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- 1981** The *Aboriginal Law Bulletin* is established. (Now known as the *Indigenous Law Bulletin*).
- 1982** A majority of the High Court in *Koowarta*<sup>1</sup> hold that the 1967 referendum which extended the Commonwealth's 'races power' to include the power to legislate on Aboriginal people was not limited to beneficial laws only. Further, the races power could not support the *Racial Discrimination Act 1975* (Cth) as the legislation was of general application to all races.
- 1983** In the *Tasmanian Dams Case*<sup>2</sup> a majority of the High Court conclude that legislation protecting sites, relics and artefacts in the Franklin River area was a valid exercise of the Races Power, as the legislation had the practical effect of protecting Aboriginal cultural sites. The special significance of these sites to Aboriginal people meant that the law was valid, even if there was a general interest to all Australians in preserving them.
- 1984** Commonwealth legislation is introduced to protect Aboriginal heritage where State and Territory laws fail to provide adequate protection.<sup>3</sup>
- 1985** The National Aboriginal Conference is disbanded following reports indicating its failure to develop coherent policy and adequately representing the diversity of Indigenous interests.<sup>4</sup>
- 1986** Uluru is handed back to its traditional owners under the *Kata Tjuta Aboriginal Land Trust*.<sup>5</sup>  
The Recognition Of Aboriginal Customary Laws 1986 - ALRC Report 31 (Cth) investigates a national legislative approach to recognising Aboriginal customary laws.  
The Aboriginal Child Placement Principle is adopted as policy by the Council of Social Welfare Ministers, consisting of Ministers from each state and territory. The principle prioritises adoption and foster placement of Aboriginal children within their extended family or members of the child's Aboriginal community.<sup>6</sup>
- 1987** The Royal Commission into Aboriginal Deaths in Custody is established in response to the high number of Indigenous people dying in police custody and in prisons. The Commission's final report published in 1991 makes 339 recommendations to reform social policy and criminal justice policy and improve Indigenous involvement and consultation in criminal justice.
- 1988** The Barunga Statement is presented by the Northern Land Council to the Prime Minister establishing requirements of a treaty between Aboriginal peoples and the Government.  
Australia Day marks the Bicentennial of the British presence in Australia. Indigenous groups march on Invasion Day to highlight the continuing problems caused by colonisation.  
The High Court in *Mabo (No 1)*<sup>7</sup> held that legislating purporting to extinguish the Native Title Rights of the Meriam people was inconsistent with the *Racial Discrimination Act*.<sup>8</sup>
- 1989** Legislation is passed to create an Aboriginal and Torres Strait Islander Commission.<sup>9</sup>
- 1990** A Council for Reconciliation is created to promote reconciliation between Aboriginal and Torres Strait Islander Australians and non-Indigenous Australians.<sup>10</sup>
- 1992** The landmark High Court decision in *Mabo (No 2)*<sup>11</sup> establishes by a 6-1 majority that Indigenous people retained a radical title over land which survived colonisation. Native Title was recognised by the common law of Australia, overturning the fiction of *terra nullius*.  
Prime Minister Paul Keating delivers a speech at Redfern Park recognising the past and present injustices faced by Indigenous Australians.
- 1993** Commonwealth laws are passed to establish a scheme for determinations of Native Title.<sup>12</sup>
- 1994** Mason CJ in *Walker*<sup>13</sup> holds that the principles in *Mabo* recognising radical title in land have no analogous application to criminal law. Australian criminal law will apply to Aboriginal people regardless of their acceptance, adoption, request or consent.
- 1996** A majority in the High Court decide in *Wik*<sup>14</sup> that pastoral leases can co-exist with native title.
- 1997** The *Bringing Them Home* report examines the Stolen Generations and makes recommendations for addressing past injustices and improving the present welfare of Indigenous Australians.<sup>15</sup>  
The High Court in *Kruger* holds that ordinances of the Northern Territory which removed Aboriginal children from their families were valid.<sup>16</sup>  
The Howard Government introduces the *Ten Point Plan* as a response to the *Wik* decision. Subsequent legislation introduced limited Indigenous control of Native Title land and made the requisite tests more difficult to meet.<sup>17</sup>
- 1998** National Sorry Day is established in response to one of the recommendations of the *Bringing Them Home* report.  
The High Court in the *Hindmarsh Island Case*<sup>18</sup> affirmed the view that the races power is not limited to beneficial legislation, however Gaudron J commented in obiter that given the 'serious disadvantage which presently affect Aboriginal Australians, it is difficult to conceive of any present circumstances which could support a law operating to their disadvantage'.<sup>19</sup> The court held that legislation which removed Hindmarsh Island from the ambit of the *Heritage Protection Act* was valid and not inconsistent with the *Racial Discrimination Act*.
- 1999** The UN Committee on the Elimination of Racial Discrimination (CERD) find the "10 point plan" to be in breach of the CERD convention.  
Senator Bob Brown introduces a bill to overrule mandatory sentencing laws in WA and NT.<sup>20</sup> This leads to a Senate Inquiry on the issue.  
