

FOREWORD

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This volume of the *Australian Indigenous Law Review* ('AILR') is the first to be published in the new print format, which we hope you find to be convenient, accessible and easy to read. The new print format coincides with the launch of the AILR's new website – <http://www.ilc.unsw.edu.au/publications/australian-indigenous-law-review> – which provides access to advance copies of articles as soon as they are available, and to electronic copies of all articles.

The new print and online formats are intended to further our aim of making quality research on Indigenous legal issues available to a wide audience.

The articles in this volume continue the tradition of traversing a range of legal issues: defining Aboriginality at law; the bestowal of legal personhood on rivers; joint governance of Tasmania's Wilderness World Heritage Area; intangible cultural heritage; Neighbourhood Justice Centres; consumer leases; home ownership and land tenure reform; Indigenous governance; and the impact of environmental pollution on future generations.

The volume opens with an investigation into legal Aboriginality and the ways in which Aboriginal legal personhood is demarcated in legislation and by the courts. Alison Whittaker problematises Aboriginal legal identity as a product of white law, criticising the way in which Aboriginal personhood is constructed almost entirely externally to Aboriginality itself. The author explores this incongruity, arguing that paternalistic and assimilation-bound legal processes render Aboriginal legal persons as 'grey legal subjects' identified without attempts to accurately reflect Aboriginal concepts of identity and self-understanding.

In his famed 1972 article,¹ Christopher Stone wrote that if inanimate entities like corporations and trusts can be bestowed with legal personality, then why can't natural objects? The New Zealand Whanganui River Treaty Settlement ('Settlement') answers that they can, and that such personality can also be protected by a scheme that prioritises Indigenous values. Katie O'Bryan's article is a comparative analysis of the Settlement and the potential for the application of its principles in Victoria. Significantly, the Settlement incorporates a distinctive 'voice to Māori' and sets up a guardianship model which prioritises Māori river values in protecting the river's personhood. The article critically examines the

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1 Christopher Stone, 'Should Trees Have Standing? – Toward Legal Rights for Natural Objects' (1972) 45 *Southern California Law Review* 450.

Settlement and discusses whether such a guardianship model could be adopted in the Victorian context, in light of that state's existing progressive water management regime.

Further south, Lee and Richardson's article considers the recent joint governance plan for the Tasmanian Wilderness World Heritage Area. The plan is part of a broader package of measures designed to 'reset the relationship' between the state government and Tasmania's Aboriginal peoples. The plan's concept of joint management is intended to reflect the fact that the area is a home incorporating kinship, reciprocity and ways of knowing. The authors survey and critically examine the history of how the plan arose, situating that survey within the broader context of Tasmania's dark colonial history, and consider the plan's promise of prioritising Indigenous cultural continuance.

Next, Matthew Storey examines recent amendments to the *Aboriginal Heritage Act 2006* (Vic) to protect intangible cultural heritage. Partially implementing the *Convention for the Safeguarding of the Intangible Cultural Heritage*,² the regime is the first in Australia to protect such heritage. Storey describes the operation of the legislation, critically analyses its implementation of the *Convention*, and considers whether its interaction with certain existing Commonwealth legislation is problematic.

Based upon tenets of community-engaged problem solving, Aleksandra Miller considers the potential for Neighbourhood Justice Centres ('NJC's') to decolonise criminal justice processes. Miller argues that NJC's ability to hybridise Indigenous and non-Indigenous models, as well as their integration of legal and administrative functions, means they have the potential to facilitate particularised and restorative justice for Aboriginal people who encounter the criminal justice system in metropolitan areas.

Paul Ali et al explore the ongoing problems experienced by Indigenous consumers in regional and rural communities when entering into consumer leases. The authors describe predatory contractual practices that induce customers into consumer leases which, contrary to their appearance, are the least financially sustainable solution for low-income earners in remote areas. The authors explain that this problem is prevalent in Indigenous communities due to their geographical isolation, socio-economic hardship and cultural practices, and describe how, despite their penalty powers, the Australian Securities and Investments Commission's interventions have had limited effect.

Using the outer Torres Strait Islands as a case study, Julia Maurus provides a critical examination of Queensland's 2015 enactment of legislation that enables Aboriginal and Torres Strait Islander land in Queensland to be converted to ordinary freehold. Maurus describes the operation of the legislation and assesses its potential role with respect to home ownership, as part of which she compares it to other options for home ownership such as 99-year leases. Maurus also considers the impact of each option on native title and concludes with an assessment of whether the freehold option is suited to the circumstances of Torres Strait Islanders.

² Opened for signature 17 October 2003 (entered into force 20 April 2006) ('*Convention*').

As part of their ARC Discovery Project on nation building, Vivian et al explore the constraints and opportunities of Australian federalism for Indigenous governments. The article weighs issues such as the vulnerability of existing entirely outside of formal legal mechanisms, the risk of becoming too 'quickly juridified' and rendered inflexible by formal legal systems, the role of economic independence and concerns about the legitimacy of sovereign status and resulting formulations of jurisdiction. Drawing on the notion of 'divided sovereignty and shared jurisdiction', the authors suggest that a reframed model of federalism that comprises co-existing Indigenous and non-Indigenous governments is conceptually possible and potentially restorative.

Moving from the domestic to the international, the volume concludes with Konstantina Koutouki's investigation into the vulnerability of Indigenous populations in the Arctic who are disproportionately exposed to heavy metal contamination and persistent organic pollutants. Koutouki discusses the criminalisation of environmental degradation, 'green criminology', and whether chronic low-level pollution is capable of being integrated into international legal frameworks. The article integrates this analysis with the question of 'intergenerational justice', asking whether long-term environmental effects can constitute crimes against future generations of the Inuit.