

UNSW
THE UNIVERSITY OF NEW SOUTH WALES

Indigenous Law Centre 2011 Annual Report

Never Stand Still

Faculty of Law

Indigenous Law Centre



CELEBRATING 30 YEARS OF THE ILC & ILB

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Indigenous Law Centre

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About the Centre

The Centre was established in 1981. For over thirty years the Centre has been at the forefront of law reform and advocacy on Indigenous law and policy issues ranging from Indigenous peoples access to justice including the development of the Aboriginal legal service, contribution to the development of the *Mabo* case, to advocacy for Indigenous rights in international law including the UN Working Group on Indigenous Peoples, the development of the United Nations *Declaration on the Rights of Indigenous Peoples* and the United Nations Permanent Forum on Indigenous Issues. Today it has a strong reputation in the field of Indigenous law reform and especially in relation to, Aboriginal women and violence, constitutional law and international law, with an unparalleled body of work to its credit. The Centre is led by the Director, Professor Megan Davis, managed by the Coordinator Ms Janette Murdoch and overseen by a Board of Management. It is also advised by eminent community members, specialist lawyers, advocates and academics.



First edition of the *Aboriginal Law Bulletin* ('ALB') in August, 1981 (later retitled as the *Indigenous Law Bulletin* ('ILB')).

From the Director

2011 was an extremely busy year for the Indigenous Law Centre. In July, we celebrated the 30th anniversary of the Indigenous Law Centre ('ILC') with the launch of a commemorative special edition of the *Indigenous Law Bulletin* ('ILB'). The cover of this Annual Report reproduces the wonderful poster that was designed for the occasion. The ILB has been in continuous publication since 1981, and the poster pays homage to this history by bringing together a sampling of three decades of cover art.

Over the years, the Centre has seen many skilled and passionate academics and law students pass through its doors and has always held a special significance in the Faculty of Law, UNSW. Celebrating 30 years gave us an opportunity to reflect on and acknowledge the work of so many great individuals, and as Director, I felt confident of the support of the large and varied ILC community as we continue to drive the Centre in a new direction, quite distinct from its original purpose in advising Aboriginal Legal Services. As I look back on the work that we have done in relation to Aboriginal women, domestic violence, and constitutional reform, I am struck not only by the diversity of legal expertise within the Centre, but also the sense of a shared research philosophy, one that avoids the traps of adversarial politics, and strives to find evidence-based solutions to disadvantage and injustice.

Also in 2011, I commenced my role as an expert member of the United Nations Permanent Forum on Indigenous Issues (UNPFII). In March, I attended my first intersessional meeting in Ottawa hosted by the US and Canadian governments to prepare for the May 2011 meeting of the UN Permanent Forum on Indigenous Issues at UN Headquarters in New York. It has been a long journey when I look back to the beginning of my work in international law and the United Nations in 1998 when I commenced with FAIRA in Brisbane on intellectual property issues and attended the World Intellectual Property Organisation (WIPO) in Geneva and the UN Working Group on Indigenous Peoples. In 1999, in my final year of Law school, I was one of four Indigenous people globally selected as a UN Fellow at the Office of the High Commissioner for Human Rights in Geneva. The training we received was exceptional and I felt I have come the full circle in my election to UNPFII for three years. My portfolios include Women, Traditional Knowledge, Human Rights and Administration of Justice. And, in my first year, I have the role of conducting a study into constitutional reform processes, which is currently underway globally, recognising Indigenous peoples in state constitutions and also, the problem of violence against women in Indigenous communities.

Throughout 2011, I participated in the Prime Minister's Expert Panel on the Recognition of Indigenous Peoples in the Constitution. As a member of the expert panel I spent five months consulting Australians and Indigenous communities in a number of locations including Thursday Island, Hope Vale, Cherbourg, Mt Isa, Longreach, Townsville, Cairns, Brisbane, Sydney and Adelaide just to name a few. In January 2012, we handed our report and recommendations to the Prime Minister. In addition to this the ILC organised a constitutional law workshop discussing and debating options for reform of the Australian Constitution and we also co-hosted a workshop with G+T Centre of Public Law for the National Congress of Australia's First Peoples on options for constitutional recognition of Aboriginal and Torres Strait Islander Peoples.

Finally, I graduated from my PhD (Law) from the Australian National University, which was a great triumph and relief; and, was promoted to Professor of Law.

Megan Davis



Megan Davis and Eva Biaudet, Ombudsman for Ethnic Minorities in Finland, also a member of the UNPFII



UNPFII May 2011, Megan Davis, Chaired a panel discussion *Promoting and Protecting Indigenous Cultures*.

Left to right:

Mr Toshie Kris - Chairperson, Torres Strait Regional Authority, Australia

Mr. Gabriel Muyuy Jacanamejoy - Special Advisor to the President on Indigenous Matters, Colombia

Megan Davis

Ms Julia Ramos Sanchez - Executive, Confederacion Nacional de Mujeres Campesinas Indigenas Originarias de Bolivia

Centre Overview

ILC Staff

Director	Dr Megan Davis
Co-ordinator	Janette Murdoch
Centre Fellow	Dr Kyllie Cripps
ILB Editor	April Long
AILR Co-Editors	Dan Threlfall and Daniel Wells

Dr Kyllie Cripps, Centre Fellow

Kyllie is a Senior Lecturer within the Law Faculty. She is one of two Chief Investigators on the 'Indigenous Sexual Violence: the experiences of Indigenous women and children as victims before the courts' project. Kyllie provides expert knowledge and direction to the project on Indigenous women's and children's contexts and issues; Indigenous family violence and sexual assault research and policy fields; Indigenous research methodology; and, ethics.

