Australian National University

Implementing the United Nations Declaration on the Rights of Indigenous Peoples Symposium

7 Oct 2011 I Senate Committee Room I Parliament House I Canberra

After more than two decades of drafting, an overwhelming majority of States voted in 2007 at the General Assembly to adopt the United Nations Declaration on the Rights of Indigenous Peoples. Australia, originally one of the four countries to vote against the Declaration, has since reversed its position. This closed one-day symposium brings together stakeholders from government, industry, academia and legal practice to explore the possibilities and challenges of implementing the Declaration's standards in Australia's public and private sectors, legislation, jurisprudence and regulatory institutions.

Hosted by the

ANU National Centre for Indigenous Studies &
ANU College of Law

A Message from the Symposium Coordinators

The ANU College of Law and ANU National Centre for Indigenous Studies at The Australian National University are proud to jointly host this symposium at Parliament House in Canberra. The symposium will explore the practical legal avenues available to domestically incorporate the rights and standards contained within the United Nations Declaration on the Rights of Indigenous Peoples, an instrument adopted by the United Nations General Assembly in 2007 and subsequently endorsed by Australia in 2009.

The presenters and participants today raise important legal questions that will shape the future of Indigenous law and policy. We thank you for your engagement with the Declaration — for some of you, this has spanned decades — and for your commitment to its implementation in Australia. We look forward to hearing your diverse views from industry, legal practice, academia, politics, and the non-governmental organisation sector about how to best achieve this common end. We commend the leadership and courage of people who continue to keep Indigenous human rights on the country's social, political and legal agenda.

A special debt of gratitude is owed to Senator Siewert for her deep insight into the plight of Aboriginal and Torres Strait Islander peoples, and for her passionate and practical commitment to reconciliation and genuine equality. Organisation of the symposium has been generously assisted by the office of Senator Rachel Siewert, particularly her staff Jess McColl and Johanna Somerville who have been continuously and enthusiastically engaged with the project.

We would like to extend special thanks to the heads of our respective academic units who are unfortunately unable to be present at the symposium. The College Dean, Professor Michael Coper, is an indefatigable and enthusiastic supporter of justice and equity, qualities not often automatically associated with a 'black letter' constitutional lawyer! He regrets being unable to be here but our thoughts are with him and his family while he convalesces. Professor Mick Dodson, Director of the ANU National Centre for Indigenous Studies and a longstanding champion of the human rights of Indigenous peoples, is doing our mob proud performing his duty as the first Indigenous Chair of Australian Studies at Harvard University.

We thank Professor Megan Davis, Member of the United Nations Permanent Forum on Indigenous Issues and Director of the Indigenous Law Centre at The University of New South Wales, both for her involvement in the symposium and for her assistance in arranging a special issue of the *Australian Indigenous Law Review* in 2012 which will be dedicated to the topic of the Declaration.

The College's support team, COAST, have lent their considerable administrative and logistical skills to the organisation of this symposium. Their impressive efficiency is matched only by their undeniable patience and good humour in working with academics on such events. We are also very thankful to Simon Rice, Director of the Law Reform and Social Justice program at the ANU College of Law, for his genuine interest and practical support in organising this event.

Without generous sponsorship such events would not be possible, and for that we thank the ANU College of Law, the Office of the Registrar at The Australian National University, Rio Tinto and the Department of Families, Housing, Community Services and Indigenous Affairs.

Finally, we thank our students and others present for sustaining our passion for our work with their idealism, energy, commitment to social justice and vision for a more equitable Australia.

