

Impact Case Study

Research into First Peoples and Land Justice Issues

Introduction and background

Australian land rights campaigners have been fighting for Indigenous land rights since first settlement, and through the courts since at least 1963, when the Yolgnu people of the Northern Territory protested their removal from their traditional lands after bauxite mining leases were granted by the government without any consultation.

Key events in the pursuit for land justice through the court system include the passing of the Aboriginal Heritage Act 1972 (WA), the Aboriginal Land Rights (Northern Territory) Act 1976, and the famous Mabo case which led to the Native Title Act 1993.

Despite significant legislation, land rights and cultural rights for Aboriginal and Torres Strait Islander people in Australia have repeatedly been overlooked or contravened, often in relation to mining activities. Recent examples include the destruction of two culturally significant rock shelters in Western Australia by Rio Tinto, and the extinguishment of native title by the Queensland government to allow the Bravus Carmichael Coal Mine (previously known as the Adani Coal Mine) to proceed.

RMIT lead researcher Associate Professor Shelley Marshall, Nia Emmanouil and Carla Unger's project looked into the processes behind major resource projects that affected land rights, to determine how issues of consent were handled, how far the application of Australia's Native Title and Land Rights laws reflected international human rights laws, and how legislation might be reformed to ensure that the fundamental rights of Indigenous peoples are upheld.

The research

The research team at the RMIT Business and Human Rights Centre (BHRIGHT) undertook three case studies to examine the effect of resource projects on Indigenous communities and land rights.

- Origin Energy: Onshore Gas Fracking
- Bravus: Carmichael Coal Mine
- Glencore: McArthur River Mine

For each project, the team looked at how agreements were made and enforced and whether the companies operated in a way that respected international human rights law. The project included a review of Australian law from an international law perspective – an area not extensively covered in previous research.

The research found that key international human rights instruments, including the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Civil and Political Rights, and the United Nations Declaration on the Rights of Indigenous Peoples, have not been adequately incorporated into Australian law. This means that companies can act in compliance with state and federal law, though their actions contravene international standards.

Funding

The project was supported by an RMIT Vice Chancellor's Impact prize awarded to Shelley Marshall, which she dedicated to research into first people's justice as a way of 'paying the rent' to indigenous Australians, upon whose unceded land she lives and works.

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What's next...

Project outcomes

Research report

The project resulted in the First Peoples and Land Justice Issues in Australia: Addressing Deficits in Corporate Accountability report, published in March 2021. The report is available online at:

- <https://www.rmit.edu.au/research/centres-collaborations/business-and-human-rights-centre/research-projects/first-peoples-land-justice-issues-australia>

A significant theme of the report concerned the issue of free, prior and informed consent (FPIC), a principle protected by international human rights standards. Consent is a vital factor whenever governments and companies are negotiating with First Peoples to operate on their traditional lands. A lack of FPIC was evident across all three case studies, meaning that the companies had not gained appropriate consent from Traditional Owners.

The report contained overall recommendations as well as recommendations for each company on how they – and companies conducting similar resource projects – can promote accountability, transparency, and good faith in their operations on land that is subject to Indigenous land rights.

The report recommended that state and federal governments review and amend related land rights, mining and environmental legislation, including the addition of requirements for early and effective FPIC engagement, and to align domestic laws more closely to Australia's international human rights commitments.

Recommendations also included the need for all companies to adhere to international business and human rights norms, to consult and cooperate in good faith with First Peoples through their own representative institutions to obtain their FPIC before undertaking projects that may affect them, and to make and adhere to due diligence commitments to ensure no further damage to sacred sites or anthropological sites.

Specific recommendations for the three case study companies included the need to immediately suspend operations (which included fracking and open cut mining) until companies had comprehensively engaged with Traditional Owners in order to establish FPIC.

Roundtable discussion

In late March 2021, the research team hosted a roundtable discussion, attended by around 50 representatives from human rights organisations, legal groups, government and academia. Speakers representing Indigenous and environmental groups described how the law is acting as a conduit or a barrier to their work and put forward recommendations for reform. Other participants were able to share views, ask questions and discuss how to work together in the future.

Online forum

In September 2021, an online forum was attended by politicians from the main Australian political parties. Senator Lidia Thorpe, National Greens Spokesperson for First Nations, and Graham Perrett, Labour MP, Deputy Chair of Parliamentary Joint Committee on Human Rights, presented an outline of their parties' policies and reform agendas for how First Peoples give consent for use of their lands and waters.

A First Nations Expert Panel then asked questions of the politicians and fielded questions from the audience.

Overview of the impact

The First Peoples and Land Justice Issues report and its recommendations for legislative reform, particularly in relation to consent, were reported over 140 times in global media, including:

- <https://7news.com.au/politics/human-rights/native-title-laws-not-balanced-study-c-2393380>
- <https://theconversation.com/when-native-title-fails-first-nations-people-are-turning-to-human-rights-law-to-keep-access-to-cultural-sites-169634> (co-authored with First Nations RMIT Associate Professor Suzi Hutchings).

In addition to the attendees of the September 2021 forum, around 30 politicians were sent or requested a copy of the report.

As a result, the research team was invited to meet with Shadow Attorney General Mark Dreyfus MP and received correspondence from, among others, Ken Wyatt MP, Federal Minister for Indigenous Australians, and Queensland Premier, Annastacia Palaszczuk MP.

The NT Deputy Chief Minister and Minister for Mining and Industry, Nicole Manison, advised that the NT Government aimed to:

- implement all 135 recommendations of the Scientific Inquiry into Hydraulic Fracturing in the NT
- Undertake environmental regulatory reforms for mining activities
- Ensure all newly approved Mining Management Plans were available at: [Environmental reports - Department of Industry, Tourism and Trade](#).

The report's reception has boosted BRIGHT's standing with other human rights organisations, including the Australian Human Rights Commission. The research findings are also being used by a number of community-based advocacy and legal organisations representing First Peoples communities in areas affected by mining interests.

BHRIGHT now hosts the First Peoples' Land Justice Allies Network email list, which shares information and calls for action, and coordinates between first peoples and allies in the legal, human rights, corporate accountability and advocacy fields.

To join this group, send a request to shelley.marshall@rmit.edu.au.

Next steps

BHRIGHT continues to build evidence on the accountability shortfalls in the mining and extractive gas industries and to deepen community-based partnerships with the aim of supporting and amplifying the voices of affected First Peoples around the country.

Associate Professor Marshall is currently engaged in discussions with the NT government about how to implement the UN Declaration on the Rights of Indigenous People into territory law, and ongoing discussions with the South Australian Department of Mines, Industry Regulation and Safety in relation to their native title projects.