



Number 7, 2013

## Welcome

Welcome to the first ILC newsletter for 2013. Last year was a very busy year for the ILC, so in this edition we thought it fitting to reflect upon some of our 2012 achievements, including an overview of major news and events that occurred during the year in addition to some of the Centre's current research work, events and publications. In particular, we are also pleased to report the success of our first Open Forum on the Australian Mining Boom and its impact upon Aboriginal communities as well as an invited academic workshop on the 20<sup>th</sup> anniversary of the Native Title Act. Both events will be described in more detail in a later newsletter.

Professor Megan Davis, Leon Terrill and Dr Kyllie Cripps.

## ILC News

### **NAB Women's Agenda Leadership Awards – Inspirational Ambassador Award**

ILC Director, Prof Megan Davis, was recently awarded the National Australia Bank/Women's Agenda Inspirational Ambassador Award. Prof Davis was announced as this year's winner at a lunch in Sydney on Thursday 7<sup>th</sup> March. The winners are chosen from a field of Australian women who have demonstrated innovation/leadership in inspiring the next generation and a strong commitment to creating change for the future. Megan was named as the winner of the award for her commitment to protecting the rights of marginalised members of society and using her position with the UN to encourage and inspire other women to be influential leaders in male-dominated industries.



## Prof Megan Davis elected Rapporteur of the UNPFII Expert Group Meeting on Indigenous Youth

ILC Director and UNPFII expert member, Prof Megan Davis, attended the United Nations' international expert group meeting on indigenous youth, from the 29<sup>th</sup> to the 31<sup>st</sup> January 2013 at United Nations Headquarters in New York. The theme was 'Indigenous youth: identity, challenges and hope: articles 14, 17, 21 and 25 of the United Nations Declaration on the Rights of Indigenous Peoples'. In addition to writing the report, Prof Davis engaged in discussion and analysis of how international human rights standards and policies could be more responsive to advancing the rights of indigenous youth. The final report and recommendations of the Expert Group Meeting will be submitted to the 12<sup>th</sup> session of the UN Permanent Forum on Indigenous Issues, in May 2013.

## Prof Davis & UNPFII in Brazzaville, Republic of Congo

Prof Megan Davis is an expert member of the UNPFII. Each year the UNPFII has a pre-session meeting to prepare for the main meeting in May/June. Each year a different UN member state hosts the UNPFII. During the current Form, pre-session meetings have been held in Ottawa, Canada and Nicaragua. This year the UNPFII was hosted by the Republic of Congo. The Republic of Congo is one of the first UN member states to implement the United Nations Declaration on the Rights of Indigenous Peoples into domestic legislation. Part of the trip was to understand how the legislation was negotiated and enacted and provide input into the 5 year implementation plan with UN Congo. Prof Davis attended the pre-session with her colleagues in the capital Brazzaville where they met with Indigenous peoples of the Congo (who had travelled up to 3 days to meet the UNPFII), Parliamentarians, UN Congo and Soyata Maigi (Mali) from the African Commission on Human and Peoples Rights to discuss the unique challenges facing Indigenous peoples in the Congo, particularly given the remoteness and the forests.



(left to right) Prof Megan Davis meeting with Soyata Maiga, African Commission on Human & Peoples' Rights and group photo of Congolese women at the pre-session meeting.

## ILC : OPEN FORUM SERIES

### Indigenous Law Centre Open Forum: *Australia's Mining Boom – The Impact on Aboriginal Communities*

This ILC Open Forum was held on the 4<sup>th</sup> April 2013 and discussed some of the beneficial impacts of the mining boom including indigenous agreement-making, economic development and capacity building, indigenous employment and improved infrastructure as well as the adverse effects on cultural and community well being and on Aboriginal peoples' access to affordable housing and health services.

### ILC Invited Workshop: *Native Title – A Vehicle for Change and Empowerment?*

The ILC, with the support of the Attorney-General's Department, Gilbert + Tobin and the UNSW Faculty of Law, hosted a workshop with a select group of industry experts on 5<sup>th</sup> and 6<sup>th</sup> of April, 2013 ***Native Title: A Vehicle for Change and Empowerment?*** The workshop conducted a critically-minded appraisal of positive and negative developments over the past twenty years and a realistic assessment of where native title may go in the next twenty. Beyond speakers and discussants, the workshop also included a limited number of invited participants involved in the native title system, academics and research students. The workshop was a great success for all who attended and we look forward to sharing the outcomes in our next newsletter.

### Successful ARC Grant: Role of Cultural Factors in the Sentencing of Indigenous Sex Offenders

Late in 2012, we were successful in an ARC grant looking at the role of cultural factors in the sentencing of Indigenous sex offenders in the Northern Territory. This will be a study of the impact of extra-legal factors about sexuality and Indigenous culture on the sentencing of Indigenous sex offenders in the Northern Territory. It will provide an empirical basis for future policy, legal practice and law reform relating to sentencing in sexual assault cases in the Northern Territory, with broader application to other Australian jurisdictions. The grant is associated with a broader research project, commenced in 2009, examining the experiences of Aboriginal women and children in Aboriginal communities.