Dr Kyllie Cripps was actively involved in the development of the Community Report 'Resistance and Renewal: Building and Supporting Community-led Partnership Initiatives Responding to Family Violence in Indigenous Communities in Victoria'.

The Report details the findings of a community-led project that explored the practice and functionality of partnerships in responding to family violence in four sites in Victoria through interviews and focus groups involving service providers (Indigenous and mainstream) working in and with the family violence sector. The Report was completed at the end of 2011, with an official launch planned for February, 2012.

Dr Cripps lectures in Foundations of Law and has developed a course with Professor Megan Davis on Aboriginal women and the law and Aboriginal children and the law, to be taught in 2012 and 2013.

Centre Research Associates

Centre Associates are academics, researchers or consultants whose work is directly related to the work of the Indigenous Law Centre. They are appointed by the Director in consultation with the ILC Management Board. Currently there are only two academic staff members of the ILC and for that reason the Director establishes constructive working relationships with relevant people whose work and research accords closely with the aims of the Indigenous Law Centre and its research agenda. This increases the institutional research capacity of the Centre and encourages collaborative working relationships.

- **Thalia Anthony**
Indigenous people and the law; criminal justice; civil remedies for Indigenous people; legal history
- **Sean Brennan**
Constitutional law; native title and land rights; Indigenous legal issues in general



- **Neva Collings**

Indigenous social justice and human rights; environmental law and policy

- **Rachel Davis**

International human rights; Indigenous peoples' rights to land and resources

- **Brenda Gunn**

Indigenous people's rights in domestic and international law; constitutional law; international law

- **Dylan Lino**

Constitutional law; Indigenous legal issues

- **Greg Marks**

Land law; Indigenous peoples rights in international law

- **Garth Nettheim**

Treaty; Bills of Rights and other forms of human rights protection in Australia; Indigenous legal issues - in Australia, in other countries and in international law

- **Caroline Taylor**

Child and adult sexual abuse; policing and jurisprudence in the area of sexual violence; animal welfare and animal rights.

- **Louise Taylor**

Criminal justice; women's issues; family and domestic violence

Management Board 2011

- Kathy Bowrey (Chair)
- Megan Davis, ILC Director
- Martin Nakata, Professor, Director, Nura Gili Indigenous Programs, UNSW
- Garth Nettheim, Emeritus Professor, School of Law, UNSW
- Darryl Cronin, Indigenous Policy and Dialogue Research Unit, FASS, UNSW
- Gary Edmond, Professor, Law Faculty, UNSW
- Deborah Healey, Senior Lecturer, Law Faculty, UNSW
- Brooke Predebon, General Manager, Law Faculty, UNSW

The Board's role involves development of strategy and oversight of the Centre's performance to ensure the operations and finances are in good order and compliant with University requirements.



Indigenous Law Bulletin Vol 7 No 22 (January/February).

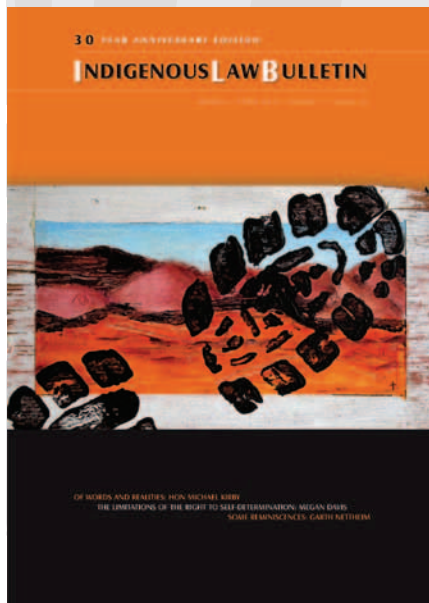
Topics covered in this issue:

- Criminal Justice System and Over Representation
- Family Violence
- Income Management
- Land Rights
- Wills.



These Shoes Were Made For by Megan Cadd (featured artist in ILB 7(22)).

Centre Research Focus



Indigenous Law Bulletin Vol 7 No 23 (March/April)
Topics covered in this issue:

- Discrimination
- Self-determination
- Domestic Violence
- Reconciliation.



Mary 'O' the Cross by Teena McCarthy (featured artist in ILB 7(23)).

Generally, the Centre's research is focused on Indigenous legal issues in Public Law and Public International Law. Currently, in Public Law, the Centre is focused on Aboriginal women's challenges in Australia particularly in relation to the criminal justice system. It will continue to examine the experiences of Aboriginal women and children before the courts in the context of sentencing and the consideration of extra-legal factors of sexuality and culture in sexual assault cases with a view to submitting an ARC grant in 2012. In 2011 the ILC also continued its research into Indigenous peoples and constitutional reform in Australia.