Asmi Wood
Director, Indigenous Students Support Scheme
ANU College of Law

Jo-Anne Weinman
Research Assistant
ANU National Centre for Indigenous Studies

PROGRAM OUTLINE

9.20–9.30am	Welcome & Acknowledgment Professor **Fiona Wheeler**, Acting Dean, ANU College of Law
Session 1	
9.30–10.30am	A Political Perspective on Incorporating DRIP Standards into Legislation using the Native Title (Amendment) Reform Bill as a Case Study The Hon **Rachel Siewert**, Senator, Australian Greens The evolution of the UNDRIP **Les Malezer**, Co-Chair, National Congress of Australia's First Peoples
10.30–11.00am	Morning Tea
Session 2	
11.00am–12.30pm	Towards a National Strategy on the Declaration on the Rights of Indigenous Peoples **Andrew Gargett**, Policy Officer, Social Justice Unit, Australian Human Rights Commission Applying the Declaration on the Rights of Indigenous Peoples to Australia **Michael Mansell**, Director, Tasmanian Aboriginal Centre Discussion
12.30–1.30pm	Lunch & Launch of the Professor Mick Dodson Award
Session 3	
1.30–3.00pm	Implementation of the UNDRIP: A view from the Private Sector **Janina Gawler**, General Manager Communities, Rio Tinto Land Rights in Australia and the accommodation of the Lands, Territories and Resources Articles of the UNDRIP **Anthony McAvoy**, Indigenous Legal Issues Committee, Law Council of Australia Discussion
3.00–3.30pm	Afternoon Tea
Session 4	
3.30–4.30pm	Educating the Public Service about the DRIP **Dr Kristine Klugman** OAM, President, Civil Liberties Australia & **Bill Rowlings**, Secretary, Civil Liberties Australia Free, prior and informed consent: implementing Articles 10, 19 and 32 **Chris Sidoti**, Executive Director, Human Rights Council of Australia Discussion
4.30pm	Symposium close

SESSION 1: 9.20–10.30am

KEYNOTE ADDRESSES

A Political Perspective on Incorporating DRIP Standards into Legislation using the Native Title (Amendment) Reform Bill as a Case Study

The Hon **Rachel Siewert**, Senator, Australian Greens

The evolution of the UNDRIP

Les Malezer, Co-Chair, National Congress of Australia's First Peoples

SESSION 2: 11.00am–12.30pm

Towards a National Strategy on the Declaration on the Rights of Indigenous Peoples
Andrew Gargett, Policy Officer, Social Justice Unit, Australian Human Rights Commission

Applying the Declaration on the Rights of Indigenous Peoples to Australia
Michael Mansell, Director, Tasmanian Aboriginal Centre

Discussion

SESSION 2: 11.00am–12.30pm

SESSION 3: 1.30–3.00pm

Implementation of the UNDRIP: A view from the Private Sector

Janina Gawler, General Manager Communities, Rio Tinto

Land Rights in Australia and the accommodation of the Lands, Territories and Resources Articles of the UNDRIP

Anthony McAvoy, Indigenous Legal Issues Committee, Law Council of Australia

Discussion

SESSION 3: 1.30–3.00pm

SESSION 4: 3.30–4.30pm

Educating the Public Service about the DRIP

Dr Kristine Klugman, President, Civil Liberties Australia & Bill Rowlings, Secretary, Civil Liberties Australia

Free, prior and informed consent: implementing Articles 10, 19 and 32

Chris Sidoti, Executive Director, Human Rights Council of Australia

Discussion

SESSION 4: 3.30–4.30pm

BIOGRAPHICAL DETAILS

Andrew Gargett

Andrew Gargett is a Policy Officer at the Social Justice Unit of the Australian Human Rights Commission. In 2009 he won the Trawalla Foundation's prize for protecting the rights of minorities, marginalised and vulnerable people as well as the World Vision prize for international law and economic, cultural and social rights.

Janina Gawler

Janina Gawler is the General Manager of Communities at Rio Tinto. She has also been the Chief Executive Officer of Australian National Training Authority and a Chief Advisor on sustainable regional development for the Rio Tinto Argyle diamond mine in the Kimberley region of Western Australia. Janina previously managed the Aboriginal Education Programs in the Echuca region for the Victorian Department of Education, and was a Councillor and then Mayor of Echuca in Northern Victoria.

Dr Kristine Klugman OAM

Kristine Klugman is co-founder and President of Civil Liberties Australia. She holds a doctorate in politics from The Australian National University. She previously served on the NSW Legal Aid Commission and was a researcher with the NSW Bureau of Crime Statistics and Research, helping to establish the Criminal Justice tertiary course for police and prison officers in NSW. She was awarded an OAM for services to education and the community.

Anthony McAvoy

Anthony McAvoy, from the Wiri people of Central Queensland, is a Barrister of the Supreme Court practising in land rights and native title law, human rights and criminal law. In 2010 he was the inaugural winner of the National Indigenous Legal Professional of the Year Award, an initiative of the Commonwealth Government. He has also been an active member of the Law Council of Australia's Indigenous Legal Issues Committee since 2001. He has been Vice President of Ngalaya Aboriginal Lawyers Association, a member of the NSW History Council Management Committee, Chairperson of Koori Radio, and Manager of the Heritage and Natural Resources Branch of the NSW Department of Aboriginal Affairs.

