



# Indigenous issues in Australia

By Leon Terrill

Last month marked the 50<sup>th</sup> anniversary of an interesting piece of history. It was in August 1963 that the Yolngu people of East Arnhem Land created the 'Yirrkala bark petitions'. The petitions were a response to the Australian Government's decision to excise an area of land from the Arnhem Land Reserve and allow it to be mined for bauxite. Combining bark painting and typed text, and written in both Yolngu Matha and English, the petitioners reminded the Australian Government that Yolngu had been using the land in question since 'time immemorial'.

In the short term the petitioners were unsuccessful. The land was excised and the mine was built without their having a say. However, their ongoing efforts at achieving recognition – including as plaintiffs in *Milirrpum v Nabalco Pty Ltd* (1971) 17 FLR 141 – were integral to building the momentum that led the Australian Parliament to enact the *Aboriginal Land Rights (Northern Territory) Act* in 1976.

Today the bark petitions hang in Parliament House, partly as a reminder of Australia's past. In 1963, Australian law did not recognise prior Indigenous ownership. Segregation was commonplace, and Australian governments had only just begun extending voting rights to all Indigenous adults. Aboriginal people in the Northern Territory were still classified as wards of the state.

We have come a long way since then. As the contributions to this edition demonstrate, however, the work of Indigenous and non-Indigenous lawyers and law reformers is not done. In their own way, some of today's challenges are as complex and demanding as those of 50 years ago.

This is partly because there is unfinished business, and this edition begins with an article by Professor Megan Davis on the recognition of Indigenous people in the Constitution. Fittingly, the edition also contains four articles on Indigenous rights to land: two on native title and two on statutory land rights. Vance Hughston SC writes about the requirements for establishing native title, including some of the difficulties faced by claimants, while Gabrielle Lauder and Dr Lisa Strelein consider the consequences of the very recent High Court decision in *Akiba v Commonwealth of Australia* [2013] HCA 33, perhaps the most important native title case for a decade.

In an article that includes an overview of the Northern Territory land rights legislation, Lizzie O'Shea describes the complex issues behind a Federal Court challenge to the nomination of Muckaty Aboriginal Land Trust as a site for a radioactive waste facility. My own article considers the impact of recent reforms to Aboriginal land tenure.

There are also two articles on alcohol regulation, although on very different issues. Peter McDonald provides a case note on *Maloney v The Queen* [2013] HCA 28, in which the High Court held that restrictions on the possession of alcohol on Palm Island were not inconsistent with the *Racial Discrimination Act* 1975. And Jared Sharp of the NAAJA critiques the Northern Territory Government's *Alcohol Mandatory Treatment Act* 2013. Not for the first time, the argument is made that more evidence-based approaches to alcohol regulation are needed.

Thalia Anthony writes about another outstanding issue in the form of stolen wages, the income of Indigenous workers that was withheld from them in breach of statutory and common law duties. It is unfortunate but necessary that the edition includes two articles on imprisonment. George Newhouse and Alan Watkins provide a case note on *Wilson v Minister for Corrective Services* (2013) WASC 157, in which a court was asked to consider the human rights implications of transferring young offenders to an adult prison. Melanie Schwartz writes with cautious optimism about the potential for justice reinvestment to reduce Indigenous incarceration rates, if implemented carefully.

The Aboriginal Peak Organisations of the Northern Territory (APO NT) reports on some recent steps towards enabling residents of Aboriginal communities to have greater control over their own circumstances, and documents areas where further work is required. Rounding out this edition is an article by Chris Ronalds SC and Megan Black describing how the NSW Bar Association is supporting talented young Indigenous lawyers and law students, with the hope that in the long term membership of the Bar will be more representative of the community.

The edition contains a good spread of articles, and reflects the diversity of Indigenous legal issues across Australia today. We hope you find it informative. ■

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**Leon Terrill** is a lecturer in the UNSW Law School and a Centre Fellow at the Indigenous Law Centre.