The High Court in *Yanner*<sup>21</sup> establishes that native title rights extend to hunting, and these rights were not extinguished by legislation making it an offence to hunt without a licence.
- 2001** Members of the stolen generations are denied damages from the Commonwealth, due to a lack of evidence establishing that the Commonwealth was responsible and liable.<sup>22</sup>  
The High Court hold by a majority that native title can apply to offshore areas, but there is no exclusive right as others have rights to the sea, including innocent passage and fishing rights.<sup>23</sup>
- 2002** Valerie Linow is the first member of the Stolen Generations to receive compensation from the NSW Victims Compensation Tribunal.  
In *Yorta Yorta*<sup>24</sup> the test for Native Title claims is made narrower, requiring acknowledgment and observance of substantially unchanged laws and customs on a substantially uninterrupted basis since sovereignty. It is held that the 'tides of history' including dispossession had disrupted the continuing connecting of the Yorta Yorta people.

- 2002** The High court in *Ward*<sup>25</sup> held that legislation can operate to only partially extinguish native title rights and interests, such as the granting of mining leases and pastoral leases.
- 2004** A NSW Legislative Council inquiry is held to examine policing in Redfern, as well as social conditions and riots in the area.<sup>26</sup>  
An inquest into the death of Thomas Hickey is held, finding that the teenager was killed "during police operations" in Redfern. No police officers are held responsible.<sup>27</sup>  
Victoria amends their state constitution to become the first Australian jurisdiction to constitutionally recognise Aboriginal people. The recognition expressly has no binding effect.<sup>28</sup>
- 2005** The Commonwealth Government abolishes ATSIC and ATSIC Regional Councils.<sup>29</sup>  
An Aboriginal Justice Advisory Council (AJAC) and Aboriginal Youth Justice Advisory Network (AYJAN) are established in NSW under the *Aboriginal Justice Plan*.<sup>30</sup>
- 2006** A Senate report is published on the issue of Petrol Sniffing in Indigenous Communities, examining the causes and possible solutions.<sup>31</sup>  
A Senate report recommends the payment of compensation to Indigenous people for wages unfairly withheld by the government from the 1980s until the 1990s.<sup>32</sup>  
A Coronial inquiry finds that Indigenous man Mulrunji Doomadgee died on Palm Island as a result of being assaulted by a Queensland police officer. This report is later set aside, with an inquiry in 2010 finding there was insufficient evidence to rule on whether the injuries leading to Mr Doomadgee's death were accidental or deliberate. The Coroner did conclude however that the Queensland Police colluded to protect the officer who caused the injuries.
- 2007** A NT inquiry is conducted in consultation with NT's Aboriginal communities, examining Aboriginal child welfare and abuse.<sup>33</sup> The Final Report '*Little Children are Sacred*' makes 97 recommendations to address this situation.<sup>34</sup>  
The Commonwealth Government announces an intervention in the Northern Territory in response to the *Little Children are Sacred* report. Implementing only 2 of the 97 recommendations in the report, the Howard government introduce measures which prohibit alcohol, increase policing, ban pornography, and quarantine welfare payments.<sup>35</sup> The legislation is passed with minimal consultation of Aboriginal communities affected by the changes.  
The Northern Territory introduces an alternative response to the *Little Children are Sacred* report, setting targets to close the socio-economic and life expectancy gap between Indigenous and non-Indigenous Australians.<sup>36</sup>  
For the first time, an Australian Court successfully awards compensation to a member of the Stolen Generations. The Court held in *Trevorrow* that the SA government took Trevorrow as a child without legal authority, falsely imprisoned him, and then breached their duty of care and fiduciary duty to him whilst he was in custody.<sup>37</sup>  
An Aboriginal prisoner, Vickie Roach, successfully challenges a Commonwealth law purporting to remove voting rights from all prisoners which would disproportionately affect Indigenous people. The provisions were found to be unconstitutional.<sup>38</sup>  
The *UN Declaration on the Rights of Indigenous Peoples* is passed by the UN General Assembly in 2007, with 143 states in favour, 11 abstentions and 4 against. The Declaration establishes human rights standards for Indigenous Peoples around the world. Australia votes against the Declaration.  
A Senate inquiry is held on the issue of Indigenous Art works, rejecting calls for a resale royalty scheme.<sup>39</sup>  
The Federal Court in *Risk*<sup>40</sup> determined that the test in s223(1) of the *Native Title Act* is whether the body of laws and customs observed have their origins in the laws and customs that existed at the time of colonisation. The test is not whether the body of laws and customs at sovereignty are the same as those that exist today.
- 2008** Marion Scrymgour acts as Acting Chief Minister of the Northern Territory for two weeks, making her the first Aboriginal Australian to lead an Australian government.  