Aboriginal Women and Constitutional Reform

Chief Investigator

Professor Megan Davis

Research Associate

Brenda Gunn

One of the areas the ILC has been examining since 2007, is the political status of Aboriginal women in Australian liberal democracy, through a comparative analysis with the experience of Aboriginal women in Canada. During the repatriation period in Canada, Aboriginal women were active in terms of ensuring their participation in constitutional reform processes as well as utilising the equality provision in the Canadian Charter of Rights and Freedoms to argue for equality with Aboriginal men. This research has studied how constitutional reform and the constitutional recognition of rights in the Canadian Charter of Rights and Freedoms has impacted on the lives of Aboriginal women in Canada, and what lessons can be drawn from this and applied to the situation of Aboriginal women in Australia. The research to date has been funded by the ARC, in 2007 when Professor Davis was funded to visit Canada and via the Faculty of Law's Faculty Research Scheme in 2008, and was a significant aspect of Professor Davis' doctoral research submitted and awarded in 2011.

This ongoing study is particularly relevant in relation to the current discussion of constitutional reform in Australia and contributes to a better understanding of how Indigenous rights discourse - which tends to focus on the collective rights of Indigenous people - impacts Aboriginal women uniquely.

Constitutional Reform and Indigenous Peoples

Project Director

Professor Megan Davis

In 2007, both sides of politics agreed that when it comes to addressing Indigenous disadvantage, the practical and the symbolic are two sides of the same coin. This project has two themes: constitutional reform and reconciliation.

The first phase of this project has involved a critical examination of all the suggested ideas and frameworks for constitutional reform in Australia. The second phase will involve the production of a book on constitutional law and Indigenous peoples.

The project was particularly active in 2011, hosting an Open Forum on the question of constitutional recognition of Indigenous peoples and also hosting an invite only academic Constitutional Workshop with the G+T Centre of Public Law. Together the G+T Centre and the ILC also jointly held a constitutional law workshop for the National Congress of Australia's First Peoples.

The Centre has developed a Resource page 'Constitutional Reform and Indigenous Peoples' to aid those interested in and/or researching this topic. <http://www.ilc.unsw.edu.au/research/constitutional-reform-and-Indigenous-peoples>

Experiences of Aboriginal Women and Children Before the Courts in Sexual Assault Cases

Chief Investigators

Professor Megan Davis

Dr Kyllie Cripps

In 2011, the Centre continued its research into Indigenous women and children in the justice system. The project examines the experiences of Aboriginal women and children before the courts in the context of sexual assault. While there have been several studies and inquiries into the prosecution of sexual assault in Australia and into the incidence of sexual assault in Indigenous communities, specifically, little work has been done on the impact of extra-legal factors such as sexual/cultural stereotypes in trial and sentencing proceedings. In fact, there is a paucity of information, generally, in relation to how Indigenous women and children are treated and perceived in sexual assault and sentencing trials in Australia.

Specifically, the research question of our study asks, to what extent, if at all, do judges rely on the the cultural context in which the sexual assault occurred and does that produce sentencing disparities in sexual assault cases involving both Indigenous and non-Indigenous defendants?

The project currently includes 134 relevant cases that have been identified, located and documents received from the relevant courts. The documents collected include original sentencing remarks, any appeals (of which there have been at least 65) and/or retrials. The volume of material being collected from the courts to obtain all relevant information for analysis is extensive. These cases have been collated and carefully dissected and documented in a program developed by us that captures detailed information relating to: victim characteristics, perpetrator characteristics, victim/perpetrator relationships, crime characteristics, charges and their relationship to state legislation, details of contents and use of victim impact statements, sentencing outcomes and their relationship with state/territory sentencing acts, nature and outcome of any appeals, and time it takes to complete the process.

We are presently refining our analysis from the cases already located. A further research brief on our latest analysis will be available in 2012, and an ARC Indigenous Discovery application is currently being prepared.



Indigenous Law Bulletin Vol 7 No 24 (May/June)

Topics covered in this issue:

- Biopiracy, Traditional Knowledge; Intellectual Property
- Criminal Justice System - Circle Courts
- Cultural Heritage
- Native Title
- Tenancy; Home Ownership.



Barra Journey by Mick Quilliam (featured artist in *ILB* 7(24)).

CELEBRATING 30 YEARS 1981-2011

INDIGENOUS LAW BULLETIN

JULY / AUGUST 2011, VOLUME 7 / NUMBER 25



CONSTITUTIONAL SPECIAL ISSUE
SHOY'S TALE BY CONNORIAN KILDEA, ANNE WINCKEL, JODY BROUN
AND GEORGE WILLIAMS

Indigenous Law Bulletin Vol 7 No 25 (July/August).

Constitutional Special Issue, with contributions from Alexander Ward, Melissa Castan, Megan Davis, Anne Winckel, Paul Kildea, AJ Brown and Ron Levy, Jody Broun and George Williams all experts in their relevant fields

Indigenous Peoples and International Law

Project Director

Professor Megan Davis

Over the past four decades Indigenous peoples have forged an important presence in the international system, particularly in international human rights advocacy and most recently in the international trade system. Indigenous involvement at the United Nations has been successful in raising awareness of Indigenous peoples rights. Indigenous peoples advocacy at the United Nations has led to the establishment of a number of mechanisms dealing specifically with Indigenous peoples issues and this includes the Permanent Forum on Indigenous Issues, based in New York.

This ongoing project aims to examine the scope of Indigenous peoples' rights in international law. In particular it will analyse the jurisprudence of the United Nations treaty bodies on Indigenous rights. It will also examine and monitor the influence of the Declaration on the Rights of Indigenous Peoples in Australia. More broadly it will examine the usefulness of international advocacy and international law to Indigenous peoples in Australia.

