

**MACQUARIE UNIVERSITY
DIVISION OF LAW
STUDY GUIDE**

Year and Semester: 2007, Second Semester

Unit Code

& Unit Name: LAW 819 and LAW 866:

**COMPARATIVE INDIGENOUS ENVIRONMENTAL LAW
AND MANAGEMENT**

Credit Points: LAW 819 – 6 credit points
LAW 866 – 4 credit points

Unit Convenor: Professor Donna Craig

Students in this unit should read this study guide carefully at the start of semester. It contains important information about the unit. If anything in it is unclear, please consult the teaching staff in the unit.

**ALL OVERSEAS STUDENTS MUST ENROL AS INTERNAL
STUDENTS FOR THIS UNIT**

1. ABOUT THIS UNIT

Unit description

The rights of Indigenous peoples to self-government has been denied by many colonial governments, particularly in Australia. However, the reality of Indigenous governance has been implicit in native title (the collective nature of the right to land encompasses the need, and right, to administer those lands) and in other forms of land management that have devolved autonomy or integrated Indigenous peoples interests into the management of lands and waters (See Lisa Strelein, Text p. vii). This course explores these themes and associated legal and institutional frameworks in Australia and overseas (USA, New Zealand, Canada and Greenland). Key issues to be studied include international legal recognition of Indigenous rights, native title and other types of land claims (environmental and natural resource rights), the recognition of customary law (and the interface with the dominant legal system), the negotiation and development of contemporary governance structures and processes (use, management and co-management of land, waters and resources) and intellectual and cultural property rights relating to biodiversity and Indigenous knowledge.

Rationale

Indigenous environmental governance goes to the heart of integrated and comprehensive rights of Indigenous peoples. This is well illustrated in human rights treaties, *International Labour Organisation Convention No. 169 Concerning Indigenous and Tribal Peoples in Independent Countries*, and the *UN Draft Declaration on the Rights of Indigenous Peoples*.

Indigenous peoples often argue that title to land without associated control of sustainable use, development and management of land and resources is like getting an "empty purse". The area is worthy of study in the context of "rights" under international, constitutional and other domestic laws and as an exploration of approaches to compensating past wrongs. It also provides exciting contemporary opportunities for exploring and negotiating new forms of sustainable development and environmental governance and the recognition of new intellectual and cultural rights associated with knowledge, environmental management and genetic resources. Indigenous peoples have vigorously asserted their rights in international forums but comparative law developments are just as important.

The course will highlight developments under the New Zealand Treaty of Waitangi (Waitangi Tribunal) and Canadian negotiated regional agreements and self-government (under the Comprehensive Land Claims Process of the federal government). Australia will be used to explore the issue of native title and environmental management (*Mabo* and the *Native Title Act 1993 (Cwth)*). Australia will also provide examples of co-management regimes for national parks.

2. TEACHING STAFF

CONVENOR: Professor Donna Craig
Ph: 9850 7077 (wk), Mobile: 0439873 223
Office: W3A 440 (inside the Environmental Law Centre)
Fax: 9850 7686
Email: donna.craig@mq.edu.au
Please make appointments for consultations.

PLEASE NOTE: If I am overseas or doing field work, I will leave a message on my mobile phone.

3. CLASSES AND STUDY TIMES

THIS UNIT WILL BE TAUGHT BY INTENSIVE COURSE ONLY (KNOWN AS THE ON-CAMPUS SESSION) OVER TWO DAYS

DATE: 22nd – 23rd September 2007
LOCATION: E5A 119

THE ON-CAMPUS SESSION IS **COMPULSORY** AND STUDENTS **MUST** ATTEND.

ALL students should check with Centre for Open Education (COE) in Building X5B for the room location for the on-campus session.

4. REQUIRED AND RECOMMENDED TEXTS AND/OR MATERIALS

PRESCRIBED TEXT

Netheim,G, Meyers,G and Craig,D *Indigenous Peoples and Governance Structures: A Comparative Analysis of Land and Resource Management Rights*, Aboriginal Studies Press, Canberra, 2002.

