Stradbroke Island: Facilitating Change

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Queensland Studies Centre

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Stradbroke Island:
Facilitating Change

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Facilitating Change — An Introduction

*Regina Ganter**

Amidst an invigorated campaign against mining on Stradbroke Island and in the lead-up to a historic agreement between indigenous custodians and other parties on Stradbroke Island in May 1997, the Queensland Studies Centre at Griffith University co-hosted a public seminar with the Quandamooka Land Council. This seminar served as a forum of information and exchange to assess and discuss how changes in the recognition of indigenous rights might affect the future of Stradbroke Island which has been subject to considerable public debate since the early 1980s when the 'Leave Straddie Unabridged' campaign cast the island and its future development into the public eye. Changes are certainly on the agenda for this island on the doorstep of Brisbane, which is like a microcosm of the debates that characterize contemporary Queensland.

For the Queensland Studies Centre 'Facilitating Change' was the second public engagement with Stradbroke Island. A 1992 seminar and its published proceedings entitled *Whose Island? The Past and Future of Stradbroke* canvassed the way in which tourism, recreational and residential interests converge and often conflict over the island. That first seminar also emanated from public debate, which was then centred on townplanning issues propelled by real estate and tourism development. The speakers at that seminar converged on the view that its natural attractiveness was a key asset of North Stradbroke and should form the centrepiece of development and management strategies. Designing a blueprint for its future required the setting of growth limits and an acknowledgment of its historical and cultural heritage, incorporating its diverse communities in the planning process.

A positive step in this direction has now taken place. In August 1997 the Redland Shire Council signed a Native Title Process Agreement with the Quandamooka Land Council Aboriginal Corporation. It is geared to developing collaborative land use and management plans for the island concerning development, tourism, cultural resources, land tenure, public

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health, zoning and water management, and is based on the common goal of both councils and residents and visitors to the island for ecologically sustainable development. This process agreement was the first of its kind in Australia and has been widely praised as a model for local government. It is a clear commitment by both parties to Reconciliation and a practical demonstration that the Native Title process is workable.[1]

This volume represents the proceedings of the 'Facilitating Change' seminar. It addresses the new legal parameters of indigenous rights since the Mabo High Court judgment of May 1992 and the Native Title Act 1993, the mediation process surrounding the native title claim lodged over Stradbroke Island, and the interests and hopes of indigenous Stradbroke Islanders. It also canvasses forms of indigenous co-management which might serve as an alternative to the native title debate, the impact of mining on the island, and the history of Myora.

Myora near Dunwich was the site chosen by the Quandamooka Land Council as the venue for this seminar because it is closely linked with the history of indigenous people on the island. This is the subject of the first two papers in this collection. Margaret Iselin, an elder of Minjerribah-Moorgumpin (Moreton and Stradbroke Islands) defined Myora as a meeting place, a place of rest in her welcome address. She recalls the economic lacuna created between the closing of the Benevolent Asylum at Myora in 1946 and the arrival of mining on the island and emphasizes that the opportunities for indigenous and white people on the island are closely linked and must proceed on the basis of Reconciliation.

Faith Walker, a historian at the University of Queensland, explores this special status of Myora in terms of other Queensland missions and reserves. Although contact with Stradbroke Islanders was made very early by Europeans, and the Dunwich Benevolent Asylum commenced operations in 1866, it was not until 1892 that a mission was commenced which briefly became an industrial and reformatory school (1893-96). By this time many Noonuccal, Koenpul and Ngugi were in regular employment. Families were formed with Pacific Islanders and Europeans, and the local population was cosmopolitan, the historical record suggesting that it was highly literate in its ability to deal with officials and represent its interests, arguing for a 'hands off' approach. The institutional arrangement of the 'Myora mission' was unusual, since it had no missionary and unlike denominational missions it was formally subsumed under the Benevolent Asylum, and responsible to the Chief Protector of Aborigines (later Department of Native Affairs). It also lacked the typical dormitory system of missions and reserves so that families were not as torn apart as on other assisted settlements. The effects of these

arrangements strongly flavour the recollections of Myora. Despite these advantages over other missions and reserves, Myora residents were subjected to administration under the Aborigines Protection Act and as in other areas of Queensland, their wages were increasingly subjected to departmental scrutiny, deductions and trust accounts. Perhaps the greatest advantage of Myora was that it softened the blow of removal policies and afforded uninterrupted occupancy of tribal lands throughout the history of contact and colonization.

Uninterrupted tribal affiliation in the face of colonization — not only of space but also of ideas — is the topic of Donna Ruska's paper. In a syncretic affirmation of traditional culture she argues that the Noonuccal, Koenpul and Ngugi have been on the island 'since creation', so that to argue on scientific grounds about a 20,000 or 40,000 year history of occupation is a devaluation of traditional knowledges. This devaluation of tradition has not ceased with the completion of the colonization of space, but continues in the realm of ideas expressed through institutions such as the law. Placing corporate law alongside customary law serves to demonstrate the way in which the whole enterprise of enlightenment rationality — including science, law, and government — perpetuates closures on indigenous tradition. To make this argument, Ruska uses examples such as the non-acknowledgement of elders by the corporate law which governs Aboriginal representative corporations, the inability of scientific rationality to acknowledge the existence of water spirits, or the language of government which is able to refer to the 'illegal' occupation by indigenous Stradbroke Islanders of Stradbroke Island.

All over Australia indigenous groups face this issue of closure between the dominant ontology and their own. In the Hindmarsh Island affair — another island that faced development pressures for a bridge to the mainland — the question became not whether tradition would be offended by major road works at certain sites, but whether that tradition (secret women's business) existed at all in such a way as to be decipherable to non-traditional people. This is like asking about the existence of God when a church building is about to be desecrated. All that is knowable to outsiders in either case is that there are people whose strongly-held beliefs will be violated.[2]

Donna Ruska's concern about the effects of mining, and her call for sustainable industries, is amplified by Ann Ferguson from the Stradbroke Island Action Coalition who explains the current mining activities and their environmental impact. She lists the known environmental accidents and criticizes the laxness of state and federal governments in carrying through their watchdog functions. Fears about the economic viability of

the island without mining are countered with the argument that since it depends on a non-renewable resource, mining will end, sooner or later, and the Stradbroke Island Action Coalition argues it should end now.

The next two papers in this volume address the law, again from two different ontological perspectives. Dale Ruska contrasts 'invading law' to the 'law of the Mooka'. On the basis of this law he makes apparent why the Aboriginal contributions are replete with references to the speakers themselves and their families. The history of colonization is told in context of Ruska's own family lineage and woven into a discussion of the incompatibilities between two laws. Discussing the effects of invading law, he deplores the phenomenon of those who have sought opportunities outside of traditional law, such as native police and black trackers who started to enter into service for the invading law. The 'invading law' has not made space for an alternative ontology, it contains native title, and circumscribes the basis on which talks can be held.

Since sovereignty, native title, and ownership are terms of western legal traditions, not of indigenous traditions, having to express one ontology in terms of another is a constant challenge to the very tradition that is sought to be upheld by such negotiation. For example, the notion of reciprocity, which perhaps best describes the Aboriginal relationship to land, is indecipherable to the legal traditions which are paraphrased as 'corporate law' or 'invading law' by Dale and Donna Ruska. These two contributors offer a deep-seated critique of the possibility of accommodation.

Canvassing the current legal landscape of indigenous rights, native title lawyer Scott McDougall proceeds like Henry Reynolds from a discussion of sovereignty to measure the shortcomings of the present accommodation between outright denial of indigenous rights and full recognition of interests. He points out that acquisition by settlement has not been rejected as a valid concept by the High Court's Mabo decision, so that native title does not restore sovereignty. Native Title legislation offers either adversarial litigation through courts or a process of mediation to reach an outcome, and Stradbroke Islanders have taken the latter path to facilitate change.

Penny Tripcony, a member of the mediation team, explains the strength of the Quandamooka native title claim and the process and reconciliatory spirit of mediation. She gives an insight into the vast claims on human resources and expertise required. She also cuts through some widely held misconceptions of what it means to be Aboriginal, underlining the diversity and complexity of Aboriginal groups, and the legitimacy of divergences of opinions and beliefs.

Peter Jull widens the discussion to an examination of indigenous political strategies overseas. Indigenous peoples elsewhere encounter similar problems and pressures for change, and this examination of the emergence of indigenous political strategies among the Sami (Lapps) of Norway, Finland and Sweden, and among the Inuit (Eskimos) of Canada, Greenland and Alaska provides interesting comparisons and similarities with Australia. Jull shows how there can be strategies that differ from the path of 'native title' as implemented in Australia, such as the Nunavut self-governing territory in Canada. He argues that against the backdrop of international currents of thought on indigenous people and environmental protection, which have stemmed the tide of the devaluation of indigenous traditions, an international perspective is extremely valuable. He re-traces the emergence of the World Council of Indigenous Peoples as the institutional expression of a sense of solidarity among indigenous peoples of the world. Read closely against the Australian experience this comparative treatment illuminates the reception of Australian indigenous policies overseas, and possible impacts of overseas developments for Australia. Jull gives a sense that change is a slow grind involving various levels of government, and not too much should be made of the backpedalling of newly elected governments.

Jull has sought to bring international perspective to the native title debate in Australia in a variety of ways, and points to a vast amount of useful literature. A more extended version of his paper, which includes considerations of other First World indigenous peoples (Faroes, Shetland, Iceland and Russia) is available on request from the Queensland Studies Centre.

Vincent Martin of the Nunukul-Ngugi Land Council also seeks to tread a path around the highly formalized and resource-intensive process of native title. Like Tripcony he posits the relationship to the land as being the common denominator of Aboriginal people, and beyond that there are various avenues for a positive and productive future of indigenous presence on the island.

In the spirit of debate and discussion which is necessary to facilitate change, these papers do not present a single vision for a future of Stradbroke, either on the issue of mining, or on indigenous strategies. No editorial or organisational attempt has been made to gloss over differences in the positions taken by the various contributors. The attempt was, rather, geared to bringing together a balance of contributions from indigenous and non-indigenous perspectives, and to avoid the phenomenon of tokenism which often emerges when 'the Aboriginal point of view' is sought on any particular issue. Whereas institutions such as parliament

or the public media thrive on the debate that is proffered by party politics, intra-party factionalism, sectional and regional interests, competing commercial interests, and the differences of opinion attributable to age, class and gender or even experience and tastes, such spectres of acceptable divergences tend to collapse under the weight of the implicit expectation that being black in a white-dominated Australia should not only predominate over all other positions but should also effect an agreed position on a limitless range of issues. Considering the history of management of indigenous people, which has been consistently single-minded in defining them as a largely undifferentiated target for management or reform, it is an important step towards facilitating change to be reminded that debate and difference is possible not only between white and black communities but also within them. Nevertheless, the indigenous contributors to this volume collectively demonstrate that there is a vast and solid ground of collective experience of being an indigenous Stradbroke Islander.

An editorial attempt at uniformity was made with reference to the spelling of collective and place names. As is usual for sites where indigenous occupation is well documented, there is a range of accepted transliterations. Noonuccal may appear in other sources as Nunukul or Nunukal, Koenpul may appear as Koenpil or Gurempul, and Ngugi may appear as Nughie. There is no intention of offering these as authoritative transliterations, especially since variations may be meaningful or emotive, and where they appear as part of proper names, such as the name of an organisation, they have been left unaltered. The capitalization of 'indigenous' has been left to the discretion of contributors, since 'Indigenous' is increasingly used to denote 'indigenous Australian' but has not yet reached dictionary acceptance for this level of specificity. Several of the papers in this collection still reflect the spirit of dialogue with the audience and with other speakers in which they were delivered at the seminar at which there was a vast amount of goodwill in understanding and engaging with the views expressed. The papers in this volume do not claim to represent the views of either the Quandamooka Land Council or the Queensland Studies Centre. The generous financial assistance of Griffith University supported this seminar and its published proceedings.

Notes

1 *Land Rights Queensland* September 1997:16.

2 Lyndall Ryan (ed.) Secret Women's Business — Hindmarsh Island Affair *Journal of Australian Studies* 48 1996.

Growing Up at One Mile

*Margaret Iselin**

I grew up here along with many other families and two old grannies, who always referred to Myora as the meeting place and place to rest. My mother was a wonderful sewer, very good with a needle and cotton and many a time she would whip up bloomers for my sister and I, out of plain calico flour bags with a red design. Many times I rebelled, and would say "what if I fell over, the other children would laugh". Mother would say "lovey, after a few boilings you wouldn't notice it".

Although a frugal life on the mission, it was happy and the upbringing was good. In 1949 we were moved to One Mile. Our fathers were still working at the Institution and decided that they would like to handle their own money, so they fought for the basic wage. In 1946 the Institution was closed and it was moved to Sandgate. Our fathers were out of a job and the Aboriginal people had to fend for themselves. My mother would travel every day with others to do washing and ironing at Cleveland, and this supplemented our food bill. We went back to kerosene lamps, candles, no street lights, and two phones, one at the police station and one at the post office. The police sergeant and the school teacher were the authority. No doctor or nurses. Our mothers had to go back to their skills and knowledge of nursing when any one was sick. If a person was sick, they were transported by fishing boat to Cleveland in all kinds of weather, night or day. If a person died, my aunt and my mother were called on to dress the body. They were transported to the mainland by police launch in the night. They would bring the body back two days later. Our young boys dug the grave by hand and having no transport on the island, not even a horse and tray, the men would carry the coffin on their shoulders from the jetty to the cemetery. Our homes were open to families who came from the mainland for a cup of tea. I recall many a times having the minister at our place after the funeral.

In 1950 the mining came, and what a Godsend. Jobs for our husbands, fathers, sons and daughters. Generators were installed, lights to the houses, water, roads were built and the school was built up with more children and more teachers. Education for our children. I was on the Kindergarten

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* Margaret Iselin is the president of the Minjerribah-Moorgumpin Council of Elders.

Committee when the mining started and I am still working with the schools. Today the elders do cultural talks and presentations. We are going forward not backwards and from us to everyone here, it is a step in the right direction, 'Reconciliation'.

