



# LAW 866

## Indigenous Peoples and the Law

S2 Block 2019

*Macquarie Law School*

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#### **Disclaimer**

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## General Information

Unit convenor and teaching staff

Unit Convenor

Francesca Dominello

[francesca.dominello@mq.edu.au](mailto:francesca.dominello@mq.edu.au)

Contact via [francesca.dominello@mq.edu.au](mailto:francesca.dominello@mq.edu.au)

6 First Walk, 619

Mon, 10-11am (teaching weeks or by appointment)

Credit points

4

Prerequisites

Admission to MEnvLaw or MIntEnvLaw or LLM or MDevCult or GradDipIntRel or MPPP or GradDipPP or MDevStudGlobalHlth or MDevStud or MPPPMDevStud or MPlan or MPPPMIntRel or MCTerrorism or MIntell or MSecStrategicStud or MPASRMDevStud or 42cp in LAW or LAWS units at 400 or 500 level or (admission to JD and 24cp in LAW or LAWS units at 800 level)

Corequisites

Co-badged status

Unit description

The special place of Indigenous peoples in Australia gives rise to unique questions of law. First, there is the challenge of acknowledging the existence of more than one legal order in the one geographical space. Then, there are the terms of coexistence of these legal orders. And finally, there is a question of how effectively the Australian legal system regulates issues particular to Indigenous peoples. The unit explores these issues in Australia, and also looks to the International legal community and the experience of other settler-colonised states in understanding the limits of law in protecting the rights of Indigenous peoples.

## Important Academic Dates

Information about important academic dates including deadlines for withdrawing from units are available at <https://www.mq.edu.au/study/calendar-of-dates>

## Learning Outcomes

On successful completion of this unit, you will be able to:

Demonstrate sophisticated knowledge of the history of Australian law and system of government and the place of Indigenous customary law within that system.

Critically analyse important legal and political issues that have impacted on Indigenous Australians, linking the issues to past policies and laws.

Apply advanced critical analysis to the operation of Australian law and structure of government in continuing to impact on Indigenous Australians.

Examine the strengths and weaknesses of the Australian legal and political system to further Indigenous peoples' aims and to evaluate the role of law reform in key areas affecting Indigenous Australians.

Demonstrate sophisticated written and verbal communication skills in formulating arguments about the Australian legal and political system and their impact on Indigenous Australians.

Utilise independent research skills in analysing the operation of the legal and political institutions of Australia as they impact on Indigenous Australians.

## General Assessment Information

### Class Participation and Attendance

All lectures will be recorded and available on iLearn..

Attendance during the **OCS/Block** session is compulsory on both days. Students cannot attend a third or a half day, for instance, and think they have fulfilled the requirements for attendance. In the event that a student cannot attend one or both days they are required to apply for special consideration via Ask ([ask.mq.edu.au](http://ask.mq.edu.au)). In that event, you will be required to make up the missed time by completing extra written work. The onus is on you to ensure that the Unit Convenor knows your situation and sets the make up work, and that you submit it at the agreed time.

Please note that attendance is compulsory for pedagogical reasons, and exemption is granted only in cases where a successful application for special consideration has been made.

### Essays

A summary of these assessment tasks are available in the Assessment Tasks section of this unit guide. More information will be available on the iLearn page.

### Special Consideration

All applications for special consideration whether in relation to attendance or the written assessments must be made through Ask. Special Consideration applications must be made within five working days of the assessment task due date (including date of attendance).

This policy applies to written assessments. Unless a Special Consideration request has been submitted and approved, (a) a penalty for lateness will apply – two (2) marks out of 100 will be deducted per day for assignments submitted after the due date – and (b) no assignment will be accepted more than seven (7) days (incl. weekends) after the original submission deadline. No late submissions will be accepted for timed assessments – e.g. quizzes, online tests.

### Submission

The written assignments are to be submitted electronically by way of Turnitin on the iLearn page. Plagiarism detection software is used in this unit.

### Word Limits

Where there is a specified word limit it will be strictly applied and work above the word limit will not be assessed.

### Moderation

Detailed marking rubrics will be made available on iLearn for all assessments. If there are other markers assisting the convenor in marking the written assessments then a process of 'blind marking' to establish a common marking standard will be adopted and all Fail papers will be double marked.

### Style

The research essay should comply with the latest edition of the AGLC (ie, AGLC4).

### Format

All written assessments must be typed in 12pt Times New Roman, double spaced with margins of not less than 2.5cm on both sides. Bibliography should be single spaced in 12pt Times New Roman. Footnotes should be in 10pt Times New Roman.

Please submit in **Word format** and not in PDF.

Footnotes and bibliographies are required for all written assessments.

