

“Local Government and Traditional Owners”

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We acknowledge the traditional owners of the land on which we meet, the Wurundjeri people.

This acknowledgement is an essential part of the reconciliation process, both for Indigenous and for non-Indigenous people. It is essential because the Aboriginal nations of Victoria have maintained their traditional countries as sovereign jurisdictions since time immemorial, and this sovereignty has never been surrendered.

As you will be aware, the *Mabo* judgement of the High Court belatedly recognized that traditional Indigenous groups exercised an internal jurisdiction in defining their own laws. In this landmark decision of 1992, native title rights and interests were identified as “inherent”. That is, they were recognized rather than “granted” by the Crown.

But instead of seeing the inherent system of traditional rights as implying a sovereign system of law (as in North America), the *Native Title Act 1993* raised new questions about the ways in which Indigenous polities could be recognized in Australia. Many of these questions will remain unresolved until we have a treaty.

Our situation in Victoria is particularly problematic, because this state has not enjoyed the benefits of land rights legislation. The State of Victoria has implemented no statewide strategy for resolving issues of Indigenous land justice. The *Aboriginal Land Claims Bill* (1983), and the Social Development Committee *Report upon Inquiry into*

Compensation for Dispossession and Dispersal of the Aboriginal People (1984) both ran into the sand. Short term political factors were allowed to over-shadow the substantial and unresolved issues at stake.

While some of the State's policies relate to social disadvantage and the delivery of services to Indigenous communities, the core issues relating to land justice have not been addressed. Indigenous people in this State hold less than 0.1% of the available land, by far the lowest percentage in all of Australia. And we are unlikely to have land rights legislation in the foreseeable future.

Under these circumstances, Local Governments in Victoria have important opportunities to carry the reconciliation process forward. For example, Councils have the power to enter into Indigenous Land Use Agreements (ILUAs) with traditional owners which recognize all the rights and responsibilities of traditional owners under Aboriginal tradition. Among other things,¹ an ILUA can provide for

- agreed protocols for cultural recognition and welcomes to country
- the management of heritage
- the promotion of employment opportunities for traditional owners
- participation in the management of natural resources
- the streamlining of processes for "future acts" on Crown land
- consultation rights.

All of these measures, negotiated carefully with each traditional owner group, provide importunities for building relationships and reconciliation.

Local Governments could also signal their support for the current negotiating process in which the Victorian Traditional Owner Land Justice Group is negotiating with three

¹ See further *Local Government Agreements: Content Ideas*, National Native Title Tribunal, 2005.

Ministers in the Bracks Government. The aspirations of the Land Justice Group have been set out in a Discussion Paper designed to open up the issues that should be addressed in a Framework Agreement with the State.²

Such a Framework Agreement would expedite the resolution of existing native title claims, while at the same time addressing underlying aspirations for Indigenous land justice. It would also allow some matters to be resolved without the need for a formal native title claim being lodged. This flexibility is allowed for in ILUAs under the *Native Title Act*.

Each of the First Nations of Victoria will always retain the right to negotiate its own settlement with the State, in accordance with its own decision making process. That is guaranteed by the *Native Title Act*. But the proposed Framework Agreement promises to establish a common set of expectations about the content and process of agreements with traditional owners, and Local Governments certainly have a role to play in the various agreements that will be necessary.

It is also important to note that Local Governments carry certain statutory obligations that relate to traditional owners. With regard to the management of cultural heritage, for example, native title claimants have significant rights to be consulted under a number of different Acts.

The implementation of the *Aboriginal Heritage Act (2006)* will integrate a number of the cultural heritage processes with the requirements of the *Planning and Environment Act (1987)*, the Victorian Planning Policy and so on. Especially from the point of view of Local Government, consultation will focus on the Registered Aboriginal Parties (RAPs) – the incorporated bodies that will be recognized by the

² <http://www.nts.v.com.au/document/Framework-Discussion-Paper-26-August-2006.pdf>

statewide Aboriginal Heritage Council during the first half of 2007 to manage cultural heritage within prescribed areas.

We can expect that most of these RAPs will be representing traditional owner groups, and they will finally be in a position to manage cultural heritage in their own traditional country. This will entail a shift from the current system in which Aboriginal co-operatives have been managing cultural heritage, in many cases without regard to the rights accorded to traditional owners under Aboriginal tradition.

But quite apart from arrangements under the *Aboriginal Heritage Act*, it is important to note that a development on Crown land may also constitute a "future act" under the *Native Title Act*, in which case a developer will *also* need to negotiate with any native title group who have lodged a claim over the area. The native title group *may* be the same group who are represented by the RAP, but the legal requirements under the NTA are different.

So in addition to the positive initiatives that can be taken by Local Government purely in the cause of reconciliation, there are important reasons to negotiate ILUAs or other agreements which can streamline the various legislative requirements relating to the management of cultural heritage and native title rights to negotiate.

Local Governments have every reason to build strong relationships with the traditional owners in their area, and to negotiate comprehensive agreements that cover the whole range of both Indigenous and non-Indigenous concerns. And those agreements can go a long way towards dealing with our unfinished business. Building from the local level, with sufficient good will, we could finally see some justice done in this State. So start flying the Aboriginal flag, and let's get down to business.