A Very Different Mission: Myora Aboriginal Mission on Stradbroke Island, 1892-1940

Faith Walker*

In 1892, when the Queensland Aboriginal Protection Association established the Myora Mission at Moongalba on Stradbroke Island, the Noonuccal-Ngugi-Koenpil people had already been in continuous possession of their tribal lands since at least the Pleistocene period.[1]

The earliest recorded invaders on Stradbroke Island were a mixture of criminals, soldiers, missionaries and visiting whites[2]. When the first of these, Matthew Flinders, came ashore in 1803, he found "the natives peaceably disposed, amusing us with dances in imitation of the kangaroo".[3] In 1823, cast-away timber getters, Pamphlett, Parsons and Finnegan spent a month near Myora where the Noonuccal provided accommodation in well-built huts, a fire for cooking and as much fish as they could eat.[4]

In 1828 a cotton plantation was established at Capembah Creek, and in the same year a fortified storage depot was manned by convicts at Dunwich.[5] Finally, the desecration of their land, and the threat to the Noonuccal women, resulted in retaliation. The ensuing confrontation resulted in the death of both Aborigines and soldiers.[6]

The next invaders arrived in 1843. They came, not with the gun, but with the crucifix. They were four Passionist Priests sent to convert the people to Christianity.[7] Problems arose when the Noonuccal refused to settle down and work without remuneration.[8] Their mission a failure, the priests departed in 1847, but not before removing three of the children to the Sisters of Charity at Parramatta.[9]

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* Faith Walker is a PhD candidate at the University of Queensland. This paper could not have been written without the consent of the Minjerribah-Moorgumpin Elders Council on Stradbroke Island to access their files at the Queensland State Archives. In particular my gratitude to Elders, Margaret Iselin, Estelle Bertossi and Rose Borey. Also to Dr Rod Fisher who supervised my Hons thesis, upon which this paper is based, and to Dr Raymond Evans who suggested that Myora deserved a history.

Between 1892 and 1896 Myora Mission experienced harsh treatment while under the control of the Queensland Aboriginal Protection Association. This Association had established its first mission on Bribie Island in 1890.[10] The site proved so unsatisfactory that the Colonial Secretary, Horace Tozer, suggested that "the sooner the present mission station is removed to a locality the better."[11] In 1891, the buildings, and the inmates, were moved to a 10 hectare reserve at Moongalba. The first intake into Myora Mission numbered 41.[12]

In October 1893 the Myora Mission was declared an industrial and reformatory school. The 'Industrial and Reformatory Schools Act of 1865' deemed any child of 'an Aboriginal or half-caste mother', to be neglected.[13] This infamous Act allowed Aboriginal children to be removed from their families and detained at declared reserves and mission stations for the following one hundred years.

In 1896 a tragic event occurred at the mission which was to completely change the future of the residents and ultimately the island. In September a six year old Aboriginal girl, Cassy, died as the result of injuries inflicted on her. The Matron of the mission was brought into Brisbane and charged with murder.[14] As well as the teacher and superintendent, mission residents gave evidence at the Supreme Court trial. Resident, Budlow Lifou, described what happened:

> *The matron hit her hard many times. When I saw her bringing the cane I ran over to stop her. When she was beating the child Cassy, I tried to stop her. I tried to stop her. I told her to stop. I picked Cassy up. Miss Christensen told me to drop her. Cassy could not speak.*[15]

Despite the evidence, the murder charge was reduced to manslaughter and the Matron released with a $200 fine. Two days later the Myora Mission ceased to be an industrial and reformatory school and was no longer an establishment for the detention and training of Aboriginal people.[16] Myora now consisted of a school room with two attached, but empty dormitories, teacher's residence, and a two roomed cottage.

The Myora residents were forced to interact with authority figures on the island. These included the teachers at the Myora Aboriginal school, and the medical superintendents of the Dunwich Benevolent Asylum, either one or the other of these men acted as superintendent of the mission. Although the Myora people were not easily put down by authority, and were prepared to argue for their rights, they were, as other Queensland Aborigines, under the 'Aborigines Protection and Restriction of the Sale of Opium Act of 1897'.[17]

Changed conditions were obvious by 1898 when Protector Archibald Meston visited Myora. He found that "the settlement lives much more happily than in the old mission days, peace being rarely broken...".[18] He also found a 'labyrinthic maze of cross-breeding'.[19] Noonuccal women were married to men from islands in the Loyalty, Fiji, Solomon groups, as well as others from New Zealand, also Europeans such as the Tripcony family from Cornwall. Despite his concern, Meston admitted that the children had "fine physics and attractive faces and their intelligence is equal to the average age of Europeans".[20] After receiving Meston's Report, the Home Secretary, Horace Tozer, decided that there should be no unnecessary interference with "this Aboriginal Community, nor constraint imposed for purposes of removal".[21]

Chief Protector Walter Roth visited Myora in 1905 and found a very different mission from others in Queensland. He noted that "they speak good English and are well able to take care of themselves".[22] At a meeting with Roth the Myora people told him that:

> *They did not consider themselves Aboriginals, they did not want any protection, they wished their European friends and others to visit them at holiday time, they objected to the land they were on being a reserve, and they wished to remain unmolested as they were.*[23]

Roth's final conclusion was that the '"social status of Myora reminds me of many a community to be met with among the lower classes of any large European city".[24]

John Bleakley held the office of Chief Protector of Aborigines for the last twenty-seven years of the Myora Mission. He administered the Aborigines Protection Acts with a rod of iron. Bleakley maintained the policy of removing children, whom he classed as 'quadroons and octoroons', from their parents and incarcerating them in 'Industrial Mission Homes' such as the one that had been at Myora.[25]

The next line of command at Myora Mission remained with the Medical Superintendent at the Dunwich Benevolent Asylum. This was the most powerful position on Stradbroke Island. From the time of its establishment in 1866, the Dunwich Benevolent Asylum employed Aborigines in their dairy, piggery and bakery. As well, young women from the mission worked as nursing assistants and domestics.[26] However, it was physically impossible for the authorities to oversee the residents at the mission at all times.

The position of school teacher at the Myora Mission school cannot be underestimated. Other than the powerful cultural influence of the Aboriginal Elders, the school teacher exerted the strongest influence on the community. They lived on the reserve and managed the everyday needs and activities of the residents. Some teachers, such as Philip Bensted (1921-1929), became very involved with the Myora community. He objected to white residents using the school grounds as a right-of-way, and informed the Protector that:

> *My people will be more happy and content as they much resent the presence of strangers, especially white ones on the reserve, they are extremely jealous of their wives and resent strangers being present when they are playing cards.*[27]

Housing on the reserve was eclectic. Many houses, such as those of bark and slab or with corrugated iron walls were similar to housing in the outback of Queensland at the same period.[28] Second-hand building materials were brought from the abandoned St Helena penal colony so the residents could build new dwellings or repair the old ones.[29] Despite the shortcomings in the quality of housing on Myora parents were able to live together with their children, rather than being segregated in dormitories.

At Yarrabah Mission, as in many other Queensland missions and reserves, parents were persuaded to leave their children at the mission, where they were placed in dormitories. If this condition was not met, they were denied schooling. Yarrabah girls who remained unmarried would often spend a lifetime in the dormitory.[30] Although the families at Myora were packed into their small houses like the proverbial sardine, both Charlotte Richards and Estelle Bertossi remembered Myora as "a happy, and beautiful place".[31]

Rations supplied to the mission were boosted by traditional fare. Probably an over-supply of sea-foods accounts for the Aborigines trading these for 'white-mans' tucker'.[32] Charlotte Richards recalled her grandfather, Sam Rollands, catching dugong and that "the meat cut like beef, but it was very strong, and the oil was used like a liniment. It was very good for colds on the chest".[33] The mission was also given an oyster reserve to supplement its food supply.[34] As well, European fruits and vegetables were cultivated, Bethel Delaney described her Grannie, Miboo, as having "eleven orange trees, nine mango trees, and bananas, lemons, guavas and sweet potatoes".[35] Many inmates of Queensland's northern missions were close to starvation. Charmaine Hollingsworth, who was removed to Yarrabah Mission in 1915, said the inmates were so hungry they made a soup by boiling up mango leaves.[36]

Myora was also blessed with a permanent supply of pure water drawn from a number of wells on the mission. Margaret Iselin recalled that her parents had their own well where water was filtered through the sand. Margaret, and her sister filled a kerosene tin from the well twice a day. Her mother, and the other women, always did their washing near their well, taking care not to foul the well with soapy water. Margaret believes that the whitest wash came from the well water.[37]

Providing clothing for Myora Mission involved the inmates, the teacher and the Protector's Office in considerable organisation and irritation. The system was similar to the way in which most of Australia's white population living in the outback ordered their clothing, by store catalogue, except that Myora residents had no catalogue. Clothing orders were sent from the school teacher to the Protector's office which in turn had to order them in from either the state stores, or retail shops. As many of the clothes were for growing children, by the time they arrived at the mission, they were often returned as too small. Some orders were mislaid, others disappeared in transit, leaving the waiting recipients in dire need.

According to Margaret Iselin and Estelle Bertossi, Myora residents were issued with warm clothing in winter, and dress material for those women with sewing machines.[38] It was a different experience for Ruth Hegarty, a 'dormitory girl' from Cherbourg settlement where none of the inmates had a stitch to call their own. Instead, after washing day, the clothes were put into boxes, and it was a matter of 'first in, best dressed'.[39] Fred Clay, from Palm Island, recalled that they were issued with hessian trousers that were "bloody uncomfortable".[40]

Mabel Brown and Lavinia Moreton usually wrote directly to the Protector's Office, rather than going through the teacher or superintendent. Large extended families, such as Mabel Brown's, resulted in many requests and returns. In 1931 Chief Protector Bleakley wondered if Mabel's Christmas clothing order was "not a little extravagant".[41] Nevertheless in the following year he assured the teacher, Alice Morrison that "the Department was prepared to give every assistance to this woman and the children".[42]

If the residents felt aggrieved by discriminatory treatment, they made their complaints known to the Protector's Office. In 1932 Lavinia Moreton was denied the Commonwealth's Baby Bonus because she was Aboriginal. This was a non-means tested sum of money to assist with baby clothes. Lavinia contested the decision.[43]

The Myora school was the hub of the Aboriginal community. It was much more than a place of learning. It was the seat of authority, the

centre of social events and, unlike schools on missions and reserves where the pupils were removed from their culture, at Myora the grandpas, grannies and the aunties were no more than a stone's throw away.

Enrolments seldom passed 27 in a year with 11 pupils the average.[44] This was preferable to Barambah (Cherbourg) where in 1909 there were 88 pupils being taught in a bough shed.[45] In 1917 the Inspector reported very favourably on the progress of the 11 Myora pupils. They were well-behaved, "applying themselves quietly, diligently and honestly to their tasks".[46]

According to Paul Tripcony, dances at Christmas, Easter and Arbor Day were held at the school. A residents' committee organised the evenings, the music supplied by Aboriginal artists using accordions. The ladies served soft drinks, cakes and confectionery.[47]

When the teacher, Philip Bensted, resigned in 1929 the Department of Public Instruction closed the school. This was a traumatic time for the residents. Reaction to the crisis was immediate. Mabel Brown wrote to Chief Protector Bleakley on behalf of Sam Rollands describing the way in which the headmaster at the Dunwich school had arrived and removed school furniture and materials including "two large pictures of the King and Queen", and the kerosene lamps which the community had purchased to use during dances.[48] Sam Rollands, went into town and saw the Chief Protector. The following day Bleakley wrote to the Home Secretary that the community was "greatly perturbed, they wished to remain in their old home on their reserve".[49] Reprieve came with the appointment of teacher, Alice Morrison and the school reopened in 1930.[50]

The Protector's Office was concerned that young people from Myora were able to have the run of the island. In 1933, Protectoress Mrs. Sullivan recorded her displeasure on seeing "young girls ranging from three-quarter black to quadroon, disporting themselves at Dunwich".[51] However, it was impossible to segregate the Myora residents as they had extended families in the white community was well as employment at Dunwich. This was in contrast to Cherbourg where 'courting' was done under the eyes of the police: girls were brought to the front of the girls' dormitory and young men were allowed to meet them for half an hour.[52]

The Protector's Office resented the Aboriginal work gang at the Dunwich Benevolent Asylum receiving a small wage, while their families were given rations. The Medical Superintendent was in favour of abolishing the system of issuing portion of the men's wages in rations as it was another responsibility for the management. Whereas the Protector's Office

wished to avoid increasing wages, arguing that the men will "have more ready cash to indulge in gambling".[53]

The Protector's Office had always deducted part of the Aborigines wages to a special account, the Aborigines Property Protection Account. This was illegal. The Bradbury/O'Leary report in 1932 stated:

> *There was no authority in the Act or Regulations for making deductions. However as the natives are evidently standing the deduction no alteration is intended.*[54]

However the Aborigines working at the Dunwich Benevolent Asylum became aware of these deductions and objected. The dispute involved the Aboriginal Gang, Chief Protector Bleakley, the Medical Superintendent at the Dunwich Benevolent Asylum Dr. Frederick Turnbull, and the Minister of Home Affairs Ned Hanlon. In 1937, the Gang refused to sign the banking slip for the deductions.[55] Technically they withdrew their labour. The Medical Superintendent considered the Gang to be "intelligent and able to handle their own money".[56] Also he admitted he could not manage without them. The Australian Worker's Union became involved but without success. A year before the Dunwich Benevolent Asylum dispute the Torres Strait Islanders had instigated a strike over unjust wage deductions which had continued for some months.[57] Still, the industrial actions taken by the Noonuccal were 20 years ahead of the Gurindjis who walked off Wave Hill in 1957.[58]

Despite the egalitarian nature of Myora society, there were some residents who were more adept at handling the authorities than were others, these included Mabel Brown and Sam Rollands. Sam's character is best summed up in his obituary written by Tom Welsby in 1936:

> *In disposition Sam was kind and unobtrusive. Yet he resented the actions of certain officious subordinates in the Aborigines Department, and was not afraid to come to Town to the Home Office, pleading at all times and winning his cause as well as that of other coloured people.*[59]

Mabel Brown was a woman of great strength and determination. She fought the authorities to see that her sister's orphaned children were not removed to an institution.[60] Both Mabel Brown and Lavinia Moreton acted as midwives to the Aboriginal women on the island. They were also sent to Peel Island Leper Colony to attend the Aboriginal women in childbirth.[61]

The Noonuccal 'Grannies' and 'Aunties' retained a special position on Myora Mission and in the community generally. Marrying out of their tribe did not diminish their authority. They educated the young people in tribal law and the value of the sacred sites on Stradbroke Island. They were strengthened by the fact that they remained on their tribal land, and, while able to negotiate with the white authorities, never lost their independence and cohesion.

