

Law Reform Commission of Western Australia

# Aboriginal Customary Laws

The interaction of Western Australian  
law with Aboriginal law and culture

## FINAL REPORT

Project 94

September 2006

## The Law Reform Commission of Western Australia

### Commissioners

Chair	Ms AG Braddock SC, BA in Law (Cambridge)
Members	Ms ID Petersen, BJuris, LLB (Western Australia) Ms MA Kenny, BJuris, LLB (Hons) (Western Australia), LLM (Iowa)

### Special Commissioners

Prof MJ Dodson, B Juris, LLB (Monash), DLit (HC) (UTS),  
LLD (HC) (New South Wales)  
Mrs B Woods

**Executive Officer** Ms HJ Kay LLB LLM (Western Australia)

**Acting Executive Officer** Dr TL Hands LLB (New South Wales), PhD (Western Australia)

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Law Reform Commission of Western Australia  
Level 3, BGC Centre  
28 The Esplanade  
Perth WA 6000  
Australia

Telephone: 011+61+8+9321 4833  
Facsimile: 011+61+8+9321 5833

Email: [lrcwa@justice.wa.gov.au](mailto:lrcwa@justice.wa.gov.au)  
Website: [www.lrc.justice.wa.gov.au](http://www.lrc.justice.wa.gov.au)

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# Acknowledgements

## **Principal Project Writer & Publication Manager**

Dr Tatum L Hands LLB (UNSW), PhD (UWA)  
(Chapters 1–4, 6–8 & 10)

## **Project Writers**

Victoria Williams LLB, LLM (UWA)  
(Chapters 1 & 5)

Danielle Davies BA, LLB (UWA)  
(Chapter 9)

## **Executive Assistant**

Sharne Cranston

## **Research Assistants**

James Newton-Palmer LLB (Murdoch)

Yuki Kobayashi BA, LLB (UWA)

Miriam McKenna

Mimi Yeung

## **Technical Editor**

Cheryl MacFarlane

## **Cover Design**

Egg Design Group

# Terms of Reference



Recognising that all persons in Western Australia are subject to and protected by this state's legal system; and there may be a need to recognise the existence of, and take into account within this legal system, Aboriginal customary laws:

The Law Reform Commission of Western Australia is to enquire into and report upon Aboriginal customary laws in Western Australia other than in relation to Native Title and matters addressed under the *Aboriginal Heritage Act 1972* (WA).

Particular reference will be given to:

1. how those laws are ascertained, recognised, made, applied and altered in Western Australia;
2. who is bound by those laws and how they cease to be bound; and
3. whether those laws should be recognised and given effect to; and, if so, to what extent, in what manner and on what basis, and in particular whether:
  - (a) the laws of Western Australia should give express recognition to Aboriginal

customary laws, cultures and practices in the administration or enforcement of Western Australian law;

- (b) the practices and procedures of the Western Australian courts should be modified to recognise Aboriginal customary laws;
- (c) the laws of Western Australia relating to the enforcement of criminal or civil law should be amended to recognise Aboriginal customary laws; and
- (d) whether other provisions should be made for the identification and application of Aboriginal customary laws.

For the purposes of carrying out this inquiry, the Commission is to have regard to:

- matters of Aboriginal customary law falling within state legislative jurisdiction including matters performing the function of or corresponding to criminal law (including domestic violence); civil law (including personal property law, contractual arrangements and torts); local government law; the law of domestic relations; inheritance law; law relating to spiritual matters; and the laws of evidence and procedure;
- relevant Commonwealth legislation and international obligations;
- relevant Aboriginal culture, spiritual, sacred and gender concerns and sensitivities;
- the views, aspirations and welfare of Aboriginal persons in Western Australia.

Peter Foss QC MLC  
2 December 2000

# Foreword

This Final Report is the culmination of the Law Reform Commission of Western Australia's six-year inquiry into the recognition of Aboriginal customary laws in this state. Over these six years the Commission has conducted wide-ranging research and has consulted not only with the Aboriginal peoples of Western Australia, but also with many Aboriginal and non-Aboriginal organisations, government agencies and individuals.

In its Discussion Paper, published in December 2005, the Commission made 93 proposals which it considered could lead to the principled recognition of Aboriginal customary laws and culture in such a manner as would also address Aboriginal disadvantage in many areas of life in Western Australia. The Commission's proposals have received an overwhelmingly positive response. Many submissions have focused on practical issues likely to arise in the implementation of the proposals. Changes have been made to some proposals to reflect these submissions where necessary.

This Report contains a total of 131 recommendations for reform. The Commission has not confined itself to legislative amendment, but has also recommended change to the procedures of government agencies and to government policy relating to Aboriginal people. Two important recommendations relate to the recognition of the unique status of Aboriginal peoples in the Western Australian Constitution and the creation of an Office of the Commissioner for Indigenous Affairs.

The Commission is concerned that the recommendations contained in this Report have a life after the close of this inquiry. For this reason, an important function of the Commissioner for Indigenous Affairs will be monitoring the implementation of the Commission's recommendations. The Commission has



also, in Appendix B, indicated the agencies likely to be responsible for the implementation of each recommendation. The breadth of the actions required to give effect to the Commission's recommendations can be seen from this summary as can the need for a coordinated response.

There are many individuals and organisations to whom the Commission is indebted in relation to its work on this inquiry. These people are listed in Appendix D to this Report. However, the greatest thanks is due to the Aboriginal peoples of Western Australia without whose assistance, contribution and encouragement this inquiry would not have been possible.

The Commission hopes that the results flowing from this Report will benefit the Aboriginal peoples of Western Australia and their culture, enhance the integrity of the legal system of this state and have a positive influence in other states and territories where Aboriginal culture and laws extend.

Gillian Braddock SC  
Chairperson  
September 2006