The ILC 'Indigenous Peoples and International Law' Resource Page lists information about Indigenous issues in International Law <http://www.ilc.unsw.edu.au/resources/Indigenous-peoples-and-international-law>



Mangroves by Arone Meeks (featured artist in ILB 7(25)).

Centre Collaborations

In 2009, the Aboriginal Legal Service (NSW/ACT) approached the Centre to undertake a project looking into cases on sentencing with a view to developing a database that would catalogue decisions in an accessible format and make them publicly available to anyone working, engaged or interested in the rights of Aboriginal people.

'Australian Courts Considering Aboriginality Case Summaries (AUCCACS)

Project Coordinator
Patty Veliz

Background to the Project

The laws, cultural practices and knowledge-systems of Australia's First Peoples are always evolving. At times there is tension between an Indigenous person's obligations under Aboriginal law and their legal duties and obligations under Australian law. In addition, many Indigenous people continue to be affected by discrimination and severe socio-economic disadvantage. These complex issues are increasingly being considered by Australian courts when an Indigenous person has been convicted of a criminal offence and an appropriate sentence must be determined.

Aim of the Project

The aim of the AUCCAS project is to create a publicly-accessible online database (available on AustLII) of case summaries which catalogue and analyse Australian courts' varying approaches to Indigenous persons – their backgrounds, obligations under 'customary' law, cultural practices, kinship issues and other relevant factors. The scope of the initial phase of the project will be restricted to sentencing cases from the trial and appellate divisions of state and territory Supreme Courts over the past twenty years.

Purpose of Database

This database has been designed, firstly as a clinical tool for Aboriginal and Torres Strait Islander Legal Services, as well as for other legal aid organisations, community legal centres and legal practitioners representing Indigenous clients. Secondly, the database will serve as a resource for policymakers, researchers, law students and community advocates.

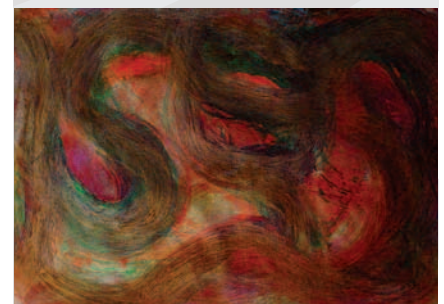
The role of project coordinator is to recruit, train and manage a team of law students who undertake analysis of case summaries collected for uploading onto to AustLII.

It is a constructive way of engaging UNSW law students within the Centre and providing them opportunity to expand their knowledge of Indigenous criminal issues and the Australian legal system. The volunteers are provided an opportunity to develop and improve their academic research skills, verbal and written communication skills, and gain experience working as part of a team in a professional legal environment.



Indigenous Law Bulletin Vol 7 No 26 (September/October). Topics covered in this issue:

- Constitutional Law and Discrimination
- Criminal Justice - Domestic Violence
- Criminal Justice and over representation; Indigenous Youth
- Indigenous People and Law
- Criminal Justice System - Juries
- Income Management.



SOS by Dorsey Smith (featured artist in *ILB* 7(26).

Centre Publications

Indigenous Law Bulletin ('ILB')

The *ILB* has been a leading journal for accessible, accurate and timely information about Australia's Indigenous peoples and the law for over 30 years. It is recognised as a valuable resource to legal practitioners, advocates, policy-makers and researchers; the content covers emerging legislation, policy, case law, international developments as well as grass-root activism and the work of Indigenous communities and organisations.

April Long, a UNSW Indigenous Law graduate, was the Editor of the *ILB* during 2011.

Reflecting on her time as the Editor of the *ILB*, April stated "being the Editor allowed me to explore legal issues affecting Indigenous Australians in much more depth than in a lecture theatre. I was able to use the knowledge I gained in my degree to highlight the legal disadvantage affecting Indigenous Australians. Editing the *ILB* was one of my proudest and most rewarding experiences to date."

During her time working on the *ILB*, April was supported by the ILC to participate in an NGO delegation to the UN Committee on the Rights of the Child in Geneva, Switzerland to present the 'shadow report' on Australia's progress in meeting its obligations under the UN Convention on the Rights of the Child. In addition, she was invited by Andrew Lynch and Megan Davis to participate in a joint G+T/ILC run constitutional workshop for the National Congress of Australia's First Peoples.

Readership

The *ILB* has a wide circulation and readership and in 2007 in consultation with the Australian Policy Online, the Director introduced a 'Featured Article' to be uploaded on Australian Policy Online (APO) to give the *ILB* and articles on Indigenous legal issues a broader readership. In addition, with each new issue, the featured article is sent out to media contacts. It is available for download from the Indigenous Law Centre website so non-subscribers can learn more about contemporary issues whether or not they are subscribed to receive the *ILB* in hard copy.

Over a 12-month period the *ILB* has published articles on

- biopiracy, traditional knowledge and intellectual property
- constitutional law and discrimination
- criminal justice system - over representation and Circle Courts
- cultural heritage
- deaths in custody
- family violence
- Indigenous youth and the *Bail Act*
- the 'Intervention'
- land rights
- radioactive waste disposal on Aboriginal lands
- native title and tax reform
- rights of Aboriginal women and children
- reconciliation
- self-determination and governance
- tenancy and home ownership.

CELEBRATING 30 YEARS 1981-2011

INDIGENOUS LAW BULLETIN



Indigenous Law Bulletin Vol 7 No 25 (November/December). Topics covered in this issue:

- Criminal Justice System and Over Representation
- Deaths in Custody (RCIADIC)
- Northern Territory Emergency Response (NTER) and Discrimination
- Land Rights
- Native Title.