In 1940, as there were only ten pupils at Myora Mission school, the children were transferred to Dunwich State School. Finally, in 1943 the remaining six families were relocated to One Mile.[62]

Notes

1 Ellie Durbidge, 'Land of Kabool the Carpet Snake', *Historic North Stradbroke Island*, eds. Paddy Carter, Ellie Durbidge, Jenny Cooke-Bramley, Dunwich: North Stradbroke Island Historical Museum, 1994: 9. For the purpose of this paper I have referred to the Noonuccal-Nughie-Koenpil people as 'Noonuccal'.

2 Thomas Welsby, *The Collected Works of Thomas Welsby*, ed. A.K. Thomson, Brisbane: Jacaranda, 1967: 100.

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An Assertion of Customary Law Over Invader Law An Eco — Perspective

*Donna Ruska**

Welcome to Stradbroke Island. One of our rituals or ceremonies at meetings here is to hold a minute silence in honour of our Elders and ancestors who ensured that there is a harmonious existence between the people and the environment and who, for the past two hundred years have led us through what I feel was a holocaust against our people. I would like everyone to be upstanding and dedicate a minute of silence to our Elders and ancestors and the Great Creator.

☆ ☆ ☆ ☆ ☆

For those of you who don't know me, my name is Donna Ruska. I am a forty-seven year old Koenpil Noonuccal custodian of this island, while I also have bloodlines to mainland clans. I am considered an Elder by some youth here and on the mainland. Since invasion we've got corporate law that rules us and causes great conflict for those of us who wish to restructure our services and business with due consideration to customary law and cultural appropriateness. As a result of the invader's corporate law and requirements, I am considered an Elder in other Australian communities but not in my own, due to age limitations.

Scientific beliefs and expert evidence say that this island was formed twenty to forty thousand years ago, perhaps from sand floating down the riverways. The Badjala people from Fraser Island jokingly reckon that it floated down from there in a big storm, but my Elders led me to believe that we've been here since creation, since the Heavenly Father created this place. He created the world and he put certain people in every section of this globe to manage the lands and societies. This management was ecologically sound. Here is a description of this management from the Yulubirriba Art Exhibition held during the International Year of Indigenous People (1993). This same year was the year our internationally acclaimed poetess Elder (Oodgeroo) left us.

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* Donna Ruska was a foundation member of the Quandamooka Land Council and is active in Aboriginal community affairs on North Stradbroke Island.

"God gave our Yulubirribi (Yuli Burri Ba)[1] (salt and sand people or place) nation nutritious food supplies and miraculous medicines and the ability for our people to utilise these gifts by listening to his messages for management from weather, flora, fauna, environment, heavens and each other. After creation, he then gave our ancestors knowledge to pass on through learned and natural expression the ways and means of existence without having to defeat his gifts. This 'expression' is enjoyed by most when artistically applied in vision and performance. This expression has been the Koenpil, Noonuccal and other nations' form of education for some hundreds of thousands of years. It is also known as ART.

Our people did not cut down trees for paper, nor did they mine metals for pencils, typewriters, computer, printouts, phones, facsimiles, photocopiers etc etc. They successfully sustained our people and environment as they talked, sang and danced the knowledge on to the young, while others used bark, branches, sticks, stones, ochres, fire and smoke for communication. To many, these methods are preferable for the environment and the coexistence proved harmonious and sustainable. These methods were shared amongst the many nations through clan gatherings, family gatherings, message stick carriers, story tellers, songs, dance and paintings. Minjerribah (North Stradbroke Island) clans have been able to partake in this custom for some time and intend to retain the celebration and ceremonies."

We know that we have lived here since creation at one with the universe — with everything within it. Now, our highly respected animals, birds, or reptiles are referred to as 'totems'. Our word *yuri* means 'meat', however, it refers to meat which we cannot eat, our sacred meat. Ours was the carpet snake. We also respect and fear our sacred birds, the frog mouth owl or *mook mook*, the curlew, the plover. The birds brought us the messages, cleaned up and sewed seeds, provided decoration and food. We listened to and respected everything around us.

I heard someone say that we were the earliest miners, but our methods were not the same as those of today. God exposed what he wanted us to use whether it was for stone axes, flint and shell for blades and other precious or semi precious gems and metal. These resources were exposed after rains, landslides and other natural events. According to scientific evidence, archaeological digs around here say we have been occupying all these shores up to Amity for six thousand years, although further south on the island, digs indicate that we have been here up to twenty

thousand years. Anyhow, that's only scientific evidence which is based on a lot of theory. My traditional evidence says that we have been here since creation. I am inclined to believe my Elders before scientists, academics or anyone else.

For those thousands of years, as I said, it was all good until two hundred years ago our country was invaded by Britain. Prior to Britain's invasion, other nations did come here. Chinese, Makassans and probably other European ones. All sorts of people came here prior to the British, but unlike the invaders they respected our ancestors and our culture and went back to where they came from. Britain was into colonising then. So they sailed around the world and supposedly colonised many countries with the kind permission of the indigenous people. If they didn't get permission then they conquered or declared war, or unwaged war. I believe that we are all survivors of 'undeclared war.'

We are survivors and not victims, due to our Elders, our law, our song and dance which was all 'outlawed' by the invaders and was forced 'underground' for a generation or two. However, we (Jandai language group) still have a few hundred words and although English is our first language, we still have Elders and young song and dance teams who are fluent in the language. Also, a lot of work has been done by the language retrieval mob who use Jandai in posters, books etc, and are currently working on a dictionary.

As a child I lived with my maternal grandparents. I heard Faith talking about Lavinia Moreton. I am proud and honoured to say that she is my mother's mother and she is the best woman I have ever known or read about. One of her parents was from Rotumah Island. They (Nan's parents) were welcomed and accepted by the local tribes probably because her father (Grandfather Newfong) had a lot of agricultural knowledge and did some initiation business with the Koenpil Noonuccal. Nan's mother (née Turnbull) was born in Normanton and her family was forcibly removed to Brisbane. While Grandma Newfong married a Rotumah man and lived at Stradbroke, some of her siblings married Cherbourg (Barambah) residents. Although the Newfong Elders did not come from here, their children married into the Koenpil Noonuccal, where they had already received lots of traditional law and knowledge. Nan was taught both customary and European healing. Her role was that of nurse and midwife, while at times she was called upon to clean and prepare the dead before they were taken to the mainland.

Nan and Gramp took us to Cherbourg annually and I noticed that she would carry out Koenpil law more than Gramp did. She did all the

talking with Gramp's female relations (including his sister). He was forbidden to. This law prevented incest and genetic impurities. Every aspect of society was taken care of by law. Tried and tested ancient laws were made and enacted to protect all life, and not soley for the purpose of exploitation and economic expansion, as appears to be the case of modern day legislators who talk Reconciliation as they decide on our cultural heritage rights.

My maternal grandfather's father (Charles Moreton) is a Koenpil who was born in 1869 and died in 1949. He was a 'message stick carrier' and moved from tribe to tribe in South East Queensland. He even walked to the tip of Cape York with his message stick. Although Gramps had all that knowledge, the invaders kept moving them from one mission to another. Some of our people were forced to deny their race because they did not want to be under the Act. I questioned my father about this and he said: "The only reason they did that girl, was so the children wouldn't be stolen, like it was happening down south." Thus my feelings on undeclared war and holocaust. Although the invader government recognises our Elders' place, they continue with their confusion, misrepresentation and deceit.

I have some papers here about Myora and One Mile which fell into my hands a couple of days ago. I think they are dated 1952 and are about people who had moved from Myora to One Mile to get closer to the school, and for other reasons up until the 1940s. In 1952 the government wanted them to turn around and move back out again. One Mile is a place one mile out of Dunwich where custodians have been living on either side of a freshwater creek. The families at One Mile in the early fifties were Coolwells, Ruska, Close, Costello, Delaney, Martin, Queary, Moreton, Jones, Kina, Graham, Newfong and Brown. These papers are the minutes of a meeting between these families and the government.

> *Mrs Brown joined in the protest at the proposed shift and stated that "the people could not possibly afford the cost. It would be very hard on the women and children. Why shift anybody? There's plenty of land at One Mile and the Board should grant special leases to the residents concerned." The Chairman called on Mr Ellis, the government agent to outline the history of the matter from the shift of the 'Home' to the publication of the town plan which was done. He pointed out that actually, the position now is that the residents of the One Mile are illegally occupying an area which is part of a future water reserve for the further development of Dunwich out to and past the place now affected. It was not hard to see that ridges above the swamp would in the future be leveled to fill the swamp*

> *and so make the town sites available for settlement. The government and the Council had to plan for one hundred years ahead.*

Thus the government proposed that One Mile residents again move and re-establish their community centre back at Myora. They felt justified to move our people like cattle, while they made plans to accommodate the new Caucasian arrivals such as dry alcoholic patients from the asylum. We also have a doctor (a healer) whose actions and words indicate that he wanted us removed from One Mile. He has made statements to Brisbane newspapers which were published long before the 1997 government maiden speeches.

Physical and cultural genocide is not a thing of the past. It happens today but in a covert fashion, and while they are not carrying out their acquisition of our lands with guns, the undeclared war, or denial of heritage rights, is now viewed by some as a 'paper war' which is as unhealthy and evil as it was two hundred years ago. As far as 'cultural genocide' goes, I would like to read you my letter to the editor of *Koori Mail* about mining:

> *re: Mining on North Stradbroke Island*
>
> *I refer to the above mentioned matter and enclosed herewith* The Courier Mail *and* Koori Mail *newspaper clippings regarding the same, with the hope that you might do an article or publish this letter, as a Right Law Custodian perspective, seeking further support to stop the mining and furthermore all devastating usage of our Sacred Mother.*
>
> *I'm a custodian of this island due to my Koenpil, Noonuccal and Ngugi inheritance and I was born about the same time mining exploration and exploitation began here (1950), at a time when my people were not the minority, in spite of the massacres, the denial of human rights, and the continued genocidal policies practiced against my ancestors. Although our numbers (custodian residences) have dwindled from the thousands (three to five) to the hundreds, our morbidity and morality was not as bad as it is today.*
>
> *I was born into the conflicting lifestyles of my large hunter gatherer extended families and the few recently resident nuclear families of government service providers, millers, miners and associated contractors. The mining industry brought conflict into the Aboriginal families as well as the environment. Fortunately, only a minority of our people are 'enslaved' to the industry while many of the miners' own children secretly want mining stopped.*

Both my father and maternal grandfather (both of them now deceased) were employed by the mining company, TAZI back then. However, my grandfather who worked in the laboratory suffered a heart attack and retired, whilst my father (who used to roam the island on horseback) became disgusted at the devastation and destruction to his homeland and soon found employment elsewhere.

Consequently, they both advised their children to put our ancient custodial law and responsibility first and to avoid mining at all costs. They feared, and instilled in us the fear of the Great Creator whose anger may be stirred at the sight of mankind's disrespect and abuse of his gift, our Sacred Mother. In particular, my father feared that the mining company would damage his homeland like they had in Africa and many other parts of the world, thereby denying future generations their inherent right to the beauty and resources of this Garden of Eden.

As a result, my grandfather's family sought education and employment opportunity outside the mining industry, and among the family's achievements are five teachers (including one at Dunwich Primary School), a sociologist, an actor, a carpenter, several journalists, university graduates and students, aged and youth carers, and song and dance men and women. I personally have lived away from my beloved island for some ten to fifteen years. My two children have been educated both here and on the mainland and both are now residing back here with their families and still NOT mining.

We have knowledge of about fifteen to twenty large extended families who are Right Law Custodians to Moreton Bay and islands. These families, numbering perhaps five thousand people, are the Koenpil (People of the Pearl Oyster), Noonuccal (People of the Andekal) and Ngugi (People of the Ugaree). As stated earlier, only hundreds of us now reside here whilst the rest live elsewhere, probably because they don't want to mine.

Although those thousands of Koenpil, Noonuccal and Ngugi no longer live here, due to various reasons, including forced removals, the majority avoided the mining industry and those who no longer reside here return often, with their children, and even more often for 'sorry business', due to the unacceptable morbidity and mortality status which many believe is the direct result of mining and the cultural genocide.

Let me elaborate on that a bit. While we had a lot of white education earlier than many mainland tribes, some of us felt that white education was not enough. The system which 'white education' prepared us for is a capitalist system, and not everyone benefits from it. There is still a lot of poverty and ill health within the capitalist system although it had been eliminated in the ancient system of our own. The capitalist system seems to be failing to sustain the world as favourably as the old system did. Some of us looked for answers outside that capitalist system and we have been to many other Aboriginal communities to gain extra knowledge, and have come to the conclusion that perhaps the two systems may be incorporated, and as soon as the invader recognises and acts accordingly then healing and Reconciliation will begin.

> *Mining has, to many custodians, meant denial of access to and utilisation of sacred as well as inherent resource sites: destruction of dunes, freshwater swamp lands, etc. These areas included our camp and burial sites, also sites for food and necessary material gathering. The destruction of these sites also meant interference with the eco-system, thereby ensuring droughts, plagues, disease and death to much of the mainland, as well as here. Of course, this mining destruction also means denial and depletion of the habitat used by the wildlife, such as mammals, birds and reptiles, not to forget the freshwater fish, crayfish and tortoises.*
>
> *We can only hope that the future generations will not be cursed with thirst and starvation, as in countries which have been colonised and exploited for some two to four hundred years longer than ours.*

What you call the 'elements' are spirits to us. These spirits are alive and well. The Water Spirit, the Fire Spirit, they all have to be respected. I think anyone with common sense knows about the Water Spirits' pathways. There are trees and leaves which are part of the Water Spirits' pathways. Since invasion about seventy percent of the forests have been wiped out. Now the coastal areas are being overpopulated and overused and the Water Spirit's pathway is being destroyed. What can come of it? Nothing but drought and the associated illnesses. As well as the mining company using megalitres of water daily, Minjerribah provides megalitres of freshwater to the mainland.

> *Although the two mining companies here may employ up to three hundred between them,*

— I've since found out that CRL (according to its paper *True Grit*) employs about 170 here on the island and then another 90 at Pinkenba in Brisbane —

> *I would estimate that only about fifty (I'd venture thirty) are Right Law Custodians employed here. Some of the miners do not even live on this beautiful place which they destroy daily for their sacred dollar and a lot of associated contractors commute with them daily or weekly, to and from the island. At the same time there is an unemployment problem for our people.*

Another mining horror is the allegations that the sands, after mineral extractions, become radioactive or 'hot' and have to be brought back here to be dumped. So while we have next to no say about the extraction, by the tons, of our minerals we cannot even save ourselves from the toxic waste which the companies send back.

