FOREWORD

Editorial Board
Australian Indigenous Law Review

This volume of the *Australian Indigenous Law Review* ('*AILR*') is the first to be fully edited by a new editorial board comprised of Kathy Bowrey, Kyllie Cripps, Megan Davis, Mehera San Roque and Leon Terrill. With the increased involvement of academics from diverse backgrounds and experience we are seeking to encourage new submissions, including content addressing regional experiences and advocacy by Indigenous peoples. We would especially welcome contributions from Indigenous scholars and works that break with the conventions of settler colonial academic scholarship on law and legal relations.

The general issue opens with an innovative exploration of cultural tourism in the Andaman Islands where, in the recent past, exploitation of the Indigenous Jarawa People has led to a direct intervention by the Indian Government. Drawing upon insights from critical theory Jonathan Liljeblad suggests that the Indian state can find guidance in formulating a response to the issue of 'human safaris' by closer consideration of the normative aspects of the issues involving tourist relations with the Jarawa.

Clement Ng draws upon experience working as a lawyer in the Northern Territory to explore the theoretical and practical problems that flow from a peripheral positioning of Indigenous female youths in the juvenile justice system. Ng argues that the existing youth justice system is substantially based on the ideological model of male youth offenders. This model only contributes further to the seemingly unavoidable crisis of hyper-incarceration of Indigenous women, in turn undermining the future wellbeing of Indigenous families and communities.

Lily O'Neill's article addresses an important question in contemporary Australian Aboriginal policy—how to turn wealth derived from resource extraction on Aboriginal land into economic and social prosperity. She analyses two sets of agreement-making with resource companies: the first which resulted in the Browse LNG agreements in Western Australia and the second concerning negotiations over four LNG processing plants on Curtis Island, off Gladstone in central Queensland. Her analysis highlights the positive impact on traditional owner leverage that can occur when a government publicly prioritises the interests of Aboriginal people.

In the final article of the general section, Rob White traverses an ambitious range of scholarship: restorative justice in criminology generally, in green criminology specifically, and environmental justice. Reflecting upon a case study of NSW Land and Environment Court proceedings against Pinnacle Mines Pty Ltd, charged with several offences under the *National Parks and Wildlife Act 1974 (NSW)*, the paper identifies key features of the case that made it amenable to a restorative justice response. The paper then positions this use of restorative justice within the context of Indigenous relationships with land/country, raising interesting questions about non-human environmental victims and the 'voices' that prevail in any given situation.

This edition of the *AILR* includes a thematic section on Australian Indigenous constitutional recognition.

The opening paper by Megan Davis problematizes the space for Indigenous engagement in Australia around the issue of recognition. She asks, 'How is it that the Indigenous polity, in a Western liberal democracy like Australia, can be so marginalised and opinions have so little traction in the national conversation?' In Davis's view, Australia lags behind the rest of the world in structural accommodation of its First Peoples and she suggests that there is a link between

recognition and improvements in Indigenous health and well-being. She closes with reflections on developments in 2015 and advocates for models that advance strong forms of recognition.

In 2012 the Prime Minister's Expert Panel on the recognition of Aboriginal and Torres Strait Islander peoples in the Constitution handed its report to the Prime Minister. Since then, despite three deliberative processes in four years, there has been no decisive response from government to those recommendations. In 2015 the substantive model of recognition is no closer to resolution. The formal work of refining the model has been led by the Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples, which tabled an interim report in July 2014, a progress report in October 2014 and its final report in 2015. The final options are simply variations of the panel's recommendations. What is clear is that the sticking point is s 116A – the expert panel's recommendation for a non-discrimination clause. The primary objection to a non-discrimination clause is political: Australian politicians do not want a bill of rights and Australian politicians do not want their power to legislate to be constrained.

Spearheaded by Noel Pearson and the Cape York Institute, an alternate model has emerged. This proposal is put forward as one that addresses conservative objections to the expert panel's recommendations, especially s116 A. The model seeks to provide Aboriginal and Torres Strait Islander peoples with a voice in the Parliament. It is aimed at providing scrutiny of decision-making for Indigenous polities by allowing them a voice in the parliamentary process; one that is not provided by the current parliamentary committee arrangements.

Since the abolition of the Aboriginal and Torres Strait Islander Commission (ATSIC) there has been no Indigenous voice in the political arena. This is problematic for a group of Indigenous polities that together constitute three percent of Australia's 22 million people.

The second paper by Shireen Morris analyses the ways in which Maori are recognised through New Zealand's legal and political institutions. She discusses reaction to the Australian Expert Panel's recommendations, contextualises the relevant concepts including 'recognition', 'symbolism', 'practicality' and 'fairness' within the frame of a liberal democracy, and argues that Indigenous advocacy has always been for practical forms of constitutional recognition. Morris' conclusion is that, while it too has its flaws, the New Zealand experienced does provide an example of how Indigenous recognition can be active, ongoing and practical, and not just symbolic.

Lisa McAnearney considers the available options with respect to the 'race power' in the Australian constitution. She describes how a central goal of Indigenous constitutional recognition is ensuring that the Commonwealth legislative power that replaces section 51(xxvi) can only be used beneficially. McAnearney is critical of the Cape York Institute proposal, arguing that it lacks the function of a constitutional safeguard against adverse Indigenous discrimination.

The final two papers by Gabrielle Appleby and George Williams apply a critical lens to the Cape York Institute model, outlining limitations of and challenges for such a body as it is currently configured. Both suggest potential improvements to its structure and associated constitutional drafting.

As with its special edition on constitutional recognition in 2011, the *AILR* is pleased to continue to provide critical analysis of constitutional reform.

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