This book is no longer in print as a Hard Copy. It is available from eBooks.com for AUD\$58.00 (See AIATSIS website). Aboriginal Studies Press is the publishing branch of a peak Indigenous research organization in Australia: Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS). You will find the AIATSIS website and the AustLII database is very useful.

Student should also obtain a copy of :

Undertaking projects and research in Central Australia: CLC protocols and the development of protocols for projects and research in the CLC region, Central Land Council, 2005

Scoping project on Aboriginal Traditional Knowledge, Sonia Smallacombe, Michael Davis, Robynne Quiggin, 2007

Both of these reports can be downloaded from the Desert Knowledge CRC website (Under Publications). They are required reading for this Unit.

SUPPLEMENTARY MATERIAL

Several additional articles are Recommended Reading:

1. Craig, D.G, "Recognising Indigenous Rights Through Co-Management Regimes: Canadian and Australian Experiences" *New Zealand Journal of Environmental Law* Vol. 6, 2002: 199-255.
2. Dutfield,G, "Trips-Related Aspects of Traditional Knowledge" *33 CASE W. RES. J. INT'L L: 239*
3. Corbett,T, Lane,M and Clifford,C "Achieving Indigenous Involvement in Management of Protected Areas: Lessons from Recent Australian Experience" *Aboriginal Politics and Public Sector Management Research Paper No. 5, March, 1998, Griffith University.*
4. *Australian Indigenous Law Reporter*, published by LexisNexis Butterworths. Many volumes, up to 1999, can be accessed online through the AustLII database (under "journals" published by AustLII).

Also see Australian Government website: www.indigenous.government.au and the websites for the Convention on Biological Diversity (programs on access and benefit sharing of genetic resources and article 8(j)) and the United Nations Permanent Forum on Indigenous Peoples. Useful publications are on other sites: United Nations University Institute for Advanced Studies, Call of the Earth Circle.

5.UNIT WEB PAGE

There is not a website for this Unit. The Centre for Environmental Law has recently upgraded it's website and this should be checked for important notices and Study Guides are accessible through this site

www.law.mq.edu.au , click on environmental law. CEL staff are in the process of including many of their publications on a free international Database of full text articles : SSSRN (Social Science Research Network). Students will find this and increasingly useful resource.

6. LEARNING OBJECTIVES

At the end of the course, students should have developed an understanding of:

- a) International law, policies and institutions that relate to human rights, environmental rights and the specific the rights of Indigenous peoples and the implications for domestic law;
- b) An examination of the unique problems and opportunities raised by Indigenous peoples' claims of self-determination, cultural survival, lands and natural resources, treaty-based rights and negotiated agreements;
- c) The scope and diversity of domestic legal regimes dealing with the above concerns;
- d) The benefits of studying comparative approaches to environmental law and the rights of Indigenous peoples; and
- e) A critical assessment of the development of international and domestic law and likely future trends in Australia.

7. GENERIC SKILLS

In addition to the discipline-based learning objectives, all academic programs at Macquarie seek to develop students' generic skills in a range of areas. One of the aims of this unit is that students develop their skills in the following:

Communication skills;
Critical analysis skills;
Problem-solving skills;
Creative-thinking skills.
Interdisciplinary skills

TEACHING AND LEARNING STRATEGY

The two day on-campus session is designed provide the opportunity for extensive discussion of the issues covered and will provide the student with an understanding and appreciation of comparative study in this area of environmental law and indigenous rights. A Role Play ,involving all students, will provide an interactive and dynamic process for learning and assessment. The Role Play will be on the third day of the on-campus session. Students will also have the opportunity for independent research on issues relating to environmental law and indigenous rights.

9. ASSESSMENT

LAW 866

Assignment No. 1 (2,500 words): 50% Due Date for Brief: 10/9/07
(Role Play will be at the On-Campus Session)

Assignment No. 2 (3000 words): 50%

Due Date: 12/11/07

LAW 819

Assignment No 1 (2,500 words): 40%

Due Date for Brief: 10/9/07

(Role Play will be at the On-Campus Session)

Assignment No 2 (6500 words): 60%

Due Date: 12/11/07

Please note: I have only a few weeks to mark the second assignment before the University deadline for results for second semester.