Jalala - Marking Stones by Jack Dale (featured artist in *ILB* 7(27)).

Complete archives of the *ILB* from Volume 1, Issue 1 (1981) to Volume 7, Issue 23 (2011) are available from AustLII which is an online free searchable database. There is a 12-month time lag from current issue from this site, whilst *Informit* and *HeinOnline* have the current issues available immediately.

Supporting Indigenous Artists

The ILC and the *ILB* support and promote Indigenous art by identifying new and emerging artists through TAFEs, art colleges, galleries, universities and secondary schools. Once an artist is identified and they agree to have their work reproduced in the journal, a selected piece is chosen for the cover with the other art pieces displayed throughout the journal, in total up to 8 pieces are reproduced in any given issue. We pay a licence fee to the artist and/or gallery for use of the artwork. We also promote the artwork for each publication on our website <http://www.ilc.unsw.edu.au/galleries>

Artists whose works were published in the *ILB* in 2011 were:

- **Megan Cadd**
January/February 2011 Volume 7 Issue 22
- **Teena McCarthy**
March/April 2011 Volume 7 Issue 23
- **Mick Quilliam**
May/June 2011 Volume 7 Issue 24
- **Arone Meeks**
July/August 2011 Volume 7 Issue 25
- **Dorsey Smith**
September / October 2011 Volume 7 Issue 26
- **Jack Dale**
November / December 2011 Volume 7 Issue 27

Each of the artists artwork that is published in the *ILB* and *AILR* are showcased on the ILC website. Samples of the work are shown throughout this report.

ILB Timeline Inserts

During 2011, there were two thematic issues of the *ILB*, one to celebrate the 30 year milestone of the *ILB* (7-23) which included a chronological timeline poster insert of Indigenous legal history between 1981–2011, as reported by the *ILB*.

The other was a Constitutional Reform Special edition which also saw the development of a timeline poster of Australian constitutional developments from 1891-2010.

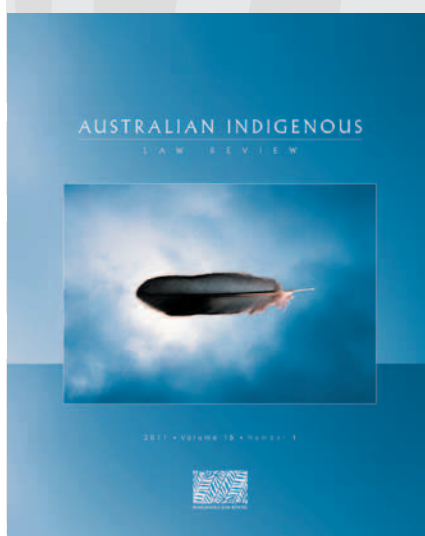
These documents were of great use to the general community and academics. For example, the NSW Department of Education ordered over 200 copies of the resource to be used at a Legal Studies Conference. In addition, the law firm Allens commissioned 50 copies for a constitutional legal education workshop. The *ILB* Editor has also used the insert at community legal education workshops.



Timeline: 30 years as reported by the *Indigenous Law Bulletin*.



Timeline: Australian Constitutional Developments from 1891-2010 developed by the Indigenous Law Centre.



AILR Volume 15 No 1, 2011.

The artwork chosen for the front cover – *cloud* (2000) – by the late Wiradjuri/Kamilaroi artist Michael Riley (1960–2004) is widely considered to have been one of the most important contemporary Australian artists of the past two decades. His contribution to the urban-based Indigenous visual arts industry was substantial. Over the course of his career he created an impressive body of work ranging from black-and-white portraiture to film, video and large-scale digital photography. Throughout, his concern was to celebrate the spirit of his people while also bearing witness to their struggles. He had a deep commitment to the process of reconciliation.

Australian Indigenous Law Review ('AILR')

The *AILR* is Australia's only compendium of specialist case law, recent agreements, policy, statements and international matters specifically on Indigenous law. Each issue includes one or more commentary pieces - scholarly, peer-reviewed articles by leaders in the field. The availability of back issues of the *AILR* on the internet through online databases such as Informit and HeinOnline increases its value as a tool for research.

During 2011, the role of the *AILR* Editor was shared by two law students, Daniel Threlfall and Daniel Wells. They oversaw the production of Volume 15 Number 1 and prepared the groundwork for Volume 15 Number 2.

Publications in 2011

2011 marked the 20th anniversary of the conclusion of the Royal Commission into Aboriginal Deaths in Custody ('RCIADIC'), and the release of its National Report. The RCIADIC convened in 1987 to address what came to be understood as a systemic problem: the disproportionate rates at which Indigenous people were dying while in prison and police custody. As it turned out, this phenomenon was directly connected with the more general problem of Indigenous overrepresentation in Australian prisons. Out of the Report came 339 substantive recommendations for reform.

Issue 15(1) of the *AILR* provided a forum for revisiting these issues. The first part of the edition comprised critical academic commentary in relation to both ongoing issues raised by the RCIADIC in its National Report, and on the manner in which the Commission itself was conducted. Topics included the role of penal expansionism in the continued growth of Indigenous imprisonment rates; police perceptions of Indigenous 'self-determination' and 'capacity', and their implications for police work in Indigenous communities; and the under-recognised (both by the RCIADIC itself and otherwise) impacts of criminal justice on Indigenous women. The second part featured a series of case studies prepared by Aboriginal and Torres Strait Islander legal services and advocacy groups from across Australia.

