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No cause for celebration on Victoria's land rights record

By Graham Atkinson

With the 15th anniversary yesterday of the High Court's Mabo decision and last week's 40th anniversary of the 1967 referendum, it has been a time to reflect on what has been achieved in indigenous affairs. Despite occasional encouraging signs, it is clear, with the benefit of hindsight, that Victorian governments do not rate well in the struggle for land rights.

The Victorian Aboriginal Land Council was born in 1975. It survived for 32 months, without the benefit of the land rights legislation or the resources that were to become available in other states. Its successor, the South Eastern Land Council, fared little better.

One of the members of both councils was David Anderson, who on May 10, 1982, began a hunger strike, camped in the Treasury Gardens not far from the office of the newly appointed premier, John Cain. Up to that point, the only substantial hand-back of land in Victoria had been to the Lake Tyers Aboriginal Trust in 1970.

Two weeks into Anderson's hunger strike, the premier announced the government's intention to hand back the Framlingham Forest near Warrnambool — and this is where the referendum comes back into the story. After years of struggle, and with the Victorian Liberal Party resisting land rights in the upper house, it was the Hawke federal government in 1987 that finally saw to it that Lake Condah and the Framlingham Forest were handed back.

Land justice suffered again in 1983. A Land Rights Act was adopted in NSW but a parallel attempt in Victoria fell over. The NSW act established a funding strategy linked to land tax that now sees the statewide Land Council in that state blessed with more than half a billion dollars in investments.

In contrast, Victoria, which has the smallest indigenous estate in country — less than 0.07 per cent of the state's land mass — has no comparable fund to address land justice.

The Mabo decision was a huge boost to indigenous morale, but the trickle-down effect in Victoria was a long time coming.

In the bizarre decision against the Yorta Yorta people, the court presumed that the traditional owners of that country could be recognised as native title holders only if they had preserved their laws and customs essentially snap frozen since 1788. That decision took no account of the effects of dispossession or of the cultural damage wrought by past governments.

The tide started to turn in December 2005 when Justice Ron Merkel ruled that the native title of the Wimmera clans had not been "washed away by the tide of history". This recognised a strip of land along the Wimmera River but the state also agreed to co-operative management arrangements for a larger area of Crown land, an outcome arrived at by negotiation, rather than litigation.

In March this year the Federal Court recognised the Gunditjmara people's native title over about 2000 parcels of Crown land in Victoria's south-west, about 0.6 per cent of the state. This was also a negotiated outcome. In his judgement, Justice Tony North drew attention to the fact that the "identity, beliefs, culture and history of a people" are not appropriate matters to be left in the hands of judicial processes. The worldwide trend was towards alternative forms of dispute resolution, North suggested, the outcomes of which may then be captured in court orders.

But native title is not land ownership. It is a bundle of rights that may be exercised over Crown land, and exercised in a manner that does not affect existing interests. As there is nothing to fear here, it is puzzling, not to mention damaging, when governments find it necessary to contest the rights of traditional owners.

These rights are always defined in native title terms as "non-commercial" and they yield very little economic advantage, despite the fact that indigenous culture includes all matters related to our traditional economies.

Some outstanding injustices are yet to be tackled before we can even begin to talk about what would it mean for traditional owners to have "equal rights" with other Australians, as was implied by the referendum in 1967. The "yes" vote was strongest in Victoria yet this state's performance on land justice is arguably the weakest of any Australian state or territory.

The Bracks Government could do something about this by taking the lessons they have learned in Gunditjmara country into the other areas of the state where traditional owners are still waiting for justice to be done. Seize the day, Mr Bracks, and all Victorians will benefit.

Graham Atkinson is chairman of Native Title Services Victoria.