that the Western Yalanji People are the native title holders for the area. As part of the determination negotiations, the parties have reached four other agreements, known as indigenous land use agreements (ILUAs), which establish how their rights and interests will co-exist in the determination *area.*

Related Links:
Media release
Background information

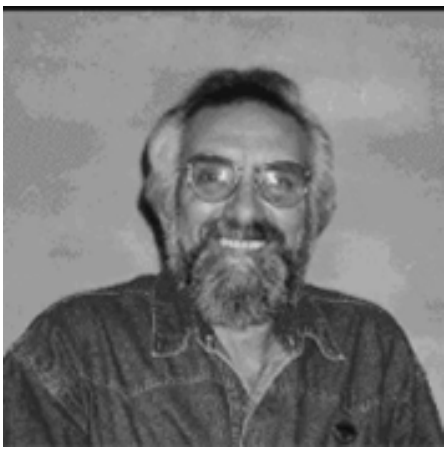
This information about the Western Yalanji determinations has been extracted from the National Native Title Tribunal's e-publication *Western Yalanji People native title determination – what it means and how it will work*
Please visit *http://www.nntt.gov.au/publications/WYalanji3.html* for the full text of this article.

Back to contents

CLAIMANT COMMENT

Balancing the scales of land justice in Victoria

Dr Wayne Atkinson



With the Melbourne Commonwealth Games fast approaching, Dr Wayne Atkinson reflects on the status of the fight for Indigenous land justice in and the Victorian government's shameful legacy and lack of political will to deal with the matter in a fair and just manner.

The path to Indigenous land justice in Victoria has been a hard and hollow one and the returns have been minuscule.

In 2006 the status of Indigenous land justice in Victoria is one that can be indicated with a dot on the map.

Indigenous Victorians have been returned the derisory amount of less than a half of one percent of their ancestral lands. Up until 1998 the amount of land held was 0.014 percent (100th of 1 percent), which in 2006 has increased marginally, but overall is still less than a half of one percent.

This amount does not include the 'consent agreement' reached by the claimants in the Mallee-Wimmera region, 2005, which the court states is 'not a grant of native title'. The agreement offers no ownership or exclusive rights over land and waters and provides for no more say over its management than settler interests.

The claimants traditional based rights to occupy possess and enjoy the two percent of their claim area along the Wimmera River have been normalised to the extent that their inherent rights to continue to camp, fish, and enjoy the land and waters as their ancestors have done, are treated the same as other Victorians. In exercising these rights they also will be required to comply with the imported Anglo laws and regulations that govern these activities. Should there be any inconsistency between the native title rights of the claimants and the rights of other license holders, the latter's rights prevail (Wotjobaluk, Jaadwa, Jadawadjali, Wergaia and Jupagulk Peoples v State of Victoria [2005] FCA 1795, 2005: 10-15). The question of whether this is land justice or continued dispossession by stealth is one of critical importance.

The nature of the title and the rights to land that has been returned to Victoria's original owners by way of Government grants, transfers and the purchase of land on the open market is worth noting.

Most of the land has been returned under inalienable freehold title including some small areas that contained Aboriginal cemeteries. Some of the land was granted and or purchased on the condition that it is used for Aboriginal cultural purposes, and in all of the lands acquired, the crown retains certain rights and interests including the right of veto over mining.

The lack of progress towards land justice in Victoria made by the current Brack's Labor government offers little joy to Indigenous

Victorians following the expressions of regret made by the last two outgoing Labor premiers, John Cain and Joan Kirner, during the height of the reconciliation process.
Regrets for not being able to do enough for Indigenous Victorians during their period of office are fine sentiments, but their failure to deliver is inevitably our loss.

Feelings of regret may well be exacerbated for the Brack's government which unlike its predecessors has the numbers and the power to deliver land justice to Indigenous Victorians on the basis of fair and just principles.

This should include the allocation of substantive capital to allow for land and cultural development.

Added to this rather embarrassing track record is the fact that Victoria stands alone in that it is the only state that has not introduced a formal state-wide land claims process for Indigenous claimants.

All other states and territories including Tasmania, (Aboriginal Lands Act 1995 (Tas), have introduced land claims processes that allow Indigenous claimants to achieve some degree of land justice on the basis of traditional and historic connections and on the basis of the need for land.

The hand-back of Cape Barron Island and Clark Island, to traditional owners in Tasmania is an example of what can be achieved through a state land claims process.
John Cain's commitments to land justice in the early 1980s had some success but his attempts to introduce a state land claims process, the Aboriginal Land Claims Bill, 1983, failed because he did not have the numbers in the upper house - a privilege that the current Government holds.

Whether this Government is morally and politically committed to rectifying the legacy of dispossession remains at the front of the unfinished business agenda.

The Minister for Aboriginal Affairs, Gavin Jennings and the Victorian Attorney General, Rob Hulls seem committed to this process. However Minister Jennings' ability to influence land justice issues through his party's whole of government approach to Indigenous issues, has chosen to prioritise changes to existing Aboriginal Cultural Heritage legislation.
The exposure Cultural Heritage draft and its attempts to undermine the rights of ownership and control of cultural heritage by Indigenous Victorian's have already met with strong opposition from traditional owners.
Minister Jennings' ability to achieve greater positive social and economic outcomes for Indigenous Victorians is further exemplified in a radio interview in which he said that 'he is prepared to role up his sleeves and get a bit of dirt on his hands' (Interview 3CR Radio, 2 August, 2005).

An obvious step for commitments like these to become political realities would be to set up a land claims process that will allow for a lot more dirt than that which has currently been returned to Victoria's traditional owners, and not to take away and or diminish any of those hard fought reforms in Aboriginal Heritage laws that Kooris achieved in the 1980s.

Rob Hulls goes much further by acknowledging the legacy of dispossession. In his talk at the announcement of the Wimmera determination in December 2005, Hulls admitted that "We are complicit in this atrocity, unless we can return autonomy and integrity to our relationships and reunite grieving custodians with the home lands they so love" (Sydney Morning Herald, January 9, 2006).

Fine sentiments again, but matching the rhetoric with the political action required to rectify complicity and to alleviate feelings of grief are the moral and political challenges that confront the government and Indigenous claimants in 2006.

Dr Wayne Atkinson is a Senior Lecturer, Indigenous Studies with the Department of Political Science at the University of Melbourne. He is a member of the Yorta Yorta and Dja Dja Whurrong Indigenous Nations of the Murray Goulburn and Central Victoria regions and has worked in Aboriginal Affairs for most of his life, specialising in research, writing, teaching Indigenous studies, and in land and heritage reform.

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Back to contents