## Assessment Tasks

Name	Weighting	Hurdle	Due
<u>Class Participation</u>	15%	No	OCS/Block
<u>Research Essay Abstract</u>	10%	No	Friday 23 August, 6pm

Name	Weighting	Hurdle	Due
<a href="#">Research Essay</a>	45%	No	Monday 7 October, 6pm
<a href="#">Short Essay</a>	30%	No	Wednesday 6 November, 6pm

## Class Participation

Due: **OCS/Block**

Weighting: **15%**

**Class Participation:** Preparation and understanding of prescribed materials. The ability to understand and respond in an oral communication context. This is worth 10% of the final mark

**Class Presentation:** On Day 2 of the OCS/Block session students are to give a presentation of about 5 minutes on their Research Essay (**which should be based on materials covered in Weeks 1-9**). This is worth 5% of the final mark.

See the General Assessment Information section in this unit guide for instructions about attendance requirements.

The Special Consideration policy applies.

Instructions on how class participation and presentation will be assessed will be available on iLearn.

On successful completion you will be able to:

- Demonstrate sophisticated knowledge of the history of Australian law and system of government and the place of Indigenous customary law within that system.
- Critically analyse important legal and political issues that have impacted on Indigenous Australians, linking the issues to past policies and laws.
- Apply advanced critical analysis to the operation of Australian law and structure of government in continuing to impact on Indigenous Australians.
- Examine the strengths and weaknesses of the Australian legal and political system to further Indigenous peoples' aims and to evaluate the role of law reform in key areas affecting Indigenous Australians.
- Demonstrate sophisticated written and verbal communication skills in formulating arguments about the Australian legal and political system and their impact on Indigenous Australians.

## Research Essay Abstract

Due: **Friday 23 August, 6pm**

Weighting: **10%**

In the first half of the semester, students will be conducting their own independent research on a topic of their choice that is related to the subject matter covered in **Weeks 1-9**.

In this assignment they are to write a brief abstract for their research topic.

Word length: 750 words MAX excluding footnotes and bibliography.

Style: AGLC4.

Submission: Turnitin.

The Special Consideration policy applies.

See the General Assessment Information section in this unit guide for further administrative details for this assignment.

Instructions on how the assignment will be assessed will be available on iLearn.

On successful completion you will be able to:

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- Critically analyse important legal and political issues that have impacted on Indigenous Australians, linking the issues to past policies and laws.
- Apply advanced critical analysis to the operation of Australian law and structure of government in continuing to impact on Indigenous Australians.
- Examine the strengths and weaknesses of the Australian legal and political system to further Indigenous peoples' aims and to evaluate the role of law reform in key areas affecting Indigenous Australians.
- Demonstrate sophisticated written and verbal communication skills in formulating arguments about the Australian legal and political system and their impact on Indigenous Australians.
- Utilise independent research skills in analysing the operation of the legal and political institutions of Australia as they impact on Indigenous Australians.

## Research Essay

Due: **Monday 7 October, 6pm**

Weighting: **45%**

Students are to write a research essay on a topic of their choice that is related to the subject matter covered in **Weeks 1-9**.

Word length: 2500 words MAX excluding footnotes and bibliography.

Style: AGLC4.

Submission: Turnitin.

The Special Consideration policy applies.

See the General Assessment Information section in this unit guide for further administrative details for this Essay.

Instructions on how the essay will be assessed will be available on iLearn.

On successful completion you will be able to:

- Demonstrate sophisticated knowledge of the history of Australian law and system of government and the place of Indigenous customary law within that system.
- Critically analyse important legal and political issues that have impacted on Indigenous Australians, linking the issues to past policies and laws.
- Apply advanced critical analysis to the operation of Australian law and structure of government in continuing to impact on Indigenous Australians.
- Examine the strengths and weaknesses of the Australian legal and political system to further Indigenous peoples' aims and to evaluate the role of law reform in key areas affecting Indigenous Australians.
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- Utilise independent research skills in analysing the operation of the legal and political institutions of Australia as they impact on Indigenous Australians.

## Short Essay

Due: **Wednesday 6 November, 6pm**

Weighting: **30%**

Students are to complete a Short Essay on a topic related to the materials covered in **Weeks 10-12**.

Word Length: 1500 words MAX excluding footnotes and bibliography.

The essay topics will be available on iLearn in Week 10.

Style: AGLC4.

Submission: Turnitin.

The Special Consideration policy applies.

See the General Assessment Information section in this unit guide for further administrative details for this Essay.

Instructions on how the essay will be assessed will be available on iLearn.

On successful completion you will be able to:

- Demonstrate sophisticated knowledge of the history of Australian law and system of government and the place of Indigenous customary law within that system.
- Critically analyse important legal and political issues that have impacted on Indigenous Australians, linking the issues to past policies and laws.
- Apply advanced critical analysis to the operation of Australian law and structure of government in continuing to impact on Indigenous Australians.
- Examine the strengths and weaknesses of the Australian legal and political system to further Indigenous peoples' aims and to evaluate the role of law reform in key areas affecting Indigenous Australians.
- Demonstrate sophisticated written and verbal communication skills in formulating arguments about the Australian legal and political system and their impact on Indigenous Australians.
- Utilise independent research skills in analysing the operation of the legal and political institutions of Australia as they impact on Indigenous Australians.