> *Fortunately, our Land Council which was set up by our Elders concerned about the eco-system prepared for the transition by initiating a Community Development Employment Program (CDEP) which employs fifty people. This program consists of projects which are all eco-friendly and culturally appropriate. All have proved to be employment productive. Many of the program participants are young parents and began this work-for-the-dole scheme in 1995. They were and are keen to look after their homelands and as the new and future custodians, it would appear that after three generations of mining, they intend to create new employment for themselves and their children, as they let their sacred island rest, as advised to them by their Elders.*
>
> *Since the sixties, different Elders continued to tell us to find work outside of mining and not to get into it, so I guess that's why there are less than forty of our people working there. Or perhaps, the company did not want to hire all Aboriginal applicants. At the same time we have our own service organisations here, like housing, health, aged care, respite centre and childcare. These services would probably employ more of us custodians than the mining companies put together.*
>
> *Another 'alternative to mining' work program available to us is one offered by the local shire council which currently has up to twenty local Aborigines on its payroll, although most of these positions are not permanent and contain the continual training and adult education courses within. To get work with the shire council, you have to get*

> *through the same training time and time again, and I suspect that the training does not include cultural heritage education. The shire's management of our lands leaves a lot to be desired. No advice is sought from Elders, Quandamooka Land Council or the residents.*

For example, the shire poisons all growth around the drainways just before the wet season every year. They say the poison only kills the weeds, but we can see by the brown colour of the drainways, after poisoning, that more than weeds are being killed and the poison can then quite easily get washed on to our food resources, the shell fish and oyster banks.

> *Personally, due to the death of both my parents, I am the elder of between thirty or forty of my siblings and their families, all of whom abhor the effect of mining and are grateful to the Great Creator for the opportunity not to participate in that industry. On their behalf, I extend our support and gratitude to the earth loving young people who have become the Green/Black/White alliance of eco warriors, now known as Stradbroke Island Action Coalition, whose objective is to save Stradbroke from mining like Fraser and Moreton were.*

So, in spite of the holocaust of undeclared war and genocidal policies of assimilation, forced removals, stolen children, etc, our old ways have not been entirely changed and we are very proud of them, especially of our Elders and ancestors who ensured the survival of many of our custom and traditions. Nowadays, many people in Australia and other parts of the world know the truth about Britain's invasion of this country and the continued evil practices of those invaders towards the right law custodians, or 'natives'. Many non-Aboriginal people feel repulsion, regret and sorrow at the horrific injustices and want to apologise and reconciliate, but don't know how to. At the same time, there are many evil Caucasians who regret our survival while they continue to plan our elimination and 'extinguishment'.

While the present government has attempted to incite racial hatred, they also pretend our best interests are in their hearts. For example Reconciliation. How can they reconciliate when we never had a treaty with them anyway. I heard of the word applied to divorce proceedings, so how can we reconciliate with someone we were never married to.

ATSIC is elected by us, however, it is not compulsory for us to vote during ATSIC elections, and less than fifty percent do vote. The head of ATSIC is government appointed and is assisted by less than thirty commissioners from many regions in Australia. Prior to invasion, there

were thought to be between five and seven hundred clans or tribes or language groups and the work of Norman Tindale also noted about the same number in his map less than fifty years ago. The government has deliberately decreased those tribal areas, numbering some five to seven hundred, to less than twenty regions and a commissioner from each. This has not been effective and actually has been a costly divide and rule tactic which to us is insulting and ludicrous. In spite of the good which many ATSIC councillors and commissioners may do, or attempt to do, they are still likened to modern day 'native police', ensuring that their people remain accountable and controlled by the government.

I would prefer to see our own Elders funded and resourced to manage us, and due consideration given to the royalties which the government receives for exploitation of our land, and the lack of royalties or 'rent' which the custodians receive. Perhaps after the Homeland movement when all the forcefully removed people are re-settled, with no 'sunset clause' or at least a two hundred year one, in their communities with their Elders in place and managing their lands and waters, then there would be no need for the 'middle men' like ATSIC, then healing will begin.

Another scam is the Native Title Legislation which appears to look after everyone bar 'natives'. Everyone includes miners, pastoral lease holders, legal experts, academics and consultants plus others. The press is quick to publish the ATSIC budget but deliberately creates a 'backlash' for us, by failing to advise that more than fifty percent of the budget goes to bureaucracy and the professional academics, not to forget the oppressive judiciary and the applied costs. Very little (next to nothing) gets to the 'grass roots' while health and mortality status has failed to improve in spite of the millions spent.

The Royal Commission into Aboriginal Deaths in Custody was another very costly and futile exercise. The recommendations have been ignored, the deaths have not stopped and the incarceration rate is still unacceptable. Our youth are targeted and victimised by a system which institutionalises and imprisons them during their reproductive years, thereby, controlling our population growth and keeping us in a minority group status. A lot of our own law men and women have become victims of this system for political reasons, like in South Africa. Many of our people are imprisoned for minor crimes and non payment of traffic fines etc. This is costly to the taxpayer, and customary law where the Elders try and sentence the offenders would be the preferred way and less costly.

The political imprisonment of our law men and women, at this crucial time in Australian history, is an indication of the government's lack of sincerity in Reconciliation. Our own Elder, Denis Bruce Walker, is currently imprisoned for attempting to save a tree from the saw of shire council workers in Bundjalung land. For trying to uphold Aboriginal Law, my uncle was sentenced to a term of six years and has done three although the Bundjalung and Minjerribah Elders offered to try and sentence him according to his offence.

Denis Walker, also known as Baizam Noonuccal, has dedicated his life to pursue human rights and justice for his people. The government appears to consider him an adversary while his own people consider him a leader and feel somewhat lost and confused without him. For the past three decades, he has been imprisoned for several years during each of them, and each sentence seemed unjustly severe. Denis and his late mother and late brother have done a great deal to change the political climate and social attitudes in this country. People like Denis Walker and Murrandoo Yanner, the young man who brought the mining giant CRA to his Elders' circle, receive very little credit but lots of police harrassment, for such crimes as retaining their own old, healthy diet of animals or marsupials which the invaders listed as protected because they have almost wiped out the animal and its habitat.

According to Denis' and his mother's teachings, the land cannot be taken away (although the mining companies are doing it daily), it is still here and so are we, as the Great Creator planned, and therefore, according to God's law, we should continue to occupy and utilise His gift as His intended custodians. Anyone who sincerely wants to reconciliate and do God's law should immediately enter into treaty agreements with us.

Mining company leases cover a great deal of this island. This amount of land would be sufficient to accommodate the right law custodians who no longer reside here but are dying to come back here.

Note

1 Different renditions of names reflect reference to either people (-bi) or place (-ba) and often also the social status of the speaker. (DR and Ed.)

Sand Mining on North Stradbroke Island

*Ann Ferguson**

The Stradbroke Island Action Coalition (SIAC) is calling for an immediate announcement of an end to sandmining on North Stradbroke Island. The ecology and hydrology of this ancient sand island is both spectacular and fragile. Consolidated Rutile Limited is destroying the island's natural beauty while mining a non-renewable resource and the state and federal governments are ignoring their responsibility to regulate the company's activities. SIAC has taken action to raise awareness in the community of these issues.

I would like to acknowledge the people here today who have a more intimate knowledge of the island's environmental and cultural history, and a far longer association with the island than me. With respect to those people and their knowledge, I will give further detail on these issues and the reasons why SIAC is actively campaigning for an end to sand mining.

The History

Mining began on North Stradbroke Island in the 1950s. The first form of sand mining was slow and labour intensive. It involved shovelling the rich black sands from the frontal beach dunes into army and 4WD trucks and taking it to the loading facility at Dunwich. Mining has now moved to the high dune ridges where lower grade ore deposits are exploited using more highly developed equipment.[1]

Two Companies

Currently there are two companies mining on North Stradbroke Island, Consolidated Rutile Limited (CRL) and Australian Consolidated Industries Limited (ACI). Both companies are owned by large multinational corporations.

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ACI Ltd mines for silica sand and is owned by BTR Nylex, a British transnational company. ACI Ltd has been operating on North Stradbroke Island since 1971 and employs an open cut mine technique. Front end loaders are used to fill trucks which transport the sand to loading facilities at Dunwich. Its currently operating mine is situated north of Dunwich and can be seen from the road to Point Lookout. It is a common sight for residents of Dunwich to see the stark white sand being taken away from the island on barges to the mainland. The sound of rumbling trucks continues from dawn until after dusk, and has for many years been a disturbance to local residents living close to the road.

CRL is owned by Rennison Gold Company Limited (RGC) and currently operates two mines on North Stradbroke Island; Ibis/Alpha and Gordon. RGC acquired CRL in August 1996, adding to its other Australian mineral sands operations in Western Australia. CRL owns a controlling interest in Sierra Rutile Limited, a sand mining operation in Sierra Leone, West Africa. The company hired the infamous Executive Outcomes, a South African mercenary company to protect its mining operation after the mine was overrun by anti-government forces in January 1995. The mine was reopened earlier this year after a two-year closure.

The wet mining technique used to extract the ilmenite, zircon and rutile consists of a floating dredge with an extraction cutting arm which operates at the face of the sand dune. Sand is sucked into the dredge and the minerals are extracted by gravity separation techniques which extract the 1% of mineral sand from 3000 tonnes of sand moved per hour. As the mineral sands are extracted and stored onsite, the remainder of the sand is piled in tailings dumps to be reshaped into a dune formation.

The company exports the minerals from processing facilities at Pinkenba on the mouth of the Brisbane river. The company earned a profit of $17 million in the last financial year from its North Stradbroke Island operations[2].

Rutile and ilmenite are processed into titanium dioxide which is used as a white pigment in paint, rubber, plastics, paper, cosmetics, leather and ceramics. Titanium metal is used to produce lightweight high-tensile metals for aircraft, space craft, guided missiles, jet engine components, industrial plant and sporting goods. Zircon is used in foundries, ceramics and other speciality areas.[3]

Current Leases

CRL Ltd holds leases over approximately 60% of North Stradbroke Island, covering the southern end of the island, and some of the North East

section behind Point Lookout. The leases, if unrevoked will allow CRL's operations to continue for the next 30 years.

The company's projections indicate the Ibis/Alpha operation is expected to continue until 2006, and the Gordon mine until 1999. The plant at Gordon is to be moved to the Yarraman deposit, which has been mined previously. New technology would allow the extraction of minerals sands which were previously left, due to the inefficiency of less sophisticated mining equipment. The Herring and Enterprise ore bodies have projected mine lives of 30 years, and if mined, will destroy the dune systems which provide the backdrop to the spectacular 18 Mile Swamp.

Most visitors remain unaware of CRL's operations as they are situated towards the southern end of the island, out of view of holiday makers. The Bayside mine was decommissioned in 1996 and moved to the Ibis/Alpha site. The rehabilitation of that site fails to disguise the evidence of past mining. For those aware of the industry the extensive scarring on the Western ridge of the island can clearly be seen when approaching Dunwich by sea.

Ecological Values of North Stradbroke Island

Geological Formation

Studies by geologists, hydrologists and natural historians tell us the island was formed by the ocean currents moving sand along the south east coast of Queensland and depositing on the outer reaches of Moreton Bay over thousands of years. The sands originate from the weathered volcanic rocks of the eastern highlands of Northern New South Wales and are carried to the ocean currents through the river systems.

A system of parabolic dunes, formed by the movement of sands in the wind, and then overlaid by other layers of ancient dunes forms the basis for a complex hydrological system. The ancient groundwaters of North Stradbroke Island supply the many lagoons and sweet freshwater springs for which the island is well known.

Vegetation Communities

There are 16 different plant communities on North Stradbroke Island, which have created fragile ecosystems, specific to the island because of

its small size and isolation.[4] Some of the plant communities of North Stradbroke Island are recognised for their significance by their interim listing under the Register of the National Estate.

The frontal dunes exposed to strong winds host salt tolerant plants such as the grey creeping grass *(Spinifex hirsutus)*, guinea flower *(Hibbertia scandens)* and pigface *(Carpobrotus glaucescens)*. Trees such as the Pandanus or screw pine *(Pandanus pedunculus)* and coast she-oak *(Casuarina equisetifolia)* grow on some exposed dunes.

Plant communities on the high dunes are generally tall open forests, dominated by eucalypts, with a well developed understorey of grasses and shrubs. The more common species of eucalypts include Blue Gum *(Eucalyptus tereticornis)*, Scribbly Gum *(E. signata)*, Pink and Red Bloodwoods *(E. intermedia* and *E. gummifera)* and Blackbutt *(E. pilularis)*. Other trees of the open forests include the smooth-barked apple *(Angophora costata)*, the she-oaks *(Casuarina littoralis* and *C. torulosa)* and the cyprus pines *(Callitris columellaris* and *C. rhomboidea)*. A wide variety of spectacular wildflowers, flowering shrubs and ground vegetation make up the understorey.[5]

Water Bodies

The island's freshwater springs, lakes, swamps and lagoons, provide habitat for the many bird species sighted in the area. Listing under the international Ramsar Convention on Wetlands gives recognition to the importance of these significant wetland areas.[6] North Stradbroke Island is home to a subspecies of the threatened wallum froglet[7], which requires particular pH levels in its water habitat. One of the major threats to the habitat of the wallum froglet is disturbance to pH levels caused by the clearance of vegetation near water bodies and seepage from nearby dredge ponds. Sandmining destroys vegetation close to lakes and lagoons on North Stradbroke Island and represents a threat to the habitat of the wallum froglet.

Beautiful freshwater lakes similar to those of North Stradbroke Island are found on the sister islands of Moreton and Fraser, both of which are protected areas. The spectacular Blue Lake is protected as a national park on North Stradbroke Island and is an example of a 'window' lake system. 'Window' lakes maintain constant water levels and are formed by an opening in the water table.

Perched lakes sit above the water table and are supported by the formation of a cement-like layer in upper soil horizons. Perched lakes have changing

water levels because they are filled from rainfall. Typically, freshwater dune lakes have diluted acidic waters, and do not host an abundance and variety of fish, frogs and invertebrates. Some species of fish and turtles survive relying on algae, wind-blown terrestrial insects and seeds and pollen of terrestrial vegetation.[8] Several of the island's lakes have been permanently damaged due to the hardened layer being damaged by mining. More are threatened by current and proposed mining.[9]

The History of CRL's Environmental Damage

CRL Ltd has a long history of environmental damage on North Stradbroke Island, some incidents are well known amongst the local community, yet many have gone unpunished by the State Government.