Issue 15(2) similarly considered an area of current relevance to Indigenous Australians, namely reform proposals for the recognition of Indigenous peoples in the Australian Constitution. Articles were drawn from the jointly held workshop run by the ILC and G+T Centre of Public Law, as part of the ILC's constitutional reform project in July 2011.

Centre Events

Celebrating 30 Years of the *Indigenous Law Bulletin* 1981–2011

The *ILB* celebrated 30 years, with a Special Edition Launch held at the UNSW Law School on 27 July. The Centre Director, Professor Megan Davis and *ILB* Editor, April Long, spoke about the long and valued history of the Bulletin. The event was held in conjunction with COFA who showcased the art of current Indigenous students at COFA. The *ILB* has a long and proud history of promoting Indigenous art and a lot of that art was on display at the event. In addition, the Faculty of Law with the ILC exhibited historic *ILB* framed covers in the Law School building (these are replicated throughout this report).

Since 1981 the *ILB* has facilitated discussion, celebrated legal achievements and attracted commentary from some of the country's leading legal minds. The *ILB* reports on emerging legislation, policy, case law and international developments, as well as grass-root activism and the work of Indigenous communities and organisations. It is a unique and respected national publication.

Some snapshots of guests who attended the event are featured right.

Constitutional Law Workshop

On 1 July 2011, the Indigenous Law Centre, in partnership with the Gilbert + Tobin Centre of Public Law, held a workshop on Australian constitutional reform concerning Aboriginal and Torres Strait Islander people. The workshop is a part of the ILC's constitutional law project and was funded by Attorney-General's Department, the ILC and the Gilbert + Tobin Centre. Though the workshop had been planned prior to the 2010 federal election, it was given a heightened currency following the bipartisan commitments made to Indigenous constitutional reform during and after the 2010 election campaign.

The workshop involved a range of distinguished presenters and discussants from around Australia, including Marcia Langton, Geoffrey Lindell, Hilary Charlesworth, Dr Sarah Pritchard, Adrienne Stone, George Williams and Anne Twomey. This made for probing and insightful discussions that represent an advance on the existing debates about the constitutional position of Aboriginal and Torres Strait Islander people. Among the diverse topics discussed were a constitutional preamble, the race power, provisions on equality and non-discrimination, the 'just terms' guarantee for the acquisition of property rights, provisions concerning a treaty, and questions of constitutional interpretation.

Papers from the workshop are to be published in an upcoming edition of the *AILR* 15-2.



Prof Martin Nakata, ILC Management Board Member, and Director of Nura Gili Indigenous Programs Centre at UNSW & Dr Tom Calma, Director Australian Indigenous Leadership Centre, and former Aboriginal and Torres Strait Islander Social Justice Commissioner.



Teena McCarthy, artist whose work was published in the Special Edition of the *ILB* 7-23.



Dan Threlfall AILR Co-Editor, John Hewitt, Designer for *ILB* & *AILR*, Daniel Wells, AILR Co-Editor.

Constitutional Law experts who attended the all day Constitutional Law Workshop held at the Faculty of Law in July 2011.



Contributions received from presenters were Sean Brennan (UNSW) on the relevance of section 51(xxxi) acquisition under Commonwealth–state arrangements to native title extinguishment; Geoffrey Lindell (University of Melbourne), who revisited the findings of the 1985 Australian Constitutional Commission; Anne Twomey (University of Sydney) on the significance of a preamble in the context of Indigenous recognition; Hilary Charlesworth (Australian National University) and Andrea Durbach (UNSW), who considered existing and prospective protections for equality under the Constitution; Sarah Pritchard on the race power under section 51(xxvi); and Margaret Stephenson (University of Queensland), who compared the Australian experience with treaty protection for Aboriginal land claim agreements under the Canadian Constitution. Also included were comment pieces from Paul Kildea (UNSW) and Dylan Lino (University of Melbourne).

ILC Open Forum Series

Principally, the aim of the ILC Open Forum is to spotlight a topical issue that raises a significant Indigenous legal issue. The forum is a place to be heard, but it is also a place to listen and to foster a positive, balanced discussion. The focus is on sharing information, exchanging ideas and creating dialogue across cultures, ages, careers and institutions.

In planning the forums the focus is on contemporary issues within the broad subject of Indigenous law and policy. Through the forums we hope to create an atmosphere of honest discussion and cooperation.

The forums are open to the community and free to attend. To date the forums have addressed:

- Alcohol Restrictions in Indigenous Communities
- ‘Bush Law’
- Racism in Sport
- Recognition of Indigenous People in the Constitution: What will it take to bring about change?
- International Day for the Elimination of Violence Against Women: Taking a stand against violence in Indigenous communities.

The ILC forums have been a spectacular success and we attract participants from universities all over Sydney, members of the public and students and staff from all areas of UNSW.

