Ringing the Changes: The 90th Anniversary of the Journal ................................................ 343
Thanks .................................................................................................................................. 343
Indigenous Australians and the Law .................................................................................... 343
Comings and Goings ............................................................................................................. 344
The Future of Australian Legal Education Conference ....................................................... 345
Conclusion ............................................................................................................................... 345

SPECIAL ISSUE: INDIGENOUS AUSTRALIANS AND THE LAW – Guest Editor: Megan Davis
Introduction to Special Issue ............................................................................................... 346

INDIGENOUS CONSTITUTIONAL RECOGNITION: PATHS TO FAILURE AND POSSIBLE PATHS TO SUCCESS
Shireen Morris and Noel Pearson
This article argues that the purpose of constitutional recognition is predominantly practical, rather than just symbolic. The purpose is to positively reform the power relationship between Indigenous peoples and the Australian state, to empower Indigenous peoples and create a more mutually respectful relationship. The article examines the legal and political calculations involved in the main reform options. It explains why a purely symbolic or minimalist model for Indigenous constitutional recognition is likely to lead to referendum failure, and argues that the proposal for a constitutionally mandated Indigenous representative body presents the most viable path to referendum success. ...... 350

TESTAMENTARY FREEDOM AND CUSTOMARY LAW: THE IMPACT OF SUCCESSION LAW ON THE INHERITANCE NEEDS OF ABORIGINAL AND TORRES STRAIT ISLANDERS IN AUSTRALIA
Prue Vines
The civil law needs of Aboriginal and Torres Strait Islander people in Australia have often been neglected in favour of seemingly more urgent criminal law matters. This is no less true of issues relating to the passing of property on death and the treatment of death and burial than of other civil matters. One of the myths regarding the legal system’s treatment of Aboriginal and Torres Strait Islander people has been that because they did not own much property there was little need to be concerned about succession issues for them. This turns out to be untrue in a profoundly important way. ..................................... 360

OPPORTUNITY IS THERE FOR THE TAKING: LEGAL AND CULTURAL PRINCIPLES TO RE-START DISCUSSION ON ABORIGINAL HERITAGE REFORM IN WA
Lauren Butterly, Ambelin Kwaymullina and Blaze Kwaymullina
The Aboriginal Heritage Act 1972 (WA) was drafted at a time when there was no consultation with Indigenous peoples, and based on a Eurocentric, anthropologically grounded “museum mentality” that failed to understand that Indigenous heritage is living.
All sides of the contemporary debate – Indigenous communities, the full range of the political spectrum and the mining industry – acknowledge that major reform is needed. This article provides guidance on how to achieve such reform – not in the sense of specific legislative provisions, but broad legal and cultural principles that must lead discussions about change.

TWO NEW TOWNSHIP LEASES ON ABORIGINAL LAND IN THE NORTHERN TERRITORY

Leon Terrill

Township leasing is the Australian Government’s flagship land tenure reform for Aboriginal communities in the Northern Territory. Recently, agreement was reached for two new township leases, which are fundamentally different from earlier leases. This article describes how the new leases will operate. While often the focus is on the economic consequences of township leasing, the article describes how the more significant impact is on community governance and relationships around land use.

ENSURING ETHICAL COLLABORATIONS IN INDIGENOUS ARTS AND RECORDS MANAGEMENT

Terri Janke

Traditional cultural expression and traditional knowledge and its interface with intellectual property laws raise many challenges for law and policy makers, and are viewed as incongruent with conventional intellectual property laws. However, the case studies in this article examine how the law and protocols have dealt with this meeting place of culture and law to consider what lessons can be gleaned. The author makes some concluding comments about her vision for a National Indigenous Cultural Authority.

THINKING OUTSIDE THE CONSTITUTION ON INDIGENOUS CONSTITUTIONAL RECOGNITION: ENTRENCHING THE RACIAL DISCRIMINATION ACT

Dylan Lino

Of all the major proposals to constitutionally recognise Aboriginal and Torres Strait Islander peoples, a constitutional ban on racial discrimination has been one of the most popular – and most contentious. According to some conservative commentators, this proposal would unduly empower the judiciary and would not amount to Indigenous recognition in any case. This article argues that protection from racially discriminatory laws is an important form of Indigenous constitutional recognition, and that the Racial Discrimination Act 1975 (Cth) (RDA) represents a pre-existing form of “small-c” constitutional recognition. To address the political resistance against inserting a racial discrimination prohibition into the “big-C” Constitution, it proposes strengthening the RDA’s protection by entrenching it through a “manner and form” provision. More generally, supporters of Indigenous constitutional recognition should be thinking creatively outside the Constitution in imagining a just Indigenous – settler future.

ADMINISTRATIVE LAW

Gemma McKinnon

This article argues that administrative law is under-utilised by the Aboriginal community, particularly as a solution to legal issues in their early stages. It looks at administrative law in all of its practical forms, discussing why administrative law is of particular relevance to the Aboriginal community, and exploring why this relevance is not widely realised throughout the community.
WHAT DOES NATIONAL EQUALITY LAW HAVE TO DO WITH CLOSING THE GAP?
Laura Beacroft
This article discusses the role that a strengthened national equality law can and must play in closing the gap between Indigenous and non-Indigenous life outcomes. With the Australian Government committed to reframing and humanising relations with Indigenous peoples, the challenge is more than tinkering with the status quo. It involves adherence by Australian governments to laws that recognise Indigenous equality. Non-discrimination is a key area that should be targeted in closing the gap initiatives. Disturbing patterns of government action and law-making that undermine the legitimacy of Indigenous equality, and politicise discussions about it, need to be turned around. Strengthening Australia’s national equality law can assist in this task. The priority is enacting catch-up reforms to improve the scrutiny of special laws and to improve Indigenous participation, which are aligned with international and comparable nations’ laws.

SECTIONS

CONVEYANCING AND PROPERTY – Editor: Peter Butt
Memorial to Sir Robert Torrens ................................................................. 401
Farewell .................................................................................................... 405

THE LEGAL OBSERVER – Editor: Michael Pelly
Robert French on “Fuzzy Boundaries” and an “Efficient” High Court ............... 411

STATUTORY INTERPRETATION – Editor: Justice John Basten
Statute, the Common Law and “Brexit” ....................................................... 414

BOOK REVIEWS – Editor: Angelina Gomez
Crime, Aboriginality and the Decolonisation of Justice by Harry Blagg ............... 419

Australian Law Journal Reports

HIGH COURT REPORTS – Staff of Thomson Reuters

DECISION RECEIVED IN MARCH/APRIL 2017

Day (No 2), Re (Constitutional Law; High Court of Australia) ([2017] HCA 14) .......... 518
Ecosse Property Holdings Pty Ltd v Gee Dee Nominees Pty Ltd (Interpretation; Landlord and Tenant) ([2017] HCA 12) ................................................................. 486
Kendirjian v Lepore (Courts and Judges; High Court and Federal Court; Professions and Trades) ([2017] HCA 13) ................................................................. 508

(2017) 91 ALJ 337