

INTRODUCTION

Water is highly significant to Aboriginal and Torres Strait Islander communities and still remains a vital force in the vibrant cultural, spiritual and religious life of Indigenous communities across Australia. So how is it that successive Australian governments have ignored and marginalised some of the oldest customary practices in the world? How is it that commercial and recreational interests have actively blocked and dismissed inherent Indigenous community rights of participation and access to marine resources? Perhaps it is simple ignorance, or perhaps it is more calculated and politically driven. This edition of the *Journal of Indigenous Policy* (JIP) is important because it seeks to articulate some of these issues through articles from three key Aboriginal commentators. Scott Hawkins provides insight into the implications of a flawed Fisheries Management Act (FMA) regime in NSW. Jason Behrendt and Peter Thompson discuss key issues arising from governmental failure to recognise Aboriginal interests in New South Wales rivers, and Rodney Dillon critically explores limitations of Australia's *Oceans Policy*. **This policy was released by the Australian Government in December 1998, with the theme, *Healthy oceans: cared for, understood and used wisely for the benefit of all, now and in the future.***

There is no dismissing the fact that Indigenous water and fishing rights issues are complex and deeply interwoven with histories of oppression and dispossession of aquatic environments and biodiversity. The health of a river or coast influences the wellbeing of all adjacent communities and especially Aboriginal communities. Systemic influences also tend to specifically target and impact on Aboriginal people. Hawkins analysis provides us with insight into a fisheries enforcement regime that does not recognise an adequate cultural fishing right and ignores recognised 'vulnerable class' arrest procedure protections for Aboriginal people. It is also noted how far behind the times the NSW legislation is in comparison to other state and territory regimes. In traversing the multitude of legislative and agency influences we soon come to realise that another barrier to effective change is the over emphasis on regulation and limited rights recognition regimes such as native title. Dillon points out that native title (although a significant step in terms of recognition of rights) is a white man's law that sanctions the dispossession of Aboriginal people by recognising the authority of Australian governments to extinguish Aboriginal interests in land and sea. We now see greater awareness of these limitations and community driven responses evoking fresh rights affirmation and implementation strategies that move alongside and beyond native title. Behrendt and Thompson also point out the limited capacity of the NSW legal system to understand and recognise the complexities of Aboriginal cultural landscapes. The NSW system is inept in dealing with Aboriginal interests in a holistic manner and continues to suffer in terms of its performance in protecting and enhancing the sustainable management of ecosystems for the benefit of future generations - Indigenous and non- Indigenous alike. Society needs to recognise that the current system is failing to protect our living

environment and that the failure of government systems to do so is leading towards an inevitable breakdown in the ecological integrity of our natural world. These are long held assertions of Indigenous peoples worldwide and it is very much about basic human rights standards and social justice. Look around; we live in a world of exploitation and genetic modification. Tampering with life essences will have long-term impacts - do governments and multinationals know how these impacts will manifest in tomorrow's world?

Behrendt and Thompson highlight for us just how resilient Aboriginal cultures and beliefs have proven to be in NSW and that the contemporary strength of Aboriginal identity is undeniable (as demonstrated through continued attachment to country, continued importance of kinship, continued use and enjoyment of bush tucker, communication style including ancestral language and a strong sense of survival). Indigenous knowledge has always contributed to the enhancing of non-Indigenous resource management practices. This needs to be recognised and respected and taken to another level. A level that moves far from the anthropocentric roots of western systems and into new partnership phases ensuring that authority and control of Indigenous knowledge and resources remains with the appropriate keepers for generations to come. If governments do not accept new levels of authority and management that enhance and change current systems and practices our children's children will be living in a far different world than the one we live in now. So where to from here?

Recommendations provided by contributors for this edition do provide us with some realistic strategies. Hawkins maintains that major reform of the Fisheries Management Act (FMA) is critical to mitigating the damaging effects of enforcement and highlights the importance of cultural awareness training for Fisheries Officers. Behrendt and Thompson place emphasis on the need for change and pro-activity on behalf of the NSW government. Adoption of the Boomanulla Statement is recommended as a way to manifest a framework for Aboriginal participation in resource management and the development (and incorporation into river management systems) of a Cultural Health Index for rivers in NSW is suggested as a way to effectively recognise cultural landscapes. Dillon looks to increased potential and interest in aquaculture for communities and highlights the need for broad restructuring of the industry in tune with a more equitable distribution of commercial interests.

As Stephen Schnierer points out, we need to protect all forms of aquatic life or biodiversity (the myriad of life forms and habitats that exist in fresh and salt waters) and the relationships between peoples and environments.¹ It is hoped that Indigenous rights framework strategies and mechanisms aim to both protect localised Indigenous knowledge alongside the difficult task of enhancing current sustainable management systems. This is most pertinent at the local level. In recognising the distinct and unique characteristics of every Indigenous community or nation there is a tendency to underestimate the importance of local authority, localised leadership and political power. These

¹ Schnierer, S., Scientific and environmental issues related to indigenous ownership and use of aquatic environments in Australia, *ATSIC Briefing Papers*, February 2002.

complexities are heightened through the complex structures that exist in Australia's governance model and the manifestation of the structures through a multitude of agencies and governmental bodies. This is certainly the case in environmental and resource management regimes. At a basic level, long-term strategies must be employed alongside short-term agreement making processes. Behrendt has already warned us that there 'is often an assumption that as time goes on, rights protection will gradually improve. Recent experience in Australia should highlight the fact that rights that have been recognised in the past - native title and heritage protection – can be extinguished. So it is more accurate to view Indigenous rights – and indeed rights in general – as something that has high and low watermarks'.² It is hoped that this edition will provide some hope to all of us wading through this current low tide.

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Editor.

² Behrendt, L., *Self-determination and Indigenous Policy: the rights Framework and Practical Outcomes*, Journal of Indigenous Policy, 2002, p. 58.