## Delivery and Resources

The Lectures will be recorded and available on iLearn. The OCS/Block is scheduled on 23 and 24 September. All students should refer to <https://timetables.mq.edu.au/2019/> for further details on scheduled class times and room locations.

Students will be required to use a computer to access the iLearn page for the unit ([ilearn.mq.edu.au](http://ilearn.mq.edu.au)) and to interact with online research databases and web-based research tools and to submit assignments.

The prescribed text for the unit is Larissa Behrendt et al, *Indigenous Legal Relations in Australia* (OUP, 2019, 2nd ed) available for purchase at the Macquarie University Co-op Bookshop.

Recommended text (but not compulsory for students to buy) is Heather McRae et al, *Indigenous Legal Issues: Commentary and Materials* (Lawbook Co, 2009, 4th ed).

All other information about the unit (additional reading, tutorial discussion questions etc) will be available on the iLearn page for the unit. Additional materials used in this unit are based on the materials developed by Ms Linda Telai, Unit Co-ordinator of Indigenous People of Australia and the Law, College of Law and Justice, Victoria University, Melbourne.

## Unit Schedule

Lecture Schedule:

Week 1: Dispossession and Colonisation

Week 2: Overview of Government Policies

Week 3: Contemporary Aboriginal and Torres Strait Islander Children's Welfare



Week 4: Juvenile Justice (Research Essay Abstract Due 23 August, 6pm)

Week 5: Criminal (In)Justice

Week 6: Indigenous Women and Criminal (In)Justice

Week 7: Land Rights

Mid-Semester Break

OCS/Block 23 and 24 Sept

Week 8: Native title

Week 9: Cultural Heritage (Research Essay Due 7 October, 6pm)

Week 10: Racial Discrimination and the Law

Week 11: Indigenous Rights v The New Paternalism

Week 12: Unfinished Business

Week 13: No Lecture/Last Tutorial (Essay Due 6 November, 6pm)

## Policies and Procedures

Macquarie University policies and procedures are accessible from [Policy Central \(https://staff.mq.edu.au/work/strategy-planning-and-governance/university-policies-and-procedures/policy-central\)](https://staff.mq.edu.au/work/strategy-planning-and-governance/university-policies-and-procedures/policy-central). Students should be aware of the following policies in particular with regard to Learning and Teaching:

- [Academic Appeals Policy](#)
- [Academic Integrity Policy](#)
- [Academic Progression Policy](#)
- [Assessment Policy](#)
- [Fitness to Practice Procedure](#)
- [Grade Appeal Policy](#)
- [Complaint Management Procedure for Students and Members of the Public](#)
- [Special Consideration Policy](#) (**Note:** *The Special Consideration Policy is effective from 4 December 2017 and replaces the Disruption to Studies Policy.*)

Undergraduate students seeking more policy resources can visit the [Student Policy Gateway \(https://students.mq.edu.au/support/study/student-policy-gateway\)](https://students.mq.edu.au/support/study/student-policy-gateway). It is your one-stop-shop for the key policies you need to know about throughout your undergraduate student journey.

If you would like to see all the policies relevant to Learning and Teaching visit [Policy Central \(https://staff.mq.edu.au/work/strategy-planning-and-governance/university-policies-and-procedures/policy-central\)](https://staff.mq.edu.au/work/strategy-planning-and-governance/university-policies-and-procedures/policy-central).

## Student Code of Conduct

Macquarie University students have a responsibility to be familiar with the Student Code of

Conduct: <https://students.mq.edu.au/study/getting-started/student-conduct>

## Results

Results published on platform other than [eStudent](#), (eg. iLearn, Coursera etc.) or released directly by your Unit Convenor, are not confirmed as they are subject to final approval by the University. Once approved, final results will be sent to your student email address and will be made available in [eStudent](#). For more information visit [ask.mq.edu.au](http://ask.mq.edu.au) or if you are a Global MBA student contact [globalmba.support@mq.edu.au](mailto:globalmba.support@mq.edu.au)

## Student Support

Macquarie University provides a range of support services for students. For details, visit <http://students.mq.edu.au/support/>

## Learning Skills

Learning Skills ([mq.edu.au/learningskills](http://mq.edu.au/learningskills)) provides academic writing resources and study strategies to improve your marks and take control of your study.

- [Workshops](#)
- [StudyWise](#)
- [Academic Integrity Module for Students](#)
- [Ask a Learning Adviser](#)

## Student Services and Support

Students with a disability are encouraged to contact the [Disability Service](#) who can provide appropriate help with any issues that arise during their studies.

