

## EDITORIAL

Welcome to the final edition of the Indigenous Law Bulletin for 2011! To close this year, we bring you a range of issues and legal developments for your consideration.

Hal Wooten AC QC opens this edition with a reflection on the 20th Anniversary of the Royal Commission into Aboriginal Deaths in Custody. Wooten outlines the role of the Commission in shaping the Australian narrative. The piece outlines that the Commission was a response to the problems of the time, by people of the time, using the tools of the time. Amongst other things, Wooten challenges those who currently hold power in Australia to find constructive alternatives to the revolving gate of prison.

Dr Andrew Leigh, Federal Member for Fraser takes action on the issue of reducing crime and incarceration rates with a Private Members Motion in the House of Representatives.

Colleen Smyth reviews the Cape York Welfare Reform ('CYWR'), arguing that the CYWR is not meeting its aims to reduce social dysfunction and that the parts of the program which offer supportive social services have not been realised. Further, Smyth concludes that the CYWR is not a special measure and is likely to breach Australia's discrimination legislation and international obligations.

Fiona Martin examines the use of an income tax exempt structure to facilitate face-to-face banking and other services in remote communities. Sunil Silvarjah provides an overview of native title and the process of making an application. The paper examines the practical and legal considerations of costs applications in native title proceedings.

Yogeswaran Subramaniam provides an analysis of the Malaysian Apex Court case *Bato Bagi v Kerajaan Negeri Sarawak*. The case opens the possibility for future decisions to address important issues in Indigenous land rights in Malaysia.

Finally, we close this edition with an examination of the Federal Court case *Eatoock v Bolt*. The case note is compiled by the *University of New South Wales Pre Law Program* participants. The Pre Law Programs are a preparatory program aimed at increasing the number of Indigenous lawyers in the legal profession.

**April Long**  
Editor

## CONTENTS

REFLECTIONS ON THE 20TH ANNIVERSARY OF THE ROYAL COMMISSION INTO ABORIGINAL DEATHS IN CUSTODY <i>by Hal Wooten AC QC</i>	3
PRIVATE MEMBER'S MOTION IN THE HOUSE OF REPRESENTATIVES ON REDUCING CRIME AND INCARCERATION RATES <i>by Dr Andrew Leigh</i>	9
SPECIAL MEASURES IN INDIGENOUS WELFARE REFORM: EXAMINING THE CAPE YORK TRIAL <i>by Colleen Smyth</i>	12
RECENT FEDERAL COURT DECISION HIGHLIGHTS THE USE OF AN INCOME TAX EXEMPT STRUCTURE TO FACILITATE FACE-TO-FACE BANKING AND OTHER SERVICES IN REMOTE COMMUNITIES <i>by Fiona Martin</i>	20
SAVE FOR COSTS IN NATIVE TITLE <i>by Sunil Silvarjah</i>	24
<i>BATO BAGI V KERAJAAN NEGERI SARAWAK: EXTINGUISHMENT OF NATIVE CUSTOMARY RIGHTS IN MALAYSIA</i> <i>by Yogeswaran Subramaniam</i>	28
<i>EATOCK V BOLT</i> <i>compiled by UNSW Indigenous Pre Law Program participants</i>	30
<b>REGULAR</b>	
MONTHS IN REVIEW – November / December <i>compiled by April Long</i>	31

## SEEKING CONTRIBUTORS

Would you like to submit an article to the *Indigenous Law Bulletin*?

If you are a student, practitioner, part of a community organisation, or are simply concerned about issues affecting Aboriginal and Torres Strait Islander people, the ILB wants to hear from you! We welcome contributions from Indigenous and non-Indigenous authors, on a wide range of topics. For more information, please visit our website at [www.ilc.unsw.edu.au](http://www.ilc.unsw.edu.au), or contact the Editor at [ilb@unsw.edu.au](mailto:ilb@unsw.edu.au).

*Aboriginal and Torres Strait Islanders are advised that this publication may contain images of deceased persons.*