Extensions must be requested, in writing, before the due date of assignments and late penalties apply (See below in this Study Guide).

COPIES OF BOTH ASSIGNMENTS ARE INCLUDED IN THIS COURSE GUIDE

YOU MUST KEEP A COPY OF ALL ASSIGNMENTS. I will accept copies of assignments emailed to me (for the purposes of complying with due date for submission) but a copy must also be lodged through the Centre for Open Education in the normal way. I will email acknowledgements when I receive electronic copies.

10. ASSIGNMENTS

Submission of Assignments

Students should ensure that their tutor's name and their tutorial group is provided on the first (cover) page of every assignment. Assignments should be typed. All pages must be firmly stapled or pinned together and include contact details.

External students must submit their assignments by the due date in the manner specified by the Centre for Open Education (COE)

Internal students should place their assignments in the box provided. Do not push assignments under your tutor's door or post them in your tutor's pigeon hole in the Law Division's mail room. These methods of delivery are *not* secure.

Students are advised to always make and retain a backup copy of all pieces of work submitted. It is University policy to place upon the students the onus of producing a copy of work which goes astray.

Word Length

Word length of assignments should be indicated. Word limits should be adhered to. The word length indicated for the assignments is exclusive of footnotes and Bibliography. The word limit should not be exceeded by more than 10%. Excessively long assignments will be penalised.

Citations/Footnotes/Bibliography

ALL ASSIGNMENTS MUST BE FOOTNOTED AND HAVE A COMPREHENSIVE BIBLIOGRAPHY. Students should use a **Proper Legal Citation** method in all their written work. For a model, look at a law journal article or text and find the method for citing cases, books, articles, statutes, etc. Also consult reference books such as Enright, C, *Studying Law* and Glanville Williams *Learning the Law*

Late Submission

Illness or serious misadventure may be sufficient excuse, preventing submission on time, but complete details must be notified to tutors, *in writing, before the due date*, and be supported by medical certificate or other appropriate documentation.

Pressure of work is generally *not* an acceptable ground for delay.

If an extension of time is granted by a tutor, then the assignment must be submitted within this time. An excuse is good for one assignment only; there can be no chain effect.

In cases where illness or misadventure is likely to affect more than one assignment, students are advised to apply for a withdrawal (W) grade. After the end of the eighth week, a case must be made out for withdrawal without penalty. Your tutor must be separately notified in writing.

It is possible to fail the course on penalties.

Note: *The current Divisional policy on penalties for lateness is 10% up to 7 days; 20% up to 14 days; work submitted later than 14 days need not be accepted.*

Failure to Submit Work or Attend Classes

It should be noted that University regulations require that all classes, assignments and compulsory On-Campus sessions be satisfactorily attended and completed. Non-completion of any piece of work or non-attendance at a compulsory On-Campus Session without sufficient excuse will result in an F grade.

11. RELATIONSHIP BETWEEN ASSESSMENT AND LEARNING OBJECTIVES

Many fundamental questions and issues will be raised and the consideration of various issues, debates, perspectives and readings are what is important. There is rarely a “right” answer to these fundamental questions. We expect that you will have a good understanding of the legal framework, clear issue identification, ability to apply the law to a variety of factual situations and good analytical and critical skills.

12. PLAGIARISM

The University defines plagiarism in its rules: "Plagiarism involves using the work of another person and presenting it as one's own." Plagiarism is a serious breach of the University's rules and carries significant penalties. You must read the University's policies and procedures on plagiarism. These can be found in the *Handbook of Undergraduate Studies* or on the web at: <http://www.student.mq.edu.au/plagiarism/>

The policies and procedures explain what plagiarism is, how to avoid it, the procedures that will be taken in cases of suspected plagiarism, and the penalties if you are found guilty. Penalties may include a deduction of marks, failure in the unit, and/or referral to the University Discipline Committee

13. UNIVERSITY POLICY ON GRADING

The University requires all Divisions to adhere to a policy relating to the distribution of grades across high distinction, distinction, credit and pass grades. This means that on occasion a student's raw mark for a unit (ie, the total of their marks for each assessment item) may not be the same as that which they receive on their transcript. This is because the total raw mark may be scaled up or down so that the grades of all students in each unit sit within the distribution bands set down by the University. The policy does not require that any number of students are to be failed in any unit.