- 1982 — Tailings from the Bayside mine slipped into the Moreton Bay, disturbing mangroves and fish habitats;
- 1987 — The water level at Lake Kounpee, a perched lake near the Bayside mine dropped significantly. The company admits the indurated layer of the lake was punctured. All attempts to restore the damage to the lake have failed.
- 1991 — Approximately 100 000 litres of diesel leaked at a fuel storage depot near Amity Swamp. The company did not report the incident until 1994 — recovery of the spilt diesel is ongoing, with approximately only 20 000 litres recovered up to June 1995.
- In the 1990s Native Companion Lagoon was inundated with water from the Gordon mine. This occurred despite attempts to mitigate the flooding by installing pumps and monitoring the water levels both underground and in the dredge pond. During this time, the water level of Blaksley Lagoon dropped significantly and it has not yet risen to its previous level. The cause of the drop in water level is unknown and conservationists suspect it is directly related to the Bayside operation.

The examples of damage caused by the company highlight the destructive process of sand mining overall. The process destroys habitat when forest is cleared to make way for the mine path. The complex layers of ancient dunes which form the intricate hydrological system of the island are completely disrupted and replaced by an homogeneous sand formation which is then 'landscaped' in an attempt to resemble the previous dune formation. The past examples of interference with previously intact lakes and lagoons provides evidence that sand mining cannot be conducted

without causing significant impact and disturbance to the island's water bodies.

Potential Impact at Ibis Lagoon

On 6 November 1996 CRL were issued with a Notice to Show Cause as to why Mining Lease 1121 (the Gordon Mine) should not be cancelled or a penalty imposed for failing to comply with lease conditions. The company reported seepage which was occurring in an area adjacent to the Gordon Mine, but off lease to the Department of Mines and Energy, but as yet has been unable to halt the seepage.

A hydrological report recently commissioned by the company, in compliance with the Notice to Show Cause, predicts seepage to occur at Black Snake Lagoon in June 1997. Without control, the seepage could completely inundate the lagoon by December 1998. The report also warns of potential seepage at Ibis Lagoon in June 1998 which could extend across the northern section of the lagoon by March 1999 unless it is prevented.[10]

The company's attempts to stem the seepage at Gordon and prevent further seepage from occurring have failed. Seepage is now occurring at three sites and shows no signs of being curtailed. At least one site of cultural significance to the Aboriginal people of North Stradbroke Island is threatened to be inundated by the seepage.

The full impact of seepage occurring at Ibis and Black Snake Lagoons can only be speculated. In the past, seepage occurring from mining operations has affected vegetation at Native Companion Lagoon. A CRL report on the effect of the prolonged inundation of Native Companion Lagoon states:

> *The raised water level in the lagoon caused the death of a section of the woodland vegetation around the perimeter of the lagoon and changed the distribution of reeds in the lagoon itself.*[11]

The company's inability to prevent seepage occurring at Gordon, and the subsequent damage caused, provide further evidence that the island's hydrology is far too sensitive and complex to withstand intrusive and destructive mining operations.

Rehabilitation

The company claims to have a significant rehabilitation program, and has in the past entered awards for environmental excellence in

rehabilitation. As yet, no successful recolonisation of fauna has been recorded. The plant diversity of the rehabilitation is inadequate when compared to the original vegetation communities. The ecological niches formed over thousands of years by natural divots, holes, gullies and uneven ground surfaces cannot be replicated using the mechanical methods and the technology of today, no matter how sophisticated.

The seeding mix used by the company includes the major species which occur on the island but not the rare and endangered species. The undisturbed plant communities have developed over thousands of years and represent a mature equilibrium between plant species. There is no evidence to suggest the delicate and intricate balance of the plant communities and habitats unique to North Stradbroke Island can be recreated by rehabilitation techniques.

Failure of State Government to Uphold Lease Conditions

The Queensland State Government issues mining leases over North Stradbroke Island and the Department of Mines and Energy oversees the regulation and adherence to the lease conditions. CRL's operations lease contains special conditions, some of which recognise the environmental significance of North Stradbroke Island and the need to minimise damage from mining operations.

Prior to 1988 the operations lease contained Special Condition No.24 which stated that:

> *The lessee shall not through his operations on a lease, permanently disturb or damage those features known as Lake Kounpee, Blaksley Lagoon and Black Snake Lagoon or features directly or indirectly associated with the continued existence of those water bodies and shall not allow any sludge, slimes tailings or water other than clean water to enter any of these water bodies through his operation.*

The indurated layer of Lake Kounpee was damaged in 1987. In the following year Special Condition No.2 replaced the provisions previously contained in Special Condition 24, but in a much weakened form.

> *The lessee shall at all times cause all steps and things to be taken and done to prevent mineralised or impure water or sludge or mining debris resulting from mining operations within the boundaries of the lease from unlawfully polluting, obstructing, damaging or interfering with the sea, any water course, lake or reservoir or any land.*

Damage to a water body through the breach of its indurated layer is no longer a contravention of the mining lease conditions because the company is no longer obliged to ensure that it does not disturb or damage those features known as Lake Kounpee, Blaksley Lagoon and Black Snake Lagoon or features directly or indirectly associated with the continued existence of those water bodies.

The combination of less stringent lease conditions, and a State Government reluctant to impose penalties and uphold its responsibilities, has resulted in continued damage to the environment of North Stradbroke Island. The company has not been penalised in the past for the environmental damage caused by the Bayside sand slip, the flooding of Native Companion Lagoon for five years, disturbance to Blaksley Lagoon, or irreparable damage caused at Lake Kounpee.

CRL are in breach of their lease conditions at the Gordon mine and will breach them at the Ibis/Alpha mine if seepage is not prevented there.

Failure of Federal Government to Act Upon Export Licence Controls

The company must also conform to special conditions as part of its export approval for mineral sands. The Export Approval Licence is issued by the Federal Minister for Resources and Energy and requires that CRL must conform to special conditions in order to maintain its licence.

CRL's Export Approval Licence states:

> *Condition 1*
>
> *CRL shall conduct mining and related activities in accordance with the special conditions attached to the mining leases on North Stradbroke Island issued to CRL pursuant to the Queensland Mineral Resources Act 1989.*

The flooding of Native Companion Lagoon, the disruption to water levels at Lake Kounpee and possibly Blaksley Lagoon constitute evidence of breaches of the Special Condition No. 2 of the Mining Lease and therefore breaches of the Export Approval.

Conditions set out in a letter to the company from the Commonwealth Minister for Trade, 17 October 1986 state: "all freshwater swamps and lagoons being protected from any disturbance and the proposed monitoring being carried out."

The seepage occurring at the Gordon mine site is in breach of the conditions of the Export Approval Licence. The Federal Government has

reviewed the Export Approval Licence and has stated it is happy to leave the regulation of the company's activities in the hands of the State Government. The Australian Conservation Foundation is pursuing a review of the Minister's decision through the Administrative Appeals Tribunal, on the grounds that the Minister did not adequately consult with the Australian Heritage Commission (AHC) or use the AHC recommendations during the Ministerial review of the Export Approval Licence.[12]

The evidence that CRL is in breach of its licence and export approval conditions for seepage at the Gordon Mine, and fears for the potential damage to be caused at the Ibis/Alpha mine, strengthen SIAC's call for an end to CRL's operations on the island.

Implications of an End to Mining on the Island

It is clear there are a number of implications to be considered in calling for an end to sand mining on North Stradbroke Island. The local residents employed by the mine would suffer a loss of jobs.

However, the loss of jobs based on this resource extractive industry is inevitable. Sand mining on North Stradbroke Island will end — whether in 5 years, 20 years or 30 years. There are ghost towns all over Australia where transnational mining corporations have ripped out the wealth and left local communities to fend for themselves. BHP announced that they are closing their steel works in Newcastle with the loss of 2,500 jobs. Will Straddie be any different when CRL and ACI leave?

In the global context of an environmental crisis, people all around the world are working towards more sustainable futures, because they have no other choice. Even economies dependent on renewable resource based industries, such as fishing, are re-evaluating their futures. We call for a transition to an economy on the island that is based on long term jobs — not just twenty or thirty years, but much longer. While this will not be easy, Stradbroke Island presents huge potential to support a sustainable community, just as it did in the past. However, it will require all elements of the local community to work together to create the sustainable future for the island.

Conclusion

SIAC calls for an end to mining on the grounds that the process of sand mining is ecologically destructive, that the hydrology of the island, the habitats and plant communities in the mine paths and the spectacular

lakes and lagoons must be kept intact for future generations to know and enjoy. The mining is destroying areas of great significance to Aboriginal people, many of whom have resisted the mining since its beginning and have renewed their struggle to end the mining in the current campaign.

The State and Federal Governments' clear reluctance to regulate the company according to legislation and impose penalties on the company for its breaches, simply reinforces SIAC's call for an end to sandmining. The community can have no faith that, even if mining were acceptable on ecological grounds, the government would adequately monitor and regulate the company's activities.

Notes

1 Stradbroke Island Management Organisation, *Focus on Stradbroke: New Information on North Stradbroke Island and Surrounding Areas*, 1974–1984.

2 Consolidated Rutile Limited, Annual Report 1996: 18.

3 W. Cooper, Mineral Sands, Mineral Information Leaflet No.9, Department of Minerals and Energy, Queensland 1993.

4 E. Durbidge, and J. Covacevich, *North Stradbroke Island*, Stradbroke Island Management Organisation, Amity Point 1981.

5 J. Liddy, Notes on North Stradbroke Island, n.d.: 219.

6 Australian Nature Conservation Agency, *A Directory of Important Wetlands in Australia*, 2nd Edition, ANCA Canberra 1996: 369.

7 C. James, *Conservation Genetics of Island and Mainland Populations of the Sedge Frogs: Litoria cooloolensis and Litoria olongburensis*. A Conservation Grant Report for the QLD Department of Environment and Heritage 1996: 5.

8 A. Arthington, 1988, 'The characteristics, distribution and conservation status of lakes in the wet tropics and subtropics of Queensland'. *Ecological Society of Australia*, Australian Wet Tropics Symposium, vol.15: 184.

9 Durbidge & Covacevich 1981: 147

10 A.J. Peck and Associates Pty Ltd Report commissioned by CRL Ltd, *Consolidated Rutile Limited, Gordon Mine, North Stradbroke Island: Seepage Below the Dredge Pond* 1997.

11 P. Foot, *The Effect of CRL's Mining Operations on Native Companion Lagoon*, Consolidated Rutile Limited, North Stradbroke Island 1994.

12 The Federal Governments' export control powers over mineral sands were removed on 29 May 1997. This legislative change effectively abolished any control the Federal Government had over CRL's activities.

Bloodline to Country

Dale Ruska*

I would like to thank Regina for organising this seminar, and Aunty Margaret Iselin for everything that she has done. I'm here as a representative of the Quandamooka Land Council, the corporation, but I would like to make it quite clear that I speak on behalf of Aboriginal Law, not Westminster Constitutional or Corporate Law. I speak as a representative of the Mooka or the Mookan. Firstly I'll do what is appropriate, what my people do when they enter other countries, and that's our cultural introduction.

I am Dale Ruska, the son of Donna Ruska. On my Noonuccal side my maternal grandfather is Eugene Ruska. His mother is Florence Coolwell who was Florence Ruska before she got married. On my Koenpil side, I am the grandson of my mother's mother Dulcie Moreton Ruska. Her parents were Alfred Moreton and Lavinia Newfong Moreton. Alfred's father was Mookun Koenpil, who was later known as Charlie Moreton, and his mother was Daisy Thompson.

Mookan's mother was Dinabah, who was of half Ngugi and half Yugarra bloodlines and his father was Dandrubah Koenpil. My great grandmother told me of her parents. Her father was from Rotumah Island, and her mother was from up in North Queensland. I was told that she originally belonged to Melville Island.

I was fortunate enough to be raised for the first ten years of my life by my great grandparents, Alfred and Lavinia Moreton. I lived at One Mile for the first five years of my life. I am very lucky compared to a lot of Aboriginal people. Almost as lucky as the people who were here before colonisation began. I was born in 1967, the year of the referendum, and it was around that time that the laws and the acts which applied specifically to our people became more lenient and there was a bit more freedom for us. Our old people started to be able to talk about laws and talk about culture, whereas for the hundred and fifty years before that, it was totally banned and outlawed as being a heathen or criminal act or offence according to the invader law.

* Dale Ruska is a member of the Quandamooka Land Council.

My great grandfather, Alfred Moreton, was full blood Koenpil and an initiated law man. I sat down and I was lucky enough to be able to ask him a lot of questions about ceremonies, rituals and initiations and also about law. He told me of the times before colonisation, or attempted colonisation I believe it to be. When our people had the full enjoyment of this country to themselves, we had a sophisticated system of law — law which was in accordance with the land. We did not have the right to exploit the land the way the land and natural resources are exploited now for the sake of commercial development and economic gain.

Back in those times when our systems of land tenure were fully applied, visiting people coming over to this country here from say Yugarra country, which is up around Ipswich, could not just come to Stradbroke Island, set up their own camp, go out and help themselves to the resources, take whatever they wanted by way of fish and shellfish and stay here for as long as they wanted. They had to first obtain the permission of the traditional land law people of this country. If that permission was granted, then they were able to come here and share and enjoy the value of the environment and everything that it provided.

We have a system of laws and we had a system of tribal councils which administered those laws. We also have Aboriginal people who were born and are still being born with a human blood right, the same as Aboriginal people all over the country who have inherited the blood right.

For me, I speak on behalf of myself and my own family on the Koenpil side solely, for my great great grandfather, who was the Mookan, was the one who inherited the right of the Mooka, of the Quandamooka. He was the man or the Mookan of many Mookans before him who was born with that blood inherent right to oversee the law of land. Not just the law of land, but the law of society, and also how land was used and how it was exploited. Mookan was born just after the first settlement of Dunwich had been unsuccessfully attempted and there was occupation on my other people's country down around Amity Point, which I call Pullen Pullen. There was an outstation at Pullen Pullen where the European guards lived freely and they had freedom of movement around the area. At the very same time, my other side, my Koenpil side were up here around Dunwich (Goompi) fighting for their lives. They were fighting to resist this attempted colonisation of our land and the attempts to dispossess us of our rights.

