RECOGNITION OF CUSTOMARY LAW IN WA

LAW REFORM COMMISSION

DISCUSSION PAPER

by Dr Tann Hands

Following five years of consultation and research, the Law Reform Commission of Western Australia has released its Discussion Paper into the recognition of Aboriginal customary laws in that State. Some 20 years after the publication of the Australian Law Reform Commission's report on the same subject, the Western Australian Commission has operated under similarly broad terms of reference and its Discussion Paper covers discrete areas of interaction between Australian law and Aboriginal law and culture never before investigated by an Australian law reform agency.

The Commission makes 93 proposals for substantive, procedural and policy reform to provide practical and effective recognition of Aboriginal customary laws and of the cultural concerns of Aboriginal people in Western Australia. Proposals cover such areas as inheritance; evidence and procedure of courts; guardianship and administration; funeral practices; community governance; police and prisons; customary harvesting; coronial inquests; criminal justice issues (including community justice mechanisms, Aboriginal courts, bail, sentencing and criminal responsibility); cultural and intellectual property; family law and the care and custody of Aboriginal children; family violence; Indigenous disadvantage; and human rights. Throughout its Discussion Paper, the Commission has emphasised an approach to recognition of Aboriginal customary law that seeks to remedy systemic bias, embrace Aboriginal culture, and enhance cultural authority by encouraging the institution of substantially self-determining, community-owned processes and programs.

In 'Teaching a New Dog Old Tricks: Recognition of Aboriginal Customary Law in Western Australia' appearing in the next issue of Indigenous Law Bulletin, the Commission's principal project writer Dr Tann Hands will outline a selection of the Commission's proposals and discuss the impetus and rationale for reform. A comprehensive 120-page overview of the Discussion Paper is available on the Law Reform Commission of Western Australia's website <http://www.lrc.justice.wa.gov.au>. Submissions on any of the issues contained in the Discussion Paper are welcome.