14. SCHEDULE OF TOPICS

EXTERNAL STUDENTS ON-CAMPUS SCHOOL PROGRAMME

Dates: 22nd – 23rd September 2007

Location E5A 119

LAW 819 and 866: COMPARATIVE INDIGENOUS ENVIRONMENTAL LAW AND MANAGEMENT

ALL students should check with Centre for Open Education (COE) in Building X5B for the room location for the on-campus session.

SATURDAY, 22nd SEPTEMBER

Note - Text refers to Prescribed text of the course. The readings below are required for the on-campus session and constitute the Required Reading for this Unit. Students should commence this reading at the beginning of the semester.

9.30-10.30

INTERNATIONAL LAW STANDARDS

Required Reading: Chapter Two – Text

10:30-11:00 MORNING TEA

11:00 – 1.00

COMPARATIVE STUDY: USA

Required Reading: Chapter 3, Text

COMPARATIVE STUDY: CANADA

Required Reading: Chapters 5 and 15, Text

1.00 - 2.00 LUNCH

2.00 - 3.30

COMPARATIVE STUDY: NEW ZEALAND

Required Reading: Chapters 6 and 7, Text

COMPARATIVE STUDY: AUSTRALIA

Required Reading: Chapters 11, 13 and 14, Text

3.30 - 4.00 AFTERNOON TEA

4:00 - 5.00

INDIGENOUS INTELLECTUAL AND CULTURAL PROPERTY

Required Reading:

Scoping project on Aboriginal Traditional Knowledge, Sonia Smallacombe, Michael Davis, Robynne Quiggin, 2007,

Undertaking projects and research in Central Australia: CLC protocols and the development of protocols for projects and research in the CLC region, Central Land Council, 2005 (publications available from Desert Knowledge CRC website)

Dutfield,G, "Trips-Related Aspects of Traditional Knowledge" 33 *CASE W. RES. J. INT'L L.*: 239

SUNDAY 23rd SEPTEMBER

9.00 - 11.00

INDIGENOUS CO-MANAGEMENT

Required Reading:

Chapters 13, 14 and 15, Text (Co-management of lands, waters, seas, wildlife and natural resources)

Supplementary Material:

Craig, D.G, “Recognising Indigenous Rights Through Co-Management Regimes: Canadian and Australian Experiences” *New Zealand Journal of Environmental Law* Vol. 6, 2002: 199-255.

11.00 - 13.00 MORNING TEA

11.00 - 1.00

ROLE PLAY

(Negotiation of Co-Management Agreement for Mutawinji National Park: See Instructions for Assignment One).

Reading: Supplementary Material

Corbett,T, Lane,M and Clifford,C "Achieving Indigenous Involvement in Management of Protected Areas: Lessons from Recent Australian Experience" *Aboriginal Politics and Public Sector Management Research Paper No. 5, March, 1998, Griffith University*

1.00 - 2.00 LUNCH

2.00 - 3.00

ROLE PLAY

3.30 - 4.00 AFTERNOON TEA

4.00-5.00

ROLE PLAY

ASSIGNMENT 1: (All students)

Due Date: For Written Briefs - 10th SEPTEMBER 2007.

Maximum Word Length: 2,500 words

Weight

LAW 819: 40% (20% on written Brief and 20% on participation in Role Play at On-Campus Session)

LAW866: 50% (25% on written Brief and 25% on participation in Role Play at On-Campus session)

Note: Please read Role Play Instructions carefully. You will be required to choose a "role" before the on-campus session. This should be confirmed with Donna Craig by email on donna.craig@mq.edu.au. The written Brief should be prepared for the role of your choice in the negotiation. Half of this assignment will be assessed on the written brief and the other half will be assessed on your participation in the actual role play at the on-campus session. Both of these tasks constitute Assignment One for Law 819/866.