## Student Enquiries

For all student enquiries, visit Student Connect at [ask.mq.edu.au](http://ask.mq.edu.au)

If you are a Global MBA student contact [globalmba.support@mq.edu.au](mailto:globalmba.support@mq.edu.au)

## IT Help

For help with University computer systems and technology, visit [http://www.mq.edu.au/about\\_us/offices\\_and\\_units/information\\_technology/help/](http://www.mq.edu.au/about_us/offices_and_units/information_technology/help/).

When using the University's IT, you must adhere to the [Acceptable Use of IT Resources Policy](#). The policy applies to all who connect to the MQ network including students.

## Graduate Capabilities

### PG - Discipline Knowledge and Skills

Our postgraduates will be able to demonstrate a significantly enhanced depth and breadth of knowledge, scholarly understanding, and specific subject content knowledge in their chosen fields.

This graduate capability is supported by:

## **Learning outcomes**

- Demonstrate sophisticated knowledge of the history of Australian law and system of government and the place of Indigenous customary law within that system.
- Demonstrate sophisticated written and verbal communication skills in formulating arguments about the Australian legal and political system and their impact on Indigenous Australians.
- Utilise independent research skills in analysing the operation of the legal and political institutions of Australia as they impact on Indigenous Australians.

## **Assessment tasks**

- Class Participation
- Research Essay Abstract
- Research Essay
- Short Essay

## **PG - Critical, Analytical and Integrative Thinking**

Our postgraduates will be capable of utilising and reflecting on prior knowledge and experience, of applying higher level critical thinking skills, and of integrating and synthesising learning and knowledge from a range of sources and environments. A characteristic of this form of thinking is the generation of new, professionally oriented knowledge through personal or group-based critique of practice and theory.

This graduate capability is supported by:

## **Learning outcomes**

- Demonstrate sophisticated knowledge of the history of Australian law and system of government and the place of Indigenous customary law within that system.
- Critically analyse important legal and political issues that have impacted on Indigenous Australians, linking the issues to past policies and laws.
- Apply advanced critical analysis to the operation of Australian law and structure of government in continuing to impact on Indigenous Australians.
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- Demonstrate sophisticated written and verbal communication skills in formulating arguments about the Australian legal and political system and their impact on Indigenous Australians.

- Utilise independent research skills in analysing the operation of the legal and political institutions of Australia as they impact on Indigenous Australians.

## **Assessment tasks**

- Class Participation
- Research Essay Abstract
- Research Essay
- Short Essay

## **PG - Research and Problem Solving Capability**

Our postgraduates will be capable of systematic enquiry; able to use research skills to create new knowledge that can be applied to real world issues, or contribute to a field of study or practice to enhance society. They will be capable of creative questioning, problem finding and problem solving.

This graduate capability is supported by:

## **Learning outcomes**

- Apply advanced critical analysis to the operation of Australian law and structure of government in continuing to impact on Indigenous Australians.
- Examine the strengths and weaknesses of the Australian legal and political system to further Indigenous peoples' aims and to evaluate the role of law reform in key areas affecting Indigenous Australians.
- Utilise independent research skills in analysing the operation of the legal and political institutions of Australia as they impact on Indigenous Australians.

## **Assessment tasks**

- Class Participation
- Research Essay Abstract
- Research Essay
- Short Essay

## **PG - Effective Communication**

Our postgraduates will be able to communicate effectively and convey their views to different social, cultural, and professional audiences. They will be able to use a variety of technologically supported media to communicate with empathy using a range of written, spoken or visual formats.

This graduate capability is supported by:

## Learning outcomes

- Apply advanced critical analysis to the operation of Australian law and structure of government in continuing to impact on Indigenous Australians.
- Demonstrate sophisticated written and verbal communication skills in formulating arguments about the Australian legal and political system and their impact on Indigenous Australians.

## Assessment tasks

- Class Participation
- Research Essay Abstract
- Research Essay
- Short Essay

## PG - Engaged and Responsible, Active and Ethical Citizens

Our postgraduates will be ethically aware and capable of confident transformative action in relation to their professional responsibilities and the wider community. They will have a sense of connectedness with others and country and have a sense of mutual obligation. They will be able to appreciate the impact of their professional roles for social justice and inclusion related to national and global issues

This graduate capability is supported by:

## Learning outcomes

- Demonstrate sophisticated knowledge of the history of Australian law and system of government and the place of Indigenous customary law within that system.
- Critically analyse important legal and political issues that have impacted on Indigenous Australians, linking the issues to past policies and laws.
- Apply advanced critical analysis to the operation of Australian law and structure of government in continuing to impact on Indigenous Australians.
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## **Assessment tasks**

- Class Participation
- Research Essay Abstract
- Research Essay
- Short Essay