### 2012 Narrm Oration



Prof Megan Davis was the orator of the 2012 NARRM Oration held on Thursday 8 November. NARRM refers to the country of the Melbourne region. The vision for this oration is to profile leading Indigenous thinkers from across the globe in order to enrich our ideas about possible futures for Indigenous Australia.

Professor Davis spoke on Aboriginal women and the limitations of the right to self determination. She argued that the way self-determination has been configured in international law and interpreted by the state and Indigenous communities has been skewed in a way that impedes the capacity of Aboriginal women and girls to freely determine their economic, social and cultural destiny. She provided an alternative view of self-determination based on individual capability—what each individual is able to do and to be. Accordingly, she made the point that for Aboriginal women to achieve a threshold of well-being, the current level of violence, vulnerability and disadvantage they face needs to be discussed openly and addressed.

For more information and link to a video of the Oration visit:

<http://www.murrupbarak.unimelb.edu.au/content/pages/narrm-oration-2012>

### Aboriginal Tenure Security

On 27 November, Leon Terrill presented a paper called 'Tenure Security: Concept and Implementation' to staff from the Department of Families, Housing, Community Services and Indigenous Affairs in Canberra. The presentation dealt with the distinction between the Australian Government's 'secure tenure' policies and the concept of tenure security as it is used in international research, and considered the relationship between land reform and economic development more generally. The paper was presented in the morning, and in the afternoon Leon

was invited back to participate in a question and answer session with a smaller group of around 15 staff from the Land Reform Branch.

## **Alternative Approaches To Aboriginal Land Reform Model**

On 28 November, Leon Terrill presented a second paper called 'Alternative approaches to developing a land reform model' at the Centre for Aboriginal and Economic Policy Research, as part of their seminar series. The paper set out a two stage process for developing alternative land reform models, and highlighted the connections between land reform, governance and approaches to government benefit provision.

## **Freilich Foundation Annual Lecture**

Prof Megan Davis gave the [2012 Freilich Foundation Annual Lecture](#) in Bigotry and Intolerance 2012: 'Constitutionalising racial non-discrimination: Why the Expert Panel on the Recognition of Aboriginal and Torres Strait Islanders in the Constitution recommended a racial non-discrimination provision in the Australian Constitution'.

## **2012 National Indigenous Legal Conference**

Prof Megan Davis addressed the National Indigenous Legal Conference on 5-6 October 2012. The theme of the conference was Pathways to Tomorrow: Innovations and Intersections in Law Land and Justice.

Megan spoke to the UN Declaration on the Rights of Indigenous Peoples: Implications for Australia and challenged all the young lawyers in the room to take up the challenge.

Also at that conference we heard from Glen Kelly, CEO of the South West Aboriginal Land and Sea Council ('SWALSC') who spoke impressively on the merits of 'alternative settlement; in the context of the Noongar claim in the south west of Western Australia. Given the importance of this claim the Editor of the Indigenous Law Bulletin approached Glen to write an article in the Native Title thematic issue Volume 8 -2. Glen's article is the featured article as it is a must read given the significance of the Noongar claim. The article was written in collaboration with Dr Stuart Bradfield who is the SWALSC's Negotiations Manager.



Megan Davis with law students from Queensland who attended the Perth conference.

## The Indigenous Sexual Assault Research And Resources Gateway

The ILC has launched a new website within our current pages 'The Indigenous Sexual Assault Research and Resources Gateway': <http://www.ilc.unsw.edu.au/research/indigenous-sexual-assault-research-and-resources-gateway>

This site is an outcome of research conducted by Dr Kyllie Cripps and Professor Megan Davis into the experiences of Indigenous women and children as victims of sexual abuse in Australian courts funded by the Federal Attorney-General's Department and the Faculty of Law, UNSW.

Whilst conducting this research we were approached by many professionals and organisations across several disciplines seeking resources on Indigenous sexual assault to better inform their practice and engagement with Indigenous communities on these sensitive issues. In response to these requests this Gateway was developed to provide a central collection point for research, law and policy and worker resources about sexual assault as it effects Indigenous populations both in Australia and internationally. The aim of the Gateway is to facilitate access to the growing evidence-base on sexual assault and to support individuals, organisations, and agencies to use research, evidence and resources specifically focused on Indigenous experiences of sexual assault to shape present and future policy, practice and research directions in responding to, and reducing, sexual assault in our communities.

The website will be regularly updated with new material as it becomes available. We welcome your contributions. Submissions should be sent to us via e-mail preferably in PDF format, although we can accept other formats as well. However, we reserve the right to choose only those submissions that reflect the focus, scope and quality of the Gateway's activities and documents.

We will be completing reviews of this website on a regularly basis. However, it is possible that some of our links may be inactive in between these regular checks. If you come across a 'dead link', we would greatly appreciate an email notifying us of the link so that we can update it.

We are also keen to make the website as useful as possible to a wide range of audiences, so in addition to providing links to resources you think would be valuable additions, we would also welcome your suggestions on any improvements you think the site more generally would benefit from to become more user friendly. Our email is [ilc@unsw.edu.au](mailto:ilc@unsw.edu.au)...