Constitutional Reform Open Forum

In the first part of 2011, the Centre held a forum on constitutional reform and Indigenous peoples (17 March, 2011). The forum discussed the process towards constitutional reform, the work of the Expert Panel on the Recognition of Indigenous Australians in the Constitution, possibilities for reform and chances of success. The panel included Professor Megan Davis, who is a member of the Federal Government’s Expert Panel on Constitutional Recognition of Indigenous Australians, Mick Gooda, Aboriginal and Torres Strait Islander Social Justice Commissioner, Australian Human Rights Commission, Les Malezer, Chairperson of the Foundation for Aboriginal and

Islander Research Action (FAIRA) and 2008 AHRC Human Rights Medal recipient, along with George Williams, Anthony Mason Professor and Foundation Director of the Gilbert + Tobin Centre of Public Law and Scientia Professor at the Faculty of Law, UNSW (Co-author of *Power People: The History and Future of the Referendum in Australia*) and Paul Kildea, Co-Director of the Referendums Project at the Gilbert + Tobin Centre of Public Law, Faculty of Law, UNSW.

To increase the reach of the forums and to disseminate the content of the forums to as many communities as possible, where practicable, we film the panel discussion. This particular forum was filmed by UNSWTV and an article was written by Kristyn Glanville, an ILC intern, on her reflections of the forum which was published in the Special Constitutional Edition of the *Indigenous Law Bulletin* Volume 7 Issue 25.

Violence Against Women Open Forum

Later in the year (24 November, 2011) to acknowledge the International Day for the Elimination of Violence Against Women, the Centre hosted a forum on 'Taking a stand against violence in Indigenous communities'. Panel members included Lani Brennan, Dr Kyllie Cripps, Inspector Julie Boon, NSW Police Force and Thea Deakin-Greenwood from Wirringa-Baiya Aboriginal Women's Legal Centre. The documentary 'Lani's Story' was shown prior to the open discussion. The documentary, focuses on Lani's real life experiences and the impact of intergenerational violence and the courage she displays to achieve justice.



Constitutional Reform Open Forum Panel members, left to right, Megan Davis, George Williams, Les Malezer, Paul Kildea and Mick Gooda.



Left to right, Inspector Julie Boon with Dr Kyllie Cripps, Panel members of the Violence Against Women Open Forum.



Left to right, Lani Brennan and Superintendent Dengate catching up after the Violence Against Women Open Forum.

Teaching

ILC academic staff continue to teach in the undergraduate and postgraduate programs of the Faculty of Law. The Director has a 0.5 teaching load and in 2011 taught in Indigenous Peoples and the Law (with Sean Brennan), Indigenous peoples in International Law and International Human Rights Law. Kyllie Cripps taught in the first year subject Foundations of Law. The Centre will also commence teaching two new subjects on Aboriginal Women and the Law and Aboriginal Children and the Law that Professor Davis and Dr Cripps have developed and will co-teach.

Aboriginal Women and the Law

This course has a focus on the historical and contemporary place and experience of Indigenous women within and beyond the constructs of law and society. It takes an interdisciplinary and intersectional approach to selected legal issues within Australia and internationally. Topics that are covered include: Indigenous women's rights, leadership and participation in society; Indigenous women's experiences in criminal and civil law contexts; and Indigenous women's perspectives on contemporary issues relating to restorative justice, law reform, and legal advice accessibility.

Aboriginal Children and the Law

This course deals with the historical and contemporary experience of Indigenous children within and beyond the constructs of law and society. Using United Nations human rights frameworks, the course takes an interdisciplinary approach to selected legal issues impacting upon Indigenous children within Australia and internationally. Topics covered include: theory of children's rights; Indigenous children; the Aboriginal Child Placement Principle, Indigenous children's engagement with the criminal justice system, family law, child protection and Indigenous children's access, representation, and participation within the legal system

Student Involvement

The ILC encourages and has an active student participation each semester. The Centre hosts student interns applying through the Law Faculty internship program and the Aurora Internship Program. We also actively seek volunteers from the UNSW law student body to assist with Centre activities, such as the AUCCACS project, which relies solely on volunteers.

In 2011, the Centre took on two interns from the *Social Justice Intern Program (SJIP)* and seven through the *ILC Student Editor Internship*. Both of these internship programs are accredited law electives that count towards the student's degree.

The *SJIP* affords students the opportunity to work in our Centre one day a week for a whole semester, in which they undertake advocacy or research on aspects of policy and practice relating to an area approved by the Centre Director.

The Student Editors play an active role in either the *AILR* or the *ILB*, assisting with research, editing articles, interviews, book reviews, organisation of community engagements and a range of other tasks connected with the production of the journals.

Student Editor Feedback

Katherine Gilchrist

"I was involved with the *AILR* both as a member of the Student Editorial Panel, and through the journal internship. I would highly recommend involvement in both not only for the skills gained but also for the experience of being involved in the incredibly important work done at the Indigenous Law Centre. I feel that my legal writing and editing improved through my experience, and I gained exposure to the inspiring field of Indigenous rights within Australia. The internship was both flexible and challenging, and allowed me to pursue my own areas of interest within the work done at the Centre. The ILC has a real sense of community to it and the atmosphere is very supportive."


Tristan Harley

Undertaking an internship at the Indigenous Law Centre was one of the best things I did during my Juris Doctor degree at UNSW. During my internship, I was Student Editor for the *AILR* and a volunteer for the *Australian Courts Considering Aboriginity Case Summaries Project*, which examined the use of customary law in sentencing Indigenous offenders. In these roles, I gained experience editing journal articles, conducting research, collaborating with staff, and participating in Indigenous legal forums.

It was a hugely rewarding experience, providing me with a better understanding

Tristan Harley at the United Nations International Criminal Tribunal for Rwanda in Tanzania.





of legal issues affecting Indigenous peoples, and insight into the ways lawyers can assist social justice. ILC staff were always willing to assist me and provide me with valuable advice.