ROLE PLAY INSTRUCTIONS

SUBJECT MATTER:

The role play is to be a simulated re-negotiation of an Australian co-management agreement. You will be re-negotiating the Mutawinji National park lease (1998). The whole lease document can be accessed, on the internet, at the following URL: www.austlii.edu.au/au/special/rsjproject/remote/mutawinji/lease.html. You should bring a copy to the re-negotiation.

This was the first co-management (joint management) legal agreement negotiated between Aboriginal owners and the State government of New South Wales (NSW). Much stronger legal co-management arrangements exist between the Aboriginal owners and the Australian federal government for Uluru Kata Tjuta and Kakadu National Parks (located in the Northern Territory of Australia). The Mutawinji lease was a compromise with a more conservative State government (NSW) with no prior experience with indigenous co-management. The legal constraint, in the negotiation of the 1998 Mutawinji lease, was that it had to conform to the requirements and framework of the NSW legislation: *National Parks and Wildlife (Aboriginal Ownership) Act 1996*. A full copy of this Act can be accessed on the AustLII website. You should bring a full copy to the re-negotiation. The history and issues, involved in the original Mutawinji negotiations, is summarized in the article by Marcus Lane, Tony Corbett and Chris Clifford (**Reading in the Supplementary Material**). Other material on AustLII can be found under "hosted Home Pages" in the list of databases - see *Indigenous legal resources*. (Key words for searching will include: *indigenous, Aboriginal, joint management, national park*)

The Aboriginal owners of Mutawinji refer to themselves as Wiimpatja. Wiimpatja have rapidly become aware that there are some serious problems with the terms of their co-management provided for in their lease. The NSW Government has agreed to expedite the renegotiation of the lease.

FORUM FOR THE RE-NEGOTIATION

The NSW government and Wiimpatja has agreed that a Mediator should facilitate the renegotiation (Professor Donna Craig).

The Wiimpatja are represented through their local Aboriginal Land Council (the MLALC). You may assume, for the purpose of the role play that there is no dispute over the representative capacity of the MLALC. The MLALC has specific procedures, and good faith, in providing that the Aboriginal custodians must be given the right to speak directly on all negotiation issues relating to their "country" (within the park) that they have an obligation to protect, and care for, according to Aboriginal Law.

The NSW government and MLALC have also agreed that the re-negotiation should adopt the normal mediation processes. However, if key issues cannot be agreed upon, the Mediator should adjudicate and come to a decision on these issues. The NSW Cabinet retains power to approve the final lease agreement. They have undertaken not to substantially amend the negotiated agreement without first referring it back to the Mediator for her recommendations.

Determinations on legal issues can be appealed to the NSW Land and Environment Court (a branch of the NSW Supreme Court).

PARTICIPANTS IN THE RENEGOTIATION

Students should consider what role they wish to play. Roles should be confirmed by Professor Donna Craig. Remember that the written brief that you submit will be a summary of the legal, and other related, arguments for the party (or intervenor) that you represent in the role play.

The Parties to the renegotiation are as follows:

Wiimpatja:

- Mutawinji Local Aboriginal Land Council (MLALC). The MLALC will be represented by their lawyer and the Chairperson of the MLALC. They have notified the The Mediator that MLALC has identified one Aboriginal custodian who will appear personally to "speak" for his, or her, "country" within the park and associated areas.

NSW Government:

- NSW National Parks Department
- Aboriginal Affairs Department

- Environment Department

Intervenors in the Negotiation Approved by the Mediator:

- Australian federal National parks Service
- National Farmers Federation representing pastoralists (ranchers) in the area adjoining the park
- Australian Conservation Foundation which acts as an umbrella group for non-indigenous conservation groups in NSW and other parts of Australia

Mediator

Professor Donna Craig

During the negotiation the Parties can call upon Donna Craig for legal advice, as they see fit.