Prime Minister Kevin Rudd formally apologises to Indigenous Australians, especially members of the Stolen Generations, for the effects of colonisation.<sup>41</sup>  
The High Court determine in *Blue Mud Bay* that the land rights of the traditional owners extended to the low-water mark, giving them the right to exclude others from the inter-tidal zone. As such the NT Government had no power to grant fishing licences within the boundaries of this land.<sup>42</sup>
- 2009** Australia endorses the *UN Declaration of the Rights of Indigenous Peoples*.  
The High Court determines in *Wurridjal*<sup>43</sup> that the acquisition of control of Indigenous land in the Northern Territory following the Intervention was subject to the 'just terms' provision of the Constitution. However it was held the compensation scheme in the Act was on just terms.
- 2010** Ken Wyatt becomes the first Indigenous member of the House of Representatives.  
The National Congress of Australia's First Peoples is established as a representative body elected by the Indigenous community. It is an independent corporation controlled by its members.
- 2011** The Commonwealth Government establishes an Expert Panel to consult with the community on the issue of recognising Indigenous people in the Australian Constitution.

- 1 *Koowarta v Bjelke-Petersen* (1982) 153 CLR 168.
- 2 *Commonwealth v Tasmania* (1983) 158 CLR 1.
- 3 *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth).
- 4 Human Rights and Equal Opportunity Commission, *Building a Sustainable National Indigenous Representative Body – Issues for consideration*, Issues Paper (2008) 15.
- 5 *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth).
- 6 New South Wales Law Reform Commission, *The Aboriginal Child Placement Principle*, Research Report No 7 (1997) 3.22-3.23 < <http://www.lawlink.nsw.gov.au/lrc.nsf/pages/RR7TOC> >.
- 7 *Mabo v Queensland* (1988) 166 CLR 186.
- 8 *Racial Discrimination Act 1975* (Cth).
- 9 *Aboriginal and Torres Strait Islander Commission Act 1989* (Cth).
- 10 *Council for Aboriginal Reconciliation Act 1991* (Cth)
- 11 *Mabo and Others v. Queensland (No. 2)* (1992) 175 CLR 1
- 12 *Native Title Act 1993* (Cth).
- 13 *Walker v NSW* (1994) 182 CLR 45.
- 14 *The Wik Peoples v The State of Queensland; The Thayorre People v The State of Queensland* [1996] HCA 40; (1996) 187 CLR 1.
- 15 *Bringing them Home* Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families - Human Rights and Equal Opportunity Commission (Cth).
- 16 *Kruger, Bray v Commonwealth* (1997) 146 ALR 126.
- 17 *Native Title Amendment Act 1998*.
- 18 *Kartinyeri v The Commonwealth* [1998] HCA 22.
- 19 *Ibid*.
- 20 Human Rights (Mandatory Sentencing of Juvenile Offenders) Bill 1999 (Cth).
- 21 *Yanner v Eaton* [1999] HCA 53.
- 22 *Cubillo v Commonwealth of Australia* [2001] FCA 1213.
- 23 *The Croker Island Case: Commonwealth of Australia v Yarmirr* [2001] HCA 56.
- 24 *Members of the Yorta Yorta Aboriginal Community v Victoria* [2002] HCA 58; 214 CLR 422; 194 ALR 538.
- 25 *Western Australia v Ward* [2002] HCA 28.
- 26 NSW Parliamentary Inquiry into Issues Relating to Redfern and Waterloo (NSW).
- 27 See Chris Cunneen, *Riot, Resistance and Moral Panic: Demonsising the Colonial Other* (5 September 2008) <<http://www.austlii.edu.au/au/journals/UNSWLRS/2008/29.html>>.
- 28 *Constitution Act 1975* (Vic).
- 29 ATSIC Amendment Bill 2005 (Cth).
- 30 Aboriginal Justice Plan 2004-2014: Beyond Justice (NSW).
- 31 Beyond Petrol Sniffing: Renewing Hope for Indigenous Communities.
- 32 Unfinished Business: Report of the Senate Inquiry into Stolen Wages.
- 33 Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse (NT).
- 34 *Ampe Akelyemane Meke Mekarle* "Little Children are Sacred".
- 35 *Northern Territory National Emergency Response Act 2007, Social Security and Other Legislation Amendment (Welfare Payment Reform) Act 2007* (Cth), *Families, Community Services and Indigenous Affairs and Other Legislation Amendment (National Emergency Response and Other Measures) Act 2007* (Cth).
- 36 Northern Territory Government's Indigenous Generation Plan of Action: Closing the Gap.
- 37 *Trevorrow v State of South Australia* (No. 5) [2007] SASC 285.
- 38 *Roach v Electoral Commissioner* [2007] HCA 43.
- 39 Indigenous Art - Securing the Future: Senate Inquiry into Australia's Indigenous Visual Arts and Crafts Sector.
- 40 *Risk v Northern Territory of Australia* [2007] FCAFC 46.
- 41 National Apology to the Stolen Generations (Cth).
- 42 *Northern Territory of Australia v Arnhem Land Aboriginal Land Trust* [2008] HCA 29.
- 43 *Wurridjal v The Commonwealth of Australia* [2009] HCA 2.

# INDIGENOUS LAW BULLETIN

