

The Victorian Indigenous Affairs Framework & Indigenous Representative Arrangements

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We begin by paying our respects to the traditional owners of the country on which we meet today – the Wurundjeri people and their Elders past and present. We also acknowledge their involuntary sacrifice of lands and resources, and the fact that the historic grievances of traditional owners remain unresolved.

Victorian Indigenous Affairs Framework (VIAF)

In preparing for today, we searched the VIAF documents and could find no reference to traditional owners. This is perhaps indicative of the fact that the Aboriginal Affairs Victoria has only very recently begun to consider the role of traditional owners in Aboriginal culture. There are historic reasons for this blindspot, and the advent of native title has certainly begun to shift attitudes, but the wheels of the bureaucracy grind very slowly. The single “Strategic Change Indicator” in the VIAF relating to native title is described as increasing “access” to traditional lands, rather than “ownership” or “management”.¹

There is no reason to criticize the areas of policy that have been given the highest priority in the VIAF: maternal and child health, literacy and numeracy, year 12 completions, reduction of family violence incidents. No one would want to question that improvements in these areas are absolutely crucial to improving the well-being of Aboriginal Victorians (and it should be noted that the Indigenous health indicators in Victoria are not appreciably different from

¹ http://www1.dvc.vic.gov.au/aav/docs/Vic_IndigenousAffairsFramework.pdf, see 5.2 in the Performance Framework.

the statistics elsewhere in Australia²). However, there is room to discuss *how* improved outcomes should be achieved.

There is also a question about the extent to which the underlying causes of social disadvantage can be addressed by focussing on symptoms. For example, Prof. Ian Anderson from Melbourne University recently spoke about a Canadian study on suicide among Indigenous young people, showing that the number of youth suicides was lowest within communities who had the greatest control over their lives. In other words, the particular issue of suicide must be addressed by focussed interventions, broader issues such as self-determination also need to be considered.

Commenting on the recent federal government intervention in the Northern Territory, William Tilmouth from the Tangentyere Council in Alice Springs recently said this: “If you can’t have a say in your own life, it makes you feel like sitting down and doing nothing”. There is a lot of truth behind this statement, and its implications extend beyond debates about the Northern Territory intervention.

Recent studies on the social determinants of health point in the same direction: the extent to which people have control over their lives has a large impact on health outcomes. This is now being called the ‘control factor’,³ and it is one component among a range of psychosocial factors that contribute to poor health and chronic diseases. International studies also suggest that psychosocial stress is a significant contributor to outcomes in health and education. There is every reason to believe that dispossession, and intergenerational trauma related to the removal and relocation of family members, is associated with increased levels of psychosocial stress among some Indigenous Australians.

² The average life expectancy of Aboriginal Victorians is around 17 years less than non-Aboriginal Victorians. See the Aboriginal Services Plan Key Indicators 2005/06 at <http://www.health.vic.gov.au/koori/keyindicators0506.pdf>

³ Marmot, M. & Wilkinson, R. G. *Social Determinants of Health* (Oxford: Oxford University Press, 1999); Evans, R. G., Barer, M. L., & Marmor, T. R. *Why are some people healthy and others not?* (New York: Aldine De Gruyter, 1994); Yin Paradies, *A Review of the Relationship Between Psychosocial Stress and Chronic Disease for Indigenous and African American Peoples* (Darwin: Cooperative Centre for Aboriginal Health, 2004).

The issue of community control arises in the most comprehensive studies of economic development amongst Indigenous peoples. The Harvard Project on American Indian Economic Development, for example, has found that Indigenous governance structures need to have *substantive power* or they will lack credibility with their constituencies, and economic development will flounder.

This Harvard Project on Indigenous Economic Development is well known at AAV, and you can find links to it on the AAV website. Yet it is not clear that the current Victorian Indigenous Affairs Framework has actually absorbed the implications of the Harvard Project.

A key finding in this Project is that there has to be a 'cultural match' between structures of representation and the particular norms of Indigenous culture. A key problem with AAV's proposals for Indigenous representation is that they do not seem to embody a cultural match. They are neither accountable in democratic terms, nor legitimate in terms of Aboriginal culture. Legitimacy depends on whether the values of the representative system reflect Aboriginal cultural values.⁴

In particular, if the new representative arrangements do not acknowledge the place of traditional owners within Aboriginal cultures, those arrangements are bound to fail. While in some contexts the State Government acknowledges the rights of traditional owners to speak for country, this principle is not consistently applied.

It is clear that services delivered in the areas of health, education, housing and employment need to be available to all Indigenous people, regardless of where they come from. That is their right as citizens.

⁴ Stephen Cornell, 'Accountability, Legitimacy and the Foundations of Native Self-Governance', p.9. Available at http://www.ksg.harvard.edu/hpaied/pubs/pub_133.htm

But as Pat Dodson recently pointed out in Melbourne, “it is the structural matters about including Indigenous Australians as distinct peoples with special rights in Australian nationhood that has bedevilled this country.”⁵ He said that “new systems of regional governance need to be developed that include Indigenous people not as disadvantaged citizens but as communities which shape the cultural and social reality of rural and regional Australia.”

The history of Aboriginal dispossession cannot be adequately addressed simply in terms of civil rights. The long-overdue discovery of native title has made this clear, and even the Prime Minister seems to have conceded that the Constitution does not acknowledge the special position of Indigenous Australians. Beyond the quest for equality, Victorians need to get a grip on the meaning of special *cultural* rights and how significant these are for reconciliation.