War started a long time ago for our people, almost 200 years ago. With our Aboriginal law it was very sad for us because our Aboriginal law had been able to contain the evil elements in our Aboriginal society since we

were created in this country. As soon as the foreign law arrived, some of those Aboriginal people that had the element of evil within them felt that there was an opportunity to go against the Aboriginal law. Some of them ended up being the people that hopped on the horsebacks and put on the blue coats to lead the police out into the clan country to murder and massacre my people. The bad element still exists within Aboriginal society today, so there are two elements which make up our society today. There is the good element, which is the Aboriginal law, and then there is a certain element of what I call the evil law.

Mookan's father was Dandrubah Koenpil. He was the man of the iron bark. He died a death of mysterious circumstances just before attempted colonisation came into full swing. Dandrubah had one son before his death, and that was my great great grandfather Mookan. After Dandrubah's death, his wife Diniba remarried a man called Billy Moreton who was a Ngugi man, and Mookan took the name of Charles Moreton.

Mookan spent a lot of time with his uncle Nuahju (Billy Cassim), who became one of his cultural mentors. Because Mookan was born with the inherent rights to Aboriginal law and rights to administer the law, he became the message stick man. He did not just live in this country, he travelled within the whole nation of his people. He once spent ten years away from this land carrying the message stick around the country.

His younger sister, a lot of people might know as Winyeebah or Granny Janey Sunflower. She is my double great grand aunt by law, and she was well renowned as an Aboriginal person throughout this region.

When Mookan became a man, he became the cultural mentor to a young man named Willie Mackenzie, who was from the Badjala or Kabi Kabi area near Fraser Island. Willie Mackenzie later became a grandfather through law to many people.

Mookan knew all about what was happening in the way of the undeclared war and he knew from his father's experience that there was no way we could win this war in physical combat. Mookan changed our style of warfare from physical combat to psychological combat. It is a war that Aboriginal people are still fighting today. We are fighting a psychological war. I, like my mother, believe outright that we are still in an undeclared war, and we will fight it for as long as it takes to win. We have never been violent, we have always been a passive race and the basis of our belief is in love and honouring our neighbours.

With my grandfather's rights and then being honoured myself in my own life being raised by my great grandparents, Alfred Moreton and Lavinia

Moreton, I was taught a lot about our old way. They were able to start talking about our old ways in the seventies, whereas in the years before that it was outlawed and a criminal offence. A lot of you people would be more aware of it than myself, but there was a series of laws, acts or pieces of legislation that were developed specifically for Aboriginal people, while at the same time there was the common law which applied to the whole of the Australian society. Nowadays it is very much the same. We still have specific laws for Aboriginal people, where we have mainstream law for the whole of Australian society.

The example I give now is from my experience as an individual in corporate law and its processes. Something that we feel very offended about is having to claim back our land, which we believe has never been taken away from us, because we still breathe the air, we walk upon it, we take the resources from it. The land for me is very important, we have our Father Creator, a lot of people know him as God. I refer to him in the Aboriginal name, I call him Bingwanjinni. We have our Mother Spirit, who is the land. She is just as important as the God, and a lot of religion has gone against the law of the land and they have disrespected outright the Mother Spirit. Without the Mother Spirit, we can't be a people. Without the land there cannot be a people, because the land gives us all of our life.

We have had an existence here since our creation. My mother referred to the scientific evidence, which has been proved on this island, and we look at all other ancient civilisations around the world, and in my life I have developed a keen interest in some of those ancient civilisations and I learned a lot about the great pyramids of Egypt. There was always this confusion there, because I thought these were the oldest civilisations. Then after learning more I found that through scientific evidence, they could only prove that these ancient civilisations started to exist approximately three and a half thousand years ago. Now that evidence is being re-examined and they are contemplating the possibility that some of these ancient civilisations started to exist around twelve and a half thousand years ago. I scratch my head when I think about this, about them being the ancient civilisations, because right here on this little old island, Minjerribah, that same science has proven that we have been here for at least twenty five thousand years, living the same way up until, in our case, only one hundred and ninety years ago. When I look at it in that way, I see our way as being the most ancient, because it is a way that never changed throughout the whole of our cultural evolution. It was a way that was virtually exactly the same two hundred years ago. If we were to look for the most ancient of our physical evidence, we would not

be looking here upon the surface of this island, because this island is not as ancient as ourselves. If we wanted to find it we would have to look down on the bottom of this island, where the reefs were before the island was formed, and we would have to go right out to where the sea now is, where our people lived, because we are coastal people, we are the people of the salt water law. Archaeologists have proven that in the evolution of the land, there were changes through the different periods of the ice ages. We know from the stories that my grandfather has told me, that there was once a time when Point Lookout or Nullambah was a high mountain peak and there were no islands here. I don't know when archaeologists perceive that time to be, but that was around the time of just after our creation on this land. If we had to look for our most ancient evidence then we would have to look a lot further than people look these days. A lot of it is covered up now by the Mother Spirit and it will never ever be revealed again.

What I have seen in my life of thirty years is outright destruction and desecration of my Aboriginal human right, my spiritual rights, and the desecration of my Mother Spirit. We have existed since creation and I hope that we can exist for another two hundred years. From what I have seen, and from what my grandfathers have told me, I can't be assured within my own mind that we are going to be able to exist here for that time.

I now have three children, three children that are little white skinned children with blue eyes, but they are still Koenpil Noonuccal regardless. I hope that they can exist here throughout their lives and I hope that they have the opportunity to be able to sit and tell stories that I have told them to their great grandchildren. But that is a big hope for me now because when I look around I see what is happening, and I have seen an industry (and I don't like to refer to this industry all the time because I know some of the Elders feel very supportive of it) in a mere fifty years just about destroy a creation that was laid out over thousands of years. This same industry has proposed to be here for another thirty to fifty years. It hurts me inside badly to know what destruction is going to occur for the sake of those fifty or thirty years.

From what my mother said before, I believe that we have never had a treaty of any type. Everything that we have had to do has been forced upon us through this undeclared war. We did not want to go and live in missions. We did not want to have laws which were applied to us solely. We did not want to be displaced from our country. My grandfather Alfred Moreton was displaced numerous times. He was taken from this country

here because of his defiance against the invader law, with another grandfather by the name of Alfred Martin to Purga mission. Purga mission was similar to a concentration camp in those days. He told me the story of when they took all of the men down to the river at night to bathe, and they took them all down at once and they guarded them. He and grandfather Martin swam up river underwater, hid in the reeds until nightfall and then ran from Purga to Dunwich, or Goompi, naked. They bragged about this escape to their children, and their children would say "Don't brag about that, because they can still come and take you away if they want."

Even in the nineties, we are still defying, and I find myself defying all the time this attempted conquest, through the invader law against my Aboriginal law. Now Native Title is the new piece of legislation which most people in Australia think is going to fix up this question of Aboriginal land rights. When it started Native Title was perceived by a lot of Aboriginal people to be one of the best and most advantageous pieces of legislation going. I myself experienced the legislation before it, which was the Queensland Land Rights Act, which I don't even want to use the words to explain it. With regard to Native Title, one man up in the Murray Islands got the High Court of Australia to accept that the land was not *terra nullius*, that there were people who lived on this land. That is as far as it got, it never got any further than that. Then there was the next case which challenged common law, and that was Wik. And now there is a challenge to common law on the grounds of our rights over sea, rights that we believe that we still fully have. But Native Title legislation has turned out to be a piece of legislation which does not address our 'Aboriginal Native Title'. It is now a piece of legislation which is addressing the rights of pastoralists, industrialists and primary industries. According to my Aboriginal Law those interests and how those interests have been gained are in a sense illegal and criminal. What my people have lost, for their interests to be gained, has been a hell of a lot. We have not lost it forever, it has just become idle, and it has been idle now for around two hundred years. Our land before European people came here was alive. My grandfather and my grandmother told me how well and truly alive our land was. There were not three major islands here, there was just one continuous peninsula of land which was growing from the Gold Coast to the North. Stradbroke Island, Moreton Island and South Stradbroke Island and the Gold Coast were all connected together. In the late eighties, from colonisation, the land slowly started to die. The Mother Spirit started hurting and dying. The islands were broken apart. They broke apart down on the southern end first, then they broke apart on the northern end later. My great grandmother, Lavinia Moreton told

me of the time from her own experience when she stood at Pullen Pullen (Amity Point) and she saw the people talk to the Ngugi people across the foreshore. She walked from Amity Point to Moreton Island on low water. They had mock battles where they tried to spear each other from one foreshore to the next. Now I look at that, and this isn't even one hundred years later, and I wouldn't be able to throw a spear one tenth of the way across that break, because the land is dying. It's not just dying where those breaks are, it's dying all over, you just look all across the land and you see the death. That is brought on with the destruction which has been impacted upon her, from the attempts of colonisation. I say attempts of colonisation, because when I look around at my Mother country, I see her rejecting this attempt of colonisation all the time. I hope that this rejection does not go to the extent where the Mother can no longer reject it, and she ends up dying. If she dies then we die along with her. That is something I don't want to happen.

I don't have much confidence in Native Title any more because when we go into the process of negotiations and discussions, we are only allowed to talk on our interests. We are not allowed to talk about our cultural rights, or our spiritual rights, only about our interests. We are only allowed to talk to them about their interests, but how their interests have been gained to me and my Aboriginal Law are through acts that were criminal. We had our people murdered, we had our children murdered, we had our culture attempted to be taken away from us to the extent to where law forbade it. The Land Law people of this country, my people, have never ever endorsed things like the mining industries to be here, and there has never been a treaty. So they are acting in an industry which according to our law is an illegal industry, and they are committing according to our law a criminal offence against not just our people, but our Mother Spirit.

In summing up, let me return to the wisdom of my grandfather, who was the Mookan. In those times, men and women, no matter how high in status they thought they were, had no right whatsoever to decide over the fate of their country or their Mother Spirit. They were there since the time of creation, and our Dreaming or Dreamtime began a long time ago. We are somewhere in the middle of it now and there is a long time to come. Where we now put ourselves in the position of the God and we think we have the right to decide over the fate of our Mother Spirit, we are actually denying the future generations a human right, a blood born right, and we are taking away the Mother Spirit. And that means we are also taking away their spirit.

The New Legal Landscape of Indigenous Rights on Stradbroke Island

*Scott McDougall**

To begin an assessment of the new landscape of indigenous rights existing on North Stradbroke Island and the form, content and likely future of such rights, it is useful to dig up a bit of history and observe some of the critical events that have altered the landscape.

Aboriginal Sovereignty

We have already heard today from Quandamooka people themselves, how their forebears were the sole custodians of this rich island — managing the land, sea and all of its resources in accordance with an intricate system of laws and customs which cut across all of the social, political, religious and economic aspects of life. A common law definition of the nature of the actual 'system' of life, held and controlled by Quandamooka people, has never been attempted. However in other jurisdictions, such systems have been recognised as bestowing 'sovereign' or 'nationhood' rights upon indigenous people.[1]

On North Stradbroke Island, as in all of Australia, the sovereign rights of Aboriginal people were not recognised or respected when the imperial government annexed the island as part of the colony of New South Wales and in so doing proclaimed its own sovereignty over the island.

Early colonial history records many examples of the assertion of sovereignty by Quandamooka people. The somewhat gentle persuasion of the castaways Pamphlett, Finnegan and Parsons to leave both Moreton and North Stradbroke Islands is one of the less hostile examples of the Quandamooka peoples' assertion of ownership. As was typical of early colonisation, there were also bloody assertions of Aboriginal sovereignty.[2]

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* Scott McDougall is a native title lawyer employed by the Quandamooka Land Council Aboriginal Corporation. Whilst he has assisted in the preparation of the Quandamooka claim, this paper should not be taken as representing the views and/or policy of the Quandamooka Land Council Aboriginal Corporation.

In the early 1820s, there was therefore a distortion between the Imperial government's claim of sovereignty and the reality of the Quandamooka peoples' control over North Stradbroke Island.

Entrenching a Discriminatory Rule

So what was the law underpinning this distortion of reality? The principle by which the British government originally assumed sovereignty over the colony of New South Wales was the doctrine of *terra nullius*, which under international law enabled a sovereign state to acquire territory inhabited by people without recognised social or political organisation.[3]

Terra nullius itself however was never part of English common law. The common law subsequently relied upon to assert British sovereignty over Australia is based on the concept of 'acquisition by settlement' — a doctrine remarkably similar to *terra nullius* and which, despite commonly held belief, has not been totally rejected by the High Court. Acquisition by settlement was justified in common law where a territory was either unoccupied, or occupied by inhabitants regarded as 'barbarous or unsettled and without settled law'.[4] In the Mabo decision, the High Court reaffirmed that Australia was acquired by settlement as opposed to secession or conquest. The High Court did not do away with this doctrine — it merely rejected the notion that native title rights could not survive the acquisition of sovereignty by settlement.[5]

Mabo therefore established that the system of laws and customs or life of Meriam people did not give rise to sovereign rights but merely native title rights to land. In coming to such a conclusion the High Court has exposed itself to criticisms of hypocrisy. On one hand it has said:

> *It is contrary both to international standards and to the fundamental values of our common law to entrench a discriminatory rule which, because of the supposed position on the scale of social organisation of the indigenous inhabitants of a settled colony, denies them a right to occupy their traditional lands.*[6]

On the other hand it applied the same discriminatory rule to deny Aboriginal people their right to sovereignty. The justification for this double standard appears to be that the recognition of Aboriginal sovereignty would 'fracture a skeletal principle' of our legal system.[7] But would it?[8]

The High Court's treatment of this issue was unsatisfactory and will continue to be a source of aggravation in this country, particularly if the

modest rights recognised by the High Court are not properly protected or able to be meaningfully implemented. It is likely that at some point in the future an international challenge to the discriminatory 'acquisition by settlement' doctrine will be made.[9] At present the High Court has ruled out the possibility of any challenge to the Commonwealth's sovereignty by an Australian municipal court.[10]

In the meantime, it is important that Aboriginal people make the most of the Mabo decision to demonstrate that their fundamental right to maintain their system of life can be fully recognised without causing the social, political and economic fracture that the Australian courts, politicians and public seem to fear so much.

This is the historical context in which the Quandamooka claim is being made. Quandamooka people have not relinquished their rights to sovereignty. Their native title claim expressly states this. In the meantime they are attempting to implement their custodial obligations under their system of laws and customs through the native title claim process.