Les Malezer

Les Malezer, from the Gabi Gabi people in Queensland, is the current co-chair of the National Congress of Australia's First Peoples. As a delegate to the United Nations, he has been involved in official negotiations with governments and other delegations (including finalising the Nagoya Protocol under the Convention on Biological Diversity in 2010) and held the position of Chair of the Global Indigenous Peoples' Caucus. Previously, he worked at both ATSIC and the National Aboriginal Conference, and he has also worked in the Department of Aboriginal Affairs. Until recently, he was General Manager of a Native Title Representative Body, the Foundation of Aboriginal and Islander Research Action. In 2008, he won the Human Rights Medal for his work in advancing the rights of Aboriginal and Torres Strait Islander peoples nationally and internationally.

Michael Mansell

Michael Mansell is Barrister and Solicitor of the Supreme Court of Tasmania, and the High Court of Australia. His North-East Tasmanian Aboriginal heritage is Trawlwoolway on his mother's side, and Pinterrairer on his father's side. He has been both Chair and Legal Manager of the Tasmanian Aboriginal Centre, and is the Secretary of the Aboriginal Provisional Government. Previously named 'Aboriginal of the Year', he has advocated for Aboriginal rights in the courts and for law reform including during the drafting of the first native title legislation in 1993. He has published in the area of social, political and law reform on subjects including constitutional law, Aboriginal customary law, cultural and intellectual property, land rights and sovereignty.

Bill Rowlings

Bill Rawlings devotes his time to promoting civil liberties, social equity and human rights. As the current Secretary of Civil Liberties Australia he reviews proposed legislation and monitors the accountability of politicians and government departments and agencies. A former journalist and public relations consultant, he worked on Fleet Street in London, as editor of the *Papua New Guinea* daily newspaper, and on *The Australian*, the *Daily Telegraph* and the *Sun Herald*. In 2010, he was nominated for ACT Senior Australian of the Year.

BIOGRAPHICAL DETAILS

Senator Rachel Siewert

Senator Rachel Siewert is the Australian Greens Senator for Western Australia, and the Australian Greens Whip. She chairs the Senate Community Affairs References Committee and is also a member of the Expert Panel on Constitutional Recognition of Aboriginal and Torres Strait Islander peoples. Her portfolio responsibilities include Aboriginal and Torres Strait Islander Issues, Indigenous health, natural resource management, the Kimberley and Northern Australia, fisheries and marine, and family, community and disability services. As a Senator she has productive working relationships with non-government organisations across many sectors, providing a critical link between Parliament and communities.

Chris Sidoti

Chris Sidoti is a human rights lawyer, activist and teacher. He is currently the Executive Director of the Human Rights Council of Australia. He specialises in the international human rights system and national human rights institutions. Previously, he was Director of the International Service for Human Rights (based in Geneva) and has been Australian Human Rights Commissioner, Australian Law Reform Commissioner and the Foundation Director of the Australian Human Rights and Equal Opportunity Commission. He has also worked as the independent chair of the UK Government's Northern Ireland Bill of Rights Forum. He is an Adjunct Professor at the University of Western Sydney, Griffith University and the Australian Catholic University, a Fellow of the Castan Centre for Human Rights Law at Monash University and an Affiliate at the Sydney Centre for International Law at the University of Sydney.

Key Dates for Publication

Participants at this symposium are invited to contribute a paper to a special issue of the *Australian Indigenous Law Review* to be published in 2012 which will focus on the United Nations Declaration on the Rights of Indigenous Peoples. Papers must undergo the journal's usual peer review process and comply with the journal's requirements.

The *Australian Indigenous Law Review* is a bi-annual, peer-reviewed publication of the Indigenous Law Centre at The University of New South Wales. Publishing a broad range of commentary on legal issues affecting Indigenous peoples in Australia and around the world, the *AILR* provides a platform for academic and political debate and aids conceptual developments in Indigenous law. For detailed information on the *AILR* publication guidelines and procedures, visit here: http://www.ilc.unsw.edu.au/content/contribute-0

7 Oct 2011	Most draft papers presented at Symposium
14 Oct 2011	Participants contacted to ascertain interest in publishing
1 Dec 2011	Authors email polished version of papers to: WoodA@law.anu.edu.au & WeinmanJ@law.anu.edu.au
Jan 2012	Papers checked for compliance with AILR formatting and referencing requirements (*Australian Guide to Legal Citation*, 3rd edn)
1 Feb 2012	Papers submitted for peer-review process including revisions by authors where necessary
June-July 2012	Publication of Issue 16:2 of *Australian Indigenous Law Review*

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