Pat Dodson was, as usual, incisive on this point: “Despite the spin that the *Native Title Act* was a negotiated settlement between the Keating Government and Indigenous Australia”, he said, “there was in fact no substantial dialogue about the most important issue that had confronted Indigenous and non-Indigenous people since the coming of the first fleet – the recognition in Australian law of the inherent rights of Traditional Owners.”

“Statutory land regimes and heritage protection have been granted by parliaments on the basis of paternal goodwill, not in the context of a political settlement for invasion, dispossession and historical injustice.”

Instead of narrowing the policy debate down on service delivery to disadvantaged communities, Pat Dodson is calling for a new and more authentic dialogue about nation building which is mutually respectful and pursues the highest standards of international human rights.

⁵ Pat Dodson, ‘Reconciliation – 200 years on is dialogue enough?’, speech delivered at the Brunswick Town Hall, 10 October 2007.

The International Context

The most important recent development in the international context is, of course, the UN Declaration on the Rights of Indigenous Peoples which was passed by the General Assembly on 13 September this year. The Australian Government distinguished itself by being one of only four countries who voted against this historic document. The other three countries were Canada, New Zealand and the USA.

The Victorian Traditional Land Justice Group issued a media release on the UN Declaration noting that among the four countries who voted against it, only Australia has never entered into treaties with their First Nations. Robert Nicholls, a co-chair of the Land Justice Group, observed that this makes Australia uniquely backward in the international context.

The Australian Government refused to sign the UN Declaration on the grounds that it might give some credence to ideas of self-determination and customary law. It would be hard to imagine a more mean-spirited response to an international statement of aspirations.

The federal Labor Party stated in response that they would have no difficulty becoming a signatory to the UN Declaration should they win Government. Their media release, however, then went on to speak about practical measures around health, education and policing.⁶ In other words, the Labor Party interpreted this new international standard largely in terms of the rights of disadvantaged citizens.

Of course Aboriginal communities need substantial new initiatives in health, education and policing, but that is not the point of a 20 year United Nations process to discover the distinctive aspects of Indigenous rights beyond the rights of every citizen. Not every citizen has lost their traditional lands and resources. Not every citizen is asked to accept the position of the Australian

⁶ <http://www.alp.org.au/media/0907/msia140.php>; for the Australian Government's statement at the UN on 13 September, see http://www.undemocracy.com/generalassembly_61/meeting_107#pg018-bk04

judicial system that those who have endured racist policies before 1975 have no redress available to them. That is the date of the *Racial Discrimination Act*, and that is the date from which compensation becomes available under the *Native Title Act*.

The UN Declaration on the Rights of Indigenous Peoples, Article 28, proposes a different view of justice:

Indigenous peoples have the right to *redress*, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.

Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status, or of monetary compensation or other appropriate redress.⁷

This is where policy thinking should be focussed. We have not even begun to have genuine conversations about a political settlement for invasion, dispossession and historical injustice. And until we have those conversations, Australian nation building will be burdened by a bad conscience.

Beginning at the Local Level

Pat Dodson proposed a national conversation, but he also emphasized the importance of community mediation at the local level. He pointed to the Mawul Rom Project in East Arnhem Land as an instructive example of bringing people together in ways that are meaningful for both Indigenous and non-

⁷ <http://www.undemocracy.com/A-61-L.67.pdf>

Indigenous cultures.⁸ An inter-cultural dialogue cannot be framed in terms that are dictated by the dominant society.

The Mawul Rom process is partly about reuniting younger Indigenous people with their own culture, but also includes a process of mediation with Non-Indigenous people. Dodson argued that localized mediation should be “re-inventing Indigenous and non-Indigenous relationships in this country. It offers spirituality and intelligence to live within the country and offers a lens through which modernity becomes relevant to the purpose of life.”

Clearly, this is not just about re-vitalizing traditional cultures, but also about finding ways to link traditional Indigenous values with the various elements of contemporary life. Local mediation would need to bring traditional owners into conversation with industry representatives, politicians, senior public servants, Trade Unions, Churches, Aboriginal academics and so on.

The Victorian Traditional Owner Land Justice Group is currently the only functioning statewide representative body of traditional owners, and it is positioned to take a leading role in this much needed conversation. The State Government has already recognized that the Land Justice Group provides the most appropriate forum for dealing with issues of land, native title and natural resources. With the assistance of Prof. Mick Dodson, the Land Justice Group has begun the process of negotiating a framework for local agreement making that may help to resolve historic issues of dispossession.

This is not just about resolving the narrowly legal conceptions of native title; this is about the much larger process of community development that will benefit both Indigenous and non-Indigenous Victorians.

If the process is reduced to a mean-spirited debate about resources and service delivery, Victoria’s track record on Indigenous land justice will remain

⁸ ‘Mawul Rom Project: Traditional and Contemporary Mediation and Leadership Training’ http://ntru.aiatsis.gov.au/ifamp/research/pdfs/MawulRom_2004.pdf

what it is – the worst in Australia.⁹ On the other hand, if the process can embody even a part of Pat Dodson’s vision, it promises to heal some of the wounds in the soul of the State.

⁹ See the summary of national statistics relating to Indigenous owned land at http://ntru.aiatsis.gov.au/research/resourceguide/national_overview/national10.html