

## SECTION 3

# CUSTOMARY LAW

### 5. CUSTOM THEN AND NOW: THE CHANGING MELANESIAN FAMILY

*Jean G. Zorn*

### 6. ISSUES IN CONTEMPORARY CUSTOMARY LAW: WOMEN AND THE LAW

*Jean G. Zorn*

### 7. RITES, WHITES & MIGHT: A CRITIQUE OF THE EFFECT OF THE REVIVAL OF CUSTOMARY LAW ON THE AUTONOMY OF INDIGENOUS WOMEN

*Susan Bothmann*

### 8. THE INCORPORATION OF CUSTOMARY LAW AND PRINCIPLE INTO SENTENCING DECISIONS IN THE SOUTH PACIFIC REGION

*Tess Newton Cain*

*It would be possible to produce a whole collection of pieces that were concerned with each of the themes that are considered in this volume. Such is certainly the case in respect of this section. The place of custom in modern and modernising Pacific island societies is a question of ongoing debate in all sectors and at all levels. These debates have political, economic, legal and social aspects to them. These debates can be wide-ranging or narrow in focus. They are conducted in a wide variety of locations and in numerous languages. Some aspects of those debates are identified and explored here. Our authors are sufficiently well versed in the complexities of Pacific legal discourse to avoid oversimplifications of the 'all custom good, all law bad' variety. They are not so presumptuous as to offer solutions to problems or answers to questions that have been vexatious and will continue to be so for many years to come. Rather, they offer their observations and thoughts as part of an ongoing and dynamic dialogue whose aim is to identify the most useful questions, to accurately define the problems before moving on to the next step, the formulation of responses.*

*The first two chapters are written by Professor Jean Zorn. Her exposition of customary law is one that exemplifies the organic and changing nature of custom, of law and the inter-relationship between the two. The third chapter, by Susan Bothmann, further broadens the theoretical discussions by considering the implications of (re)constituting custom for women. Her chapter draws on concepts established by feminist theorists and those who have written in the field of aboriginal studies in Australia. Dr Tess Newton Cain provides a narrower focus in her chapter. She examines the nature of the inter-relationship between law and custom within a very specific field, that of sentencing decisions in the criminal courts of the region.*

*One of the most controversial aspects of customary law is its interrelationship with human rights. Several of the issues that the authors raise in this section will be examined further in the following section, which is concerned with human rights.*