the Royal Hobart Hospital Board between 1980-1982 and a former President, Tasmania University Union (1974) and Chairman, Student Association (TCAE) (1975).

Duncan Kerr holds a degree in Social Work (1977) and lectured in social psychology (TAFE; 1977, 1980-82).

He is a former prison visitor and honorary probation officer (Tasmania).

Duncan Kerr has given long service as executive member/ patron of the Tasmanian Deaf Society and the Tasmanian Environment Centre and is a member of many other Tasmanian community organisations.

## **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).

## 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 debt or 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-appeal against dismissal of defamation case);

*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

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

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