### UNDRIP: ILC/AustLII Online Public Database

The ILC and AustLII are embarking on a project to monitor the extent to which the United Nations Declaration on the Rights of Indigenous Peoples ('UNDRIP') is being implemented and used (practised) around the world. The aim of the project is to provide insight into the UNDRIP's standing as a source of customary international law. The centrepiece of the project will be a publicly available database documenting cases that reference the UNDRIP. The database will enable states, Indigenous peoples and other organisations to develop a more concrete idea of the UNDRIP's utility and the impact it is having on the rights of Indigenous peoples.

On a recent visit to Geneva as a representative of the UNPFII Prof Megan Davis secured the support of several leading international academic institutions who will likely become key stakeholders in the project.

Initially the database will focus on case law, but will expand overtime to include measures of constitutional, statutory and policy implementation. The database, which will be hosted on the AustLII website ([www.austlii.edu.au](http://www.austlii.edu.au)), will be regularly updated and freely available to the public and will encourage submissions regarding implementation of the UNDRIP.

### Native Title Timeline

3 June, 2012, marked the 20<sup>th</sup> anniversary of the High Court's historic decision in 'Mabo'. In recognition of this historic turning point for Indigenous peoples' rights the Indigenous Law Bulletin ('ILB') published a special edition covering developments in native title over the past 20 years. To accompany this special edition we created a poster-sized **Native Title Timeline** listing the most significant developments in native title from 1788 through to 2012.

The Native Title Timeline is an excellent resource for teachers, students and legal practitioners alike. For those interested in accessing a copy of the timeline visit:

<http://www.ilc.unsw.edu.au/sites/ilc.unsw.edu.au/files/Native%20Native%20Timeline%201788-2012.pdf>

Alternatively, the Centre still has a limited number of poster-sized hardcopies available. For more information contact [ilc@unsw.edu](mailto:ilc@unsw.edu)

### Staying informed

Follow ILC on Twitter [http://twitter.com/ILC\\_UNSW](http://twitter.com/ILC_UNSW)

### *Indigenous Law Bulletin* January / February Edition 8(4)

This Edition of the *Indigenous Law Bulletin* ('ILB')—the first for 2013—has an especially diverse selection of articles covering a number of interesting topics. We have a member of the Malaysian Bar Council Human Rights Committee analysing the recently signed ASEAN Human Rights Declaration; a commentary on the current state of Community Courts in the Northern Territory; an overview of the Aboriginal and Torres Strait Islander Peoples Recognition Bill 2012; an examination of the 'market failure' that is the native title system; an evaluation of mediation training program in remote communities; as well as a review of Tim Rowse's new book *Rethinking Social Justice: From 'Peoples' to 'Populations'*.

Finally, for our Featured Article this edition we have chosen a contribution by Daniel Herborn which looks at the operation of the *Racial Discrimination Act 1975* (Cth) in terms of the protection it provides against racially offensive social media content.

### *Australian Indigenous Law Review* Issue 16(1)

Issue 16(1) of the *Australian Indigenous Law Review* features contributions from several Australian and international scholars on a range of topics. Among the issues canvassed are intra-Indigenous conflict arising from overlapping claims under the *Native Title Act 1993* (Cth); sentencing practices in Justices of the Peace courts operating in remote Indigenous communities in Queensland; the relevance of 'Indigeneity' as a factor in sentencing; trends in relative non-parole sentencing outcomes for Indigenous and non-Indigenous offenders in the New South Wales Local Court; and those associated with awards at international law to Indigenous peoples living across two or more national boundaries.

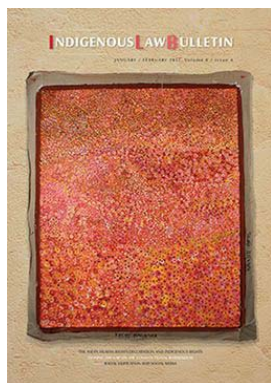
Also included is the text of the 2012 Narrm Oration, given by Professor Megan Davis (Director of the Indigenous Law Centre at UNSW and Rapporteur to the United National Permanent Forum on Indigenous Issues) at the University of Melbourne, on implications arising from the right to self-determination for Indigenous women. The cover of this issue features a linocut by Torres Strait Islander artist Alick Tipoti.

## Call for Papers

The *AILR* is currently welcoming submissions to be considered for inclusion in its upcoming

thematic issue on 'Formal Equality, Substantive Equality and Special Measures'. This issue will aim to cast fresh light on the challenges related to Indigenous peoples' differential treatment under the law and bring new insights to the debate. If you would like to submit an article (between 6,000-14,000 words, including footnotes), please email an abstract or brief summary of your topic to the Editors at [ailr@unsw.edu.au](mailto:ailr@unsw.edu.au).

If you would like to subscribe to the *AILR* or the *ILB*, please contact Melanie Simpson at [ilc@unsw.edu.au](mailto:ilc@unsw.edu.au)



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