NEGOTIATION PROCESS

The Mediator, in consultation with the parties and intervenors, shall consider the negotiation Protocol (provided below) and timetable (provided below) to reach an "Agreement in Principle" on the key issues (outlined below) for the new lease for Mutawinji National Park. The Protocol and Timetable may be amended, by agreement between the parties, at the commencement of the Role Play.

KEY ISSUES TO BE DECIDED IN THE RENEGOTIATION

There are a vast number of issues in co-management agreement. However, the parties have agreed that the renegotiation should focus on reaching an Agreement in Principle on the following issues:

1. The appointment of members, operation and powers of the Board of Management. A particular concern, to Wiimpatji is the NSW government Minister's power to direct the Board.
2. Management Principles, and Wiimpatji participation/control, in the preparation of the Plan for Management for the Park.
3. Amount of the rent paid by the NSW Government to Wiimpatji (this is the major resource for promoting environmental management by Wiimpatji and the only revenue to fund their participation in this renegotiation).
4. Wiimpatji control of sacred sites and intellectual and cultural property related to the park and Wiimpatji.
5. Wiimpatji right to hunt wildlife and otherwise use the living and non- living resources in the park on a subsistence and low intensity commercial basis.
6. Dispute resolution procedures relating to disputes within the Board of Management and between the Board of Management and the Minister.
7. Proposals for legislative reform of the provisions in the *National Parks and Wildlife (Aboriginal Ownership) Act 1996* relevant to the above issues.

WRITTEN SUBMISSIONS BY STUDENTS REPRESENTING PARTIES AND INTERVEEVERS IN THE RENEGOTIATION

Students should prepare a written brief for the party, or intervener, that they represented. The written brief should include:

- Your negotiating strategy for the Role Play
- Your legal, and other, arguments relevant to the 7 key issues identified above.
- Your opinions on the proposed Protocol and procedures for the re-negotiation.
- Other comments and suggestions relating to the role that you played in the renegotiation.

Your written brief should be no more than 2,500 words. This should be submitted by 13th September, 2007.

MUTAWINJI NATIONAL PARK RE-NEGOTIATION PROTOCOL (FOR ROLE PLAY)

Introduction

- 1.1 An Agreement in Principle will be discussed concerning the Mutawinji National Park lease re-negotiation
- 1.2 The Re-Negotiation of the lease as well as the Agreement in Principle will be presided over by a mediator, whose principle role is to mediate the process. In the event that key issues cannot be resolved by the parties, the Mediator will take on the role of adjudicators and make decisions on these issues.
- 1.3 The New South Wales Cabinet has retained the power to approve the final lease agreement but in consultation the Mediator.

Parties To These Proceedings

Representing the Mutawinji Local Council: (to be determined)

New South Wales Aboriginal Land Council will be represented by: (to be determined)

New South Wales National Parks Department will be represented by: (to be determined)

New South Wales Aboriginal Affairs Department will be represented by: (to be determined)

New South Wales Environment Department will be represented by: (to be determined)

Australia Federal National Parks Service will be represented by: (to be determined)

National Farmers Federation will be represented by: (to be determined)

Australian Conversation Foundation will be represented by: (to be determined)

Rules Governing the Proceedings

- 1.4 The issues have been divided into seven key issues. Each issue will take no longer than fifteen minutes of discussion time for this first meeting of this renegotiation.

- 1.4.1 In recognition that agreements are usually negotiated over months of meetings and the present proceedings will take place in the course of several hours, we require all participants to keep their oral submissions as brief as possible. The Mediator will enforce this provision in order to give ample time to all parties to present their position.
- 1.4.2 The Mediator reserves the right to be the only members of this proceeding that has the authority to interrupt any parties during their oral presentation in order to mediate and facilitate the reaching of resolution of any key issues or to keep within the confines of the time constraints.
- 1.4.3 All parties participating in this process are reminded that this intended to be a mediation and not adjudicatory and therefore should approach it with an open mind.
- 1.4.4 Negotiators are free to leave the table at any time but must state their objections and reasons for the record and to allow other parties the opportunity to represent their issue or facilitate their return.
- 1.4.5 All parties are required to enter into this negotiation process in good faith and behave accordingly.
- 1.4.6 The ultimate resolution of the issues would be the attaining of an "Agreement in Principle", however, should the time not permit this result the Mediator will determine an appropriate schedule of subsequent meetings to resolve any outstanding issues.
- 1.4.7 Any issues resolved in the meeting should be by consensus. This means that all parties with an identifiable interest, as determined by the Mediator, will have reached an agreement on that particular issue.