As will be seen, the Quandamooka Land Council is attempting to do this in a comprehensive manner which will not fracture the skeleton or fabric of society on North Stradbroke Island.

Mabo and Native Title

What was the effect of Mabo for North Stradbroke Island?

The Mabo decision concerned the rights of Murray Islanders to Mer, an island in the Torres Straits. It is significant for North Stradbroke Island for a number of reasons:

1 It finally recognised that the system of laws and customs of indigenous Australians gave rise to rights and interests in land (although as noted above not sovereign rights);

2 These rights and interests survived the acquisition of sovereignty by the Imperial government;

3 The nature and extent of the rights and interests depended upon the particular laws and customs of the Mer Islanders;[11]

4 The sovereignty of the Commonwealth government prevailed over the native title rights of indigenous people;

5 Therefore, native title rights were subject to lawful extinguishment by legislative or executive acts of government.

From the decision the following conclusions can be drawn for North Stradbroke Island:

1 That the system of laws and customs of Quandamooka people has still not been recognised as giving sovereign rights;

2 That the system of laws and customs has been recognised as giving rights and interests in land;

3 That the nature and extent of such rights will depend upon:

   (a) the laws and customs themselves; and

   (b) whether native title has been extinguished or impaired by legislative and executive actions of government.

From this brief overview, it is apparent that the recognition of native title represents a compromise between those seeking Aboriginal sovereignty and those who continue to deny any Aboriginal interests.

This is the same compromise that is being faced by communities across Australia, where Aboriginal people have maintained a connection to their land and/or seas and are seeking the formal recognition and implementation of the rights arising out of their own systems of laws and customs.

What Processes are in Place to Facilitate the Changes Brought by Mabo?

There are primarily two paths to reaching an outcome on native title, however rarely are they employed exclusively. The first option involves mediation, the second is litigation. There are numerous drawbacks to litigation, beyond the more obvious disadvantages such as time and cost. Some of these disadvantages include:

1 Whilst a Court may declare the rights and interests of native title holders, it cannot put in place the necessary structural mechanisms to implement and protect those rights in a practical manner;

2 Litigation can require legal argument on a parcel by parcel basis, a process extremely expensive and time consuming;

3 The adversarial nature of the process can lead to social disharmony in communities; and

4 The process of establishing a claim can cause severe stress and emotional pain to claimants, particularly the elderly. In some cases the oral evidence sought by lawyers and anthropologists derives from oral traditions, for the practice of which claimants were punished by mission authorities.

By contrast some of the advantages to mediation are:

1 It is generally a faster means of resolving native title;

2 It enables both parties to participate in the development of the outcome rather than simply having an arbiter impose an outcome;

3 It allows for a much broader and comprehensive outcome than simply a determination of legal rights; and

4 It is far less stressful and leads to greater social harmony and acceptance of the outcome.

However, mediation is not always a path lined with roses. There are some drawbacks to mediation as well. Mediation does require parties to bring goodwill to the table. There is no point in mediating where one or both of the parties has no intention of reaching agreement. For example, if a party cannot accept a fundamental premise such as Aboriginal rights to land, mediation will have little prospect of succeeding.

Further, successful agreements from mediation require parties to have access to quality information and expertise. The challenge here is in ensuring that native title holders are not lost in the quagmire of reports and studies, and maintain their ownership of the process. I am pleased to say in this regard that the Quandamooka Mediation Team, made up of Elders and other community members, have come to terms with the complexity of issues involved in mediation and yet have maintained their control over the process by being directly involved in mediation discussions. This is an important part of the process of empowerment and capacity building vital to native title claimants successfully implementing the outcomes of mediation. Thirdly, accessing quality information and expertise can be expensive and time consuming.

Mediation of the Quandamooka Claim

As the claim is presently being mediated in the National Native Title Tribunal, I am not at liberty to enter into the fine details of its current progress. However there are a number of features of the Quandamooka claim that can be appropriately raised at this forum.

Firstly, the legal basis of the Quandamooka claim is undoubtedly one of the strongest in Queensland, particularly outside of Cape York Peninsula. The continuous occupation, use and management of land and marine resources, the history of strong political activism, the maintenance of Aboriginal identity and culture, and the surprisingly few 'extinguishing acts' by government, all combine to make a very compelling case for the Quandamooka people.

Secondly, North Stradbroke Island aside from being the home of Quandamooka people, is an environmentally significant part of Queensland and Australia. It is recognised as such through its inclusion in the National Estate and listing under the Ramsar Convention on International Wetlands.[12] Therefore, the preservation of the island is not only in the interest of the Quandamooka people but also a matter of national and international concern.

Finally, if there is a common interest to ensure that the island is maintained for future generations, it follows as simple logic that native title holders should be able to implement their own custodial obligations and knowledge to manage the island.

Participating in Change

North Stradbroke Island is fortunate in that it has the real potential and rare opportunity to resolve native title issues without having to resort to litigation.

Of course such a resolution will necessarily involve changes. If the community embraces and participates in the process of change, a comprehensive and cohesive resolution may be achieved without the need for fractious litigation.

As Quandamooka people know only too well, change facilitated by a community is better than change imposed upon a community.

Notes

1 *Cherokee Nation v. State of Georgia* (1831).

2 G.Watkins 'Notes on the Aboriginals of Stradbroke Island and Moreton Islands' *Proceedings of the Royal Society of Queensland* 8 (43) 1892.

3 per Brennan J in *Mabo v. Queensland No 2* (1992) 107 ALR at 25.

4 Brennan 1992: 44.

5 Brennan 1992: 41.

6 Brennan 1992: 36.

7 Brennan 1992.

8 See arguments of Henry Reynolds, *Aboriginal Sovereignty: Reflections on Race, State and Nation* Allen and Unwin 1996: 174–186.

9 Reynolds 1996: 155–173.

10 *Coe v the Commonwealth* (1993) 118 ALR 195 and *R v Walker* (1994) 126 ALR 321.

11 per Brennan J, *Mabo* p.35, 40, 42. In Mabo, the Meriam people were declared native title rights to the 'possession, occupation, use and enjoyment' of the Murray Islands.

12 Register of the National Estate Data Base Report, 22 March 1996 and Moreton Bay Marine Park Ramsar Sites Map, 31 July 1995.

The Native Title Mediation Process in Relation to Quandamooka: An Overview

*Penny Tripcony**

Introduction

I am Penny Tripcony of the Quandamooka Land Council. I do not reside here on Minjerribah (Stradbroke Island), although both my mother and grandmother were born here at Myora, and my great-grandmother was a Ngugi woman known as Sidney Rollands from Mulgumpin (Moreton Island).

I am currently employed in an academic position at the Queensland University of Technology, but have been a teacher, an education administrator, and have worked in Aboriginal community organisations and community-based courses. I am also a mother and a grandmother, and it is for this reason in particular, that I am involved in the land claim which seeks to protect and preserve Quandamooka for future generations.

Those of us involved in Aboriginal movements seek to fight in varying ways. My choice has been to become involved in education, possibly because the aunt who raised me had taught me that education is vital to issues of status and power. I returned to school full-time (when my children were at school and kindergarten) to undertake senior secondary, then university and teacher training. Most recently I worked at senior policy level where I sought to develop policies and programs to encompass Indigenous knowledge, history, cultures, and contemporary issues. I believed that these things would bring about attitude change. I did not, however, realise the power of systems which relentlessly perpetuate dominant culture values and mores, and thus preserve the status quo.

Before presenting an overview of native title mediation, I offer the following points of clarification for those involved with Indigenous communities and relationships with the land, seas, waterways, air, constellations and all things in the environment.

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* Penny Tripcony is a member of the Quandamooka Land Council.

In much public discussion about Aborigines, there is often questioning (with some degree of sarcasm in many instances) of Aboriginal identity. Dr Diana Eades, in her work Aboriginal English and the Law which follows years of research and writing about Aboriginal people of South East Queensland, makes the following statements:

> *The official definition is that ... An Aboriginal is a person of Aboriginal descent who identifies as an Aboriginal and is accepted as such by the community in which he or she lives ... The definition makes no reference to the physical characteristics of the Aboriginal person; it is based on only three factors, namely those of descent, self-identification and community acceptance of that self-identification.*[1]

Dr Eades goes on to say, under the heading Aboriginal culture in Queensland today, that...

> *Many people mistakenly assume that if Aboriginal people have a lifestyle that seems the same as non-Aboriginal Australians and no longer speak traditional languages and no longer follow traditional religion, ritual performances and food-gathering practices, then they must have 'lost their culture'... however, there is today a strong shared core of Aboriginal culture throughout Australia which shows continuities from traditional to non-traditionally oriented Aboriginal societies.*[2]

It should also be remembered that:

- Aboriginal societies should be viewed as *complex* groups within an overall cultural framework, which encompasses *diverse* cultures, histories, languages and lifestyles.
- There are many *similarities* as well as differences between these groups — similarities in terms of invading history, western law, experiences of racism, etc.
- As with any groups within society, among and between Aboriginal groups there are varying opinions and beliefs; thus *divergence* can and does exist. There is no one Aboriginal opinion or viewpoint on issues ... with one possible exception, and that is relationship with, and care for, land/place.
- Indigenous people view all things in the natural environment as significant (and that includes people). It must be remembered that people cannot survive without the environment, but the environment can survive without people.

- The major principle of Aboriginal law is that of *reciprocity* meaning sharing, or that we cannot take without giving: and the highest level of reciprocity is to the land. We must care for the land (or place), because it cares for us and provides all of our needs.

To emphasise the last two points above, the paper that I presented in Brisbane last year (on behalf of the Quandamooka Land Council) to an international conference on the Ramsar Convention was titled: *You call it **wilderness**; we call it **home**.*

Quandamooka Claim

The Quandamooka native title claim is made by three clan groups (Noonuccal, Koenpul and Ngugi) traditionally connected with Minjerribah, Mulgumpin and smaller islands within the Quandamooka (Moreton Bay) area. The claim is widely regarded as one of the strongest in Queensland outside of Cape York Peninsula. This strength derives from our continuous connection to our traditional lands and seas. Governments also recognise this.

Despite the legal strength of the claim, the Quandamooka Land Council (QLC) has adopted a progressive approach to mediation.

Role of Mediation

Once a native title claim has been lodged and accepted by the National Native Title Tribunal (NNTT), there are two routes which it can take to resolution — mediation or litigation.

From our perspective mediation is less formal, less stressful and less costly, as well as a more effective and efficient method of resolving disputes than litigation. It also offers the potential for long-term constructive relationships between parties.

There are many definitions of mediation but in this context the process is what the parties make it. Mediation usually requires a third party (NNTT) as a mediator who does not have a vested interest in the issues being discussed.

The Quandamooka people's native title claim presents a first-time opportunity for detailed discussions between traditional owners, Queensland and local governments and community groups, where rights are set aside and interests identified, with the aim of reaching agreements on the long-term resource management responsibilities for the region.

In this instance, the QLC's approach to mediation is not directly about determining Quandamooka people's native title rights but rather a process which identifies Quandamooka's and interested parties' interests in development and conservation of resources with the aim of reaching an agreement about the way future activities in each resource sector will occur.

While at this stage the results of the process cannot be prescriptive, mediation would be pointless if it did not advance reconciliation through a realignment of the relationship between the parties by sharing responsibilities for and management of the long-term environmental, social, cultural and economic future of the region.

Mediation Team

The QLC mediation team has met consistently for a half-day every fortnight for the past eighteen months. Members of the mediation team are the front line negotiators with skills and experience across all resource issues that are being dealt with. The mediation team is responsible for presenting and arguing Quandamooka people's preferred outcomes of mediation.

It has been recognised and commented on by the NNTT that of all native title claims throughout Australia, QLC's mediation team is one of the best prepared for mediation. QLC's mediation team approach is also recognised regionally as the most positive example of how negotiations of a native title claim can progress.

Preparing for Mediation

Over a twelve to eighteen month period, QLC commissioned and coordinated assessment reports of the major land and marine uses in the region. These include:

- Land Management strategies
- National parks and Council reserves management
- Marine resources in Moreton Bay (fisheries and aquaculture)
- Economic assessment of mining on North Stradbroke Island
- Hydrology of North Stradbroke Island
- Tourism assessment and strategies in the Moreton Bay Region

- Present and proposed government structures
- Capacity building for resource management

One consistent aspect on management issues identified in the reports commissioned by the QLC is that statutory authorities who presently have responsibility for natural and cultural resource management do not have adequate budgets or possess a partnership culture to implement management programs.

All the base line information gathered on these resource sectors has informed and supported QLC's mediation team in developing positions for mediation.

Interested Parties

The interested parties registered by the NNTT as parties to the claim include:

- Queensland government
- Redland Shire Council
- Brisbane City Council
- Land owners and residents
- Extractive industries
- Commercial resource users including commercial fishing and aquaculture
- Ferry operators
- Tourist operators and associations.

Of all these interested parties the QLC has requested that the NNTT only facilitate negotiations with the Queensland government. QLC, with other interested parties, has established independent processes based on respect for each other's interests and believe we can cooperatively progress discussions to an agreement.[3]

Future of Mediation

The further the process of native title mediation is progressed the more complex and resource intensive it becomes for claimant groups.

The QLC's mediation team has firstly concentrated on developing negotiation processes with local and state governments. Negotiation with

other interested parties to the claim will come at a later stage with these processes.

The level of decision making and community consultation, the requirements for meetings and the cost of the process are all issues which QLC has to deal with. The outcomes of these mediation discussions are primarily dependent on the good-will all parties bring to the negotiating table.

The mediation negotiations need to work hand in hand with the capacity building for the Land Council. In some areas this may require administrative, structural, staffing and training resources at the same time that negotiations are taking place.

Fortunately, the QLC with its Community Development Employment Program (CDEP) presently has a committed work force of approximately fifty people specialising in natural and cultural resource management, art and craft, building and maintenance and catering. However these programs will require an injection of resources to ensure that implementation of mediation outcomes start off on the right foot.

Notes

1 Diana Eades, *Aboriginal English and the Law*, Brisbane: Continuing Legal Education Department, Queensland Law Society Incorporated 1992:5.