My experience at the ILC also opened doors to pursue further social justice avenues overseas. I have now gained further practical experience at both the Hong Kong Refugee Advice Centre and the United Nations International Criminal Tribunal for Rwanda in Tanzania. In these positions, I have worked directly with asylum seekers, and for the Office of the Prosecutor in a major appeal before the ICTR Appeals Chamber. The experience and legal skills that I obtained at the ILC really assisted me in these different roles.

Indigenous Community Engagement

Megan Davis

International Women's Day

As a Professor of Law and Director of the ILC I receive many invitations to speak at various events throughout the year, and when possible I do so, but I especially enjoy speaking at schools on how empowering education has been in my life and can be an instrument for real change for many Indigenous children. In March, I spoke at Kincoppal Rose Bay Girls School for International Women's Day. During my visit, I had a chance to meet up with several Indigenous students on scholarship and was delighted to hear how they were enjoying the school. I was also fortunate to meet up with several Sisters of the Sacred Heart nuns previously from Duchesne College where I lived and studied at the University of Queensland.

Kincoppal Rose Bay Girls School – International Women's Day March 2011.



Cherbourg

As a member of the Expert Panel on the Recognition of Aboriginal and Torres Strait Islander peoples in the Constitution I had the opportunity to visit communities like Cherbourg in southeast Queensland. I was really impressed by the contribution of the Aboriginal women of Cherbourg, and the work that they had led in terms of building the cultural precinct with the Ration Shed. It was a unique opportunity for me to talk to the Cherbourg women, who through their tenacity, gave back to the community a sense of belonging and history that was lost to a generation of young Aboriginal people and paying respect to the elders. This meeting deeply affected me in many ways, and gave me a stronger sense of purpose and resolve as a Director to push forward on the agenda I have set for the Centre.

While the ILC began as a response to Aboriginal legal services' need for assistance, the Centre has evolved, through the work of Hal Wootten and Garth Nettheim, into an institution with a remit that extends beyond criminal justice into a range of areas affecting Indigenous peoples in Australia and around the world. The work we do is unique in Australia, because it is heavily focused on the rights of Aboriginal women and children, rights that are often overlooked by the Aboriginal legal services by virtue of the adversarial nature of the criminal justice system. Indeed, the *ILB* has a rich tradition of capturing the dual discrimination to which Aboriginal women are subjected: from the state, and from within their own culture.

Megan as a member of the Expert Panel on the Recognition of Aboriginal and Torres Strait Islander People in the Constitution, Cherbourg, Queensland.

Meeting and speaking to the women of Cherbourg made me realise that the work the Centre does in the context of women's political participation in democracy or violence against women and children is important, and that we are heading in the right direction. To ameliorate the gendered impact of self-determination and the normative framework of Indigenous rights, Aboriginal and Torres Strait Islander women must be empowered to run for local government, to make submissions, to have specialist legal representation and research that supports their work. It is here that the Centre can make a small but important contribution to improving the lives of the most vulnerable in the Indigenous community.



Koori Women Mean Business and Victorian Women's Trust's 20-Year Partnership

The Victorian Equal Opportunity and Human Rights Commission sponsored a public lecture by myself in celebration of the Koori Women Mean Business and Victorian Women's Trust's 20-year partnership. I spoke on the rights of women, particularly Indigenous women, in an international context.



Funding

The ILC is funded by the Commonwealth Attorney-General's Department (AGD) to contribute to Law and Justice Advocacy development particularly in the field of Community Legal Education. The UNSW Faculty of Law provides in-kind support by way of office accommodation and IT services.

Through the AGD the Indigenous Law Centre publishes the *Indigenous Law Bulletin* (six issues per year) and the *Australian Indigenous Law Review* (two general volumes annually).

Indigenous Law Centre Statement of Financial Performance for Annual Report 2011

For the Year Ended 31 December 2011

	2011	2010	2009	2008
Income				
External Funds - AG Grant	288,161	267,258	\$264,683	412,169
Subscriptions	27,261	37,127	\$46,709	51,881
Other Income (Copyright)	116,534	12,063	\$2,040	
Other Income (Non research)	0	96,902		
Other Income (Reimbursements)	22,319	2,140		
Faculty Research	0	0	\$0	0
Total Income	454,275	415,490	\$313,431	464,050
Expenses				
Payroll	218,739	321,079	\$257,464	245,127
Equipment	817		\$0	1,832
Materials	68,492	91,268	\$95,372	80,568
Travel	44,157	69,058	\$25,693	32,289
Total Expenses	332,205	481,405	\$378,529	359,816
Operating Result	122,070	-65,915	-\$65,098	104,234
Surplus (Deficit) Bfwd from Prior Year	58,373	121,018	\$188,698	85,581
Accumulated Funds Surplus(Deficit)	180,443	55,103	\$123,600	189,815
* Excludes debtors (unpaid invoices)	8,504	2,720		

Note: Received a one-off royalty unexpected payment from CAL \$78,041 in June 2011, which was not forecasted under Income. Approval was received from Attorney-General's Department towards community legal education and consultation.



ILC staff members celebrating 30 years of the Centre at the launch of the 30th year edition of the *Indigenous Law Bulletin* 7-23

From left to right: Janette Murdoch, Kyllie Cripps, Daniel Wells, Megan Davis, Dan Threlfall and April Long



INDIGENOUS LAW CENTRE

CELEBRATING 30 YEARS

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