Confidentiality

- 1.5 In the spirit of good faith and open negotiations, all parties agree to keep all the proceedings and discussions confidential until the reaching of the Agreement in Principle.

Binding Nature of this Protocol on the Parties

- 1.23 All parties of these re-negotiation proceedings have agreed by attending these proceedings to be bound by the decisions of the Mediator and the Protocol provided herein

TIMETABLE AND PROCEDURES FOR RENEGOTIATION OF MUTAWINJI LEASE (FOR ROLE PLAY)

Time Frame: 3 hours

5 Minutes - Introduction to the Role Play; 5 Minutes - Introduction of the Parties

5 Minutes - Welcoming Ceremony - Traditional Custodians

10 MINUTES PER ISSUE FOR DISCUSSION

PARTICIPANTS PRIORITY ON ISSUES:

1. The appointment of member, operation and powers of the Board of Management.
 - Chairperson, Land Council - lawyer
 - Ministry of the Environment (final authority)
 - National Farmers Federation

2. Management principles, and Wiimpatja participation/control, in the preparation of the Plan for Management for the Park.

- Chairperson, Land Council
- State Parks (who retain fees from gates)
- Discuss conservation issues in Management Plan

3. Amount of the rent paid by the NSW government to Wiimpatja, main money for environmental management and for participation in renegotiation.

- Chairperson, Land Council - lawyer
- Ministry of the Environment (budget)

4. Wiimpatja control of sacred sites and intellectual and cultural property related to the park and Wiimpatja

- Traditional Custodian
- Aboriginal Affairs Dept.
- National Parks Service (Heritage sites)

5. Wiimpatja right to hunt wildlife and use living and non-living resources in the park on a subsistence and low intensity commercial basis.

- Traditional Custodians
- Aboriginal Affairs
- National Parks Service (Endangered Species)
- (hunting regulations - enforcement, fees from licences)
- (conservation issue on wildlife management)
- local right to hunt/use commercial resources

6. Dispute resolution procedures relating to disputes within the Board of Management and between the Board of Management and the Minister.

- Discuss traditional approaches to conservation and decision - making and more Aboriginal
- Discuss arbitration procedures in *National Parks and Wildlife (Aboriginal Ownership) Act 1996*.

7. Proposals for legislative reform of the provisions in the *National Parks and Wildlife Act, 1996* relevant to the above issues.

- NSW Aboriginal Affairs (arguing for broader Aboriginal rights)
- *National Parks and Wildlife (Aboriginal Ownership) Act 1996*.
(government arguing for established legal principles)

ASSIGNMENT 2: (All Students)

LAW 819 and 866

Due Date: 12th November 2007

Maximum Word Length: 3000 words (LAW 866)
6500 words (LAW819)

Weight: 50% (LAW866)
60% (LAW817)

Students are not only required to be familiar with the **Required Reading from the text** (identified in the two day On-Campus Session Programme) but should also **research outside the text**. Please note that environmental law changes rapidly. Some of the case studies in your text may be based on legal regimes that have changed or been modified. You cannot be exhaustive but students should make their best efforts to use their research to **update** this material using what is available in the public domain.

RESEARCH QUESTION

Choose any topic relevant to LAW819/866 Comparative Indigenous Environmental Law and Management.

Discuss the issues and relevant international and domestic legal framework. Make it clear what jurisdiction(s) and environmental laws and policies that you will be discussing. Major emphasis should be placed on a review and critique of this framework.

If appropriate, the critique may:

- (a) **consider measures to improve relevant laws and policies, having regard to international standards relating to the rights of Indigenous Peoples;**
- (b) **consider issues related to Indigenous self determination, participation in environmental management and decisions (including co-management), sustainable use of natural resources and sustainable development strategies .**

* * * * *