2 Eades 1992:9

3 Shortly after submission of this paper, such an agreement was reached with Redland Shire Council. (ed.)

Taking the Initiative: 'First World' Indigenous Lands and Seas

Peter Jull*

Indigenous peoples throughout the world have contemporary grievances and all have suffered dispossession of territory, denigration of culture, marginalisation, assimilation, and social ills. In many countries today the lives of Indigenous people are at risk from brutal governments and brutal colonisers. If we were to dwell only on the many problems remaining, we would be immobilised by despair. What we must do instead is build on positive measures which have begun to emerge in some countries. Nobody would suggest that any country has solved Indigenous problems, but at least there are examples now appearing of general policies, specific initiatives, or unforeseen outcomes which return self-worth and decision-making to peoples previously marginalised.
Mick Dodson, Aboriginal Social Justice Commissioner.[1]

Introduction

All over the world indigenous peoples are trying to protect their local cultural heritage, traditional territory, and productive environment in the face of resource development, large construction projects, influx of settlers or transient work forces, and other changes. They often must do this in spite of political, legal, and administrative systems which are either actively hostile or barely acknowledge their existence — let alone their wishes! The indigenous people in such situations lack political influence and feel isolated.

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However, a number of social and political changes in the world have created opportunities for local indigenous groups to improve their prospects. These changes have occurred in the world at large and through international agreements, and within individual countries, especially individual countries in the so-called 'first world' of wealthy nation-states such as Australia, Canada, Norway, etc. Indigenous peoples have been using these new opportunities to regain control of territory, resources, and local or regional decision-making, as well as to influence policy and decision-making more widely. There has been rapid development in some places of indigenous peoples and government jointly managing fisheries, land, resources, and development, *co-management* as it is called. In some parts of the northern hemisphere previously isolated coastal peoples and their inland neighbours have focussed national and world attention on the environment and indigenous rights to the extent of redrawing maps and revising constitutional arrangements. This has been achieved peacefully and cooperatively.

The 'first world' nation-states like Australia which share European culture, history, outlook, and affluence are full of constitutional, political, administrative, legal, and program experience in indigenous-white relations. These provide Australians with a no-cost risk-free supermarket of tested possibilities, trial and error, useful precedents, and proof that indigenous autonomy benefits both white and indigenous societies.

The 'first world' context as it relates to indigenous peoples holds up some general trends in high policy and politics, as well as specific situations which may be of interest for local indigenous people in Australia. These two levels are not separate. International standards and informal international directions influence local and specific situations, while those broad international standards are themselves constantly enriched and informed by precedents at local level. There is a constant two-way traffic. The Stradbroke situation has already had some influence around the world through writings by and about Oodgeroo (a.k.a. Kath Walker). My own copy of *Quandamooka* was read and admired in Canada's capital city by indigenous and non-indigenous persons active in indigenous politics.[2]

It is important to realise that today in Queensland or Australia as a whole we are not at the end of anything. The era of cooperative management of territory, resources, and development is only beginning.

International Trends

In recent decades the international indigenous situation has changed greatly. Implicit international experience and emerging explicit international standards are broadly defining a unique politico-constitutional status and relationship to territory of indigenous peoples. This sees indigenous peoples respected as culturally autonomous political communities within the constitutional framework of existing nation-states, with unique rights in relation to territory (land, freshwater, sea) and resources, and as distinct from immigrant minorities.

New international rights standards have been developed for peoples and territories in countries dominated by others, notably through the United Nations. Understanding of the world environment and the connections among regions and biological processes has fundamentally changed world politics and awareness and validated indigenous perceptions and agendas. This has been especially evident in responses around the world to the Brundtland Report of 1987, which called for greater indigenous control of territory and resources in Australia, arguing that "sustainable development holds out the prospect that what is good for Aborigines will be good for all Australians". However the Australian media gave little attention to the significant indigenous dimension of the 1992 Rio Earth Summit, the conference organised to digest and act on the Brundtland Report.[3]

Not long ago governments at national and sub-national level treated indigenous peoples and physical environments as entirely their own business. Today, the ease of world communications, such as e-mail and the internet, and relatively cheap and quick travel, result in international awareness and discussion of indigenous and environmental issues. Virtually any problem anywhere in the world can become widely known and commented on within hours. An example today is the situation of northern indigenous peoples in Russia. Despite being utterly isolated from the rest of Russia and the world they have drawn international support efforts and research projects. It will be impossible for their struggle and situation to be ignored unless an isolationist authoritarian government re-emerges in Russia. On this score it may be interesting over coming years to watch the Howard government's experience of world scrutiny over Aboriginal and Torres Strait Islander rights.

The most promising or successful practice of individual countries in dealing with indigenous peoples sets informal standards for other countries. When the Australian governments of Prime Ministers Whitlam and Fraser

brought in the studies and reforms for Northern Territory Aboriginal land rights in the 1970s, this created great interest overseas, for instance. In general one may say that the international trend today is for substantial indigenous roles in environmental management in their traditional territories; recognition of collective indigenous political and cultural entities; greater indigenous self-management and self government within existing nation-states; participation in land use and development decision-making and management; and elaboration through legal, administrative, and constitutional guarantees of perpetual safeguards and recognition of indigenous peoples in nation-states.[4]

Of course, there have long been international standards, even if not always or even often applied.[5] The anti-slavery movement in Europe was an example of an international moral rights movement which finally succeeded. Within the British Empire the imperial government and its governors attempted to provide some protection for indigenous peoples, always difficult at long range in the teeth of land rushes, gold rushes, and settlement fever. This is reflected in the constitutions of USA and Canada where the national governments have the indigenous affairs power as distinct from states and provinces with their primary lands and resources powers. Australia was no exception, as historian Henry Reynolds has demonstrated,[6] although the universal pressure for development and the difficulty of London's remoteness were decisive in the development of Australia. That is, settler interests in Australia were able to ride roughshod over indigenous rights, interests, and aspirations.

Nevertheless, even in countries like the USA and Canada with two or more centuries of political and legal history in accommodating indigenous rights, real modern-day respect for indigenous rights has awaited improved general social attitudes and indigenous political activism. Informing and winning over public opinion is crucial for indigenous groups.

Some Specific Cases

The Arctic Circle — Canada, Greenland, Alaska

From the of Arctic Peoples Conference in 1973 in Copenhagen to the foundation of the Arctic Council in 1996, remote and isolated indigenous communities have worked a miracle of political and policy impact on the world and in the cause of their local livelihoods and environment. At that 1973 meeting in Copenhagen's Christiansborg Palace, peoples who received little respect from governments at home were welcomed by the Danish Prime Minister through a representative.[7]

The people represented in Copenhagen lived in scattered small villages in an isolated part of the world. Some of their young people had recently formed organisations which were authentic voices of hardship and grievance but were not yet in all cases fully representative. However, most of the delegates present have gone on to have illustrious political careers in their regions and at national level. They have, personally and in cooperation with others, transformed the situations of their peoples and the political cultures and political institutions of the nation-states in which they live. This did not happen overnight, as the shampoo advertisement warns us, but it did happen — through years of persistent and determined work.[8] These circumpolar indigenous leaders refused to take 'No' for an answer from governments; they outlasted the politicians and governments; they slowly but surely, with many setbacks and some occasional rushes of success, changed the social and political attitudes of regions and countries to bring a new indigenous order.[9] They sometimes used court cases, although those can be dangerous and are always slow; they used the media; by various means they influenced key individuals and groups; they relentlessly kept the demands of their peoples in front of government officials and politicians; they became informally recognised as spokespersons long before governments would work with them as equals. Through their land claims they introduced new concepts into the environment and resource management of their countries and governments with the help of young experts; in other words, they took a lead in environmental matters, a lead in which new scientific knowledge was as crucial as their people's accumulated traditional ecological knowledge (TEK). For setting the agenda and determining its implementation in marine, coastal, and inland territory and resource management policies, Australians may wish to pay particular attention to the efforts of Alaskan Inuit, Yukon Natives (Indians and Métis), and Northwest Territories Dene, Métis, and Inuit (including Inuvialuit). [10]

Inuit of Northern Canada have experienced and themselves achieved some of the most spectacular political changes of recent times.[11] Despite their few numbers, which have skyrocketed recently to *c.* 45,000 in all of Canada, Inuit have been an absolute majority across the northern third of Canada and the majority in every community there in which they live today (except Inuvik). Traditional scattered clan and family hunting camps were largely replaced in the 1950s and 1960s by central villages typically with church mission, police post, nursing station, school, trading post (usually the Hudson's Bay Co, 'the Bay', and a cooperative, 'the Co-op'), and, increasingly, administrative and social service functions. The increasingly all-pervasive paternalism of whites and visibly inferior status of Inuit led first to political stirrings in the 1960s centred on socio-

economic issues and discrimination, soon followed by a land claims and self-government movement at the end of the 1960s in response to Canadian governments' and resource companies' frenetic search for oil, gas, and minerals. In each of the four main contemporary Inuit regions — the Inuvialuit region around the Beaufort Sea and Mackenzie River Delta; Nunavut, the northern and eastern half of the Northwest Territories (NWT); the Quebec shores of Ungava Bay, Hudson Strait, and northern Hudson Bay; and Labrador, the mainland territory of the province of Newfoundland — Inuit have fought since the early 1970s for a land (including sea) claims settlement with ownership of some areas and significant environment and resource management roles for the total region, and for local and regional self-government. In all regions these have now been negotiated successfully or negotiations are well underway, with little doubt that all regions will have all these implemented and in place in a few years.

Nunavut, the Inuit east and far north of Canada's Northwest Territories, one of the most isolated regions on earth till the 1950s, is a region larger than Queensland and is now becoming a self-governing territory with virtually all the powers of an Australian state or Canadian province.[12] It has a rapidly increasing Inuit population of *c.* 25,000, mostly very young, and an economy based on traditional seasonal land and sea mammal hunting, gathering, and fishing; the service (including government service) sector; and various subsidies and social payments. The region has some rich mineral deposits, as well as suspected undersea oil and gas. Unlike a conventional Australian state or Canadian province, however, the Nunavut constitution has two parts. One part, painfully negotiated over 17 years, including false dawns and angry upsets, is the Inuit land claims settlement. This applies to the entire region, land and sea, and provides special co-management bodies for development and resources. Obtaining government agreement to equal Inuit sharing in decision-making with the Crown, especially from the federal fisheries department, is a story in itself, of course.[13] Thanks to another Inuit initiative in other forums, all indigenous claims agreements in Canada now take precedence over the operation of the equal rights provision of the Constitution and of any other laws (barring possible wartime emergency powers). In other words, once recognised, an Indian or Inuit fishing right cannot be challenged by a white demanding equal rights or by a provincial or territorial government. The second part of the Nunavut constitution is the Nunavut Act of the federal parliament creating the Nunavut Territory and government, like a state or provincial constitution. Inuit land ownership and the management rights mentioned are spelled out in the claims agreement, accessible only to Inuit and a part of the Canadian constitutional system. These are

beyond the reach of parliaments or of white population influxes in the north, contrary to much misinformation and disinformation put about by opponents of the Nunavut model. The Nunavot Act is also a law of the federal Parliament and can only be changed there. The third part of this 'constitution' is worth noting. For many years already the region of Nunavut has received massive government spending and is well equipped in terms of public facilities, and has had administration in which the sustainable wildlife and marine economy are top priorities. This latter is a result of a generation of indigenous-government brawling and gradual government accommodation.[14] In other words, Inuit are not faced with an inadequate starting point or a hostile white system as might be true of, say, the Northern Territory or many indigenous parts of Queensland.

Attending that single meeting in Copenhagen in 1973 was a life-changing experience for those involved. It was inspiring to watch from the sidelines as individuals feeling overwhelmed at home in their own struggles with paternalistic local officials and contemptuous head offices suddenly discovered that far away there were other people fighting virtually identical battles. They couldn't have a sensible conversation or respectful hearing about important matters with governments in their home regions and countries, but here they could be understood perfectly by people who spoke entirely different languages (as long as someone could interpret). The conference provided earphones and interpreters, but most of the Arctic people present spoke English as a 2nd, 3rd, or 4th language. As they shared stories with each other of their frequent humiliations and rare victories, a new sense emerged that they were not simply marginal people but people doing something important in many lands at the same time. The full implications of this mutual discovery would take many years to be revealed, and are still being revealed.

Some of those present in Copenhagen — the Northern Canada Indians, and the Sami and Greenland Inuit — soon played key roles in launching the World Council of Indigenous Peoples (WCIP) which included Australian and New Zealand indigenous membership, in 1975. Then some of the same Greenland Inuit, together with Canadian and Alaskan Inuit, founded the Inuit Circumpolar Conference (ICC) in 1977.[15]

The Greenland Inuit

In Greenland, a land of scattered Inuit coastal hunting camps and small towns long quarantined from the world as a matter of Danish government policy, the wartime preventive occupation by American troops brought the full panoply of North American material life. The Inuit were intrigued,

and annoyed at being denied such things, just as they saw that their own affairs could be run from home without Denmark's colonial presence, that country being under Nazi occupation. After the war the Inuit demanded a new deal. Denmark, forced to rebuild itself, nonetheless poured material change into Greenland, as well as skilled workers to carry out the changes. The shock of so much change and the presence of thousands of lonely male workers far from home inevitably created many problems. Greenlanders are still trying to sort them out. The country was divided in a new way: there were the main towns which were heavily funded and grew quickly, and the outports and small places which remained small or were abandoned, places with a more traditional life. Today the country has about 60,000 people, 85% of whom are Inuit Greenlanders, the rest being short-term European or longer-term Danish workers who are inter-married or have a long-term commitment to Greenland.

In two generations Greenland has moved from being a large hunter-gatherer territory to a unique hybrid world where ultra-modern European buildings, technology, fashions, and household goods jar the visitor in a parka-clad society perched on a few bits of rock by the iceberg-strewn sea. Essentially the Greenland economy is based on fisheries, including shrimp, in the waters off the south-west coasts. Special features of modern Greenland are the joint Greenland/Denmark ownership and control of all natural resources with the potential revenue benefits tilted towards Greenland; and the large state economy built from the old Danish Royal Greenland trade monopoly, a vast employer. Indeed, Greenland is full of remarkable features and achievements, and its modern history is well worth study.[16]

The essence of Greenland politics since its Inuit leaders negotiated and implemented 'home rule' (self-government with more powers than, say, an Australian state) has been to balance a high living standard, social healing (after years of rapid change and Danish-Inuit miscegenation, usually leaving Inuit single mothers in Greenland), and an ecologically sustainable economy. The Greenlanders shocked the European Union (EU) by rejecting development of Greenland's uranium deposit and then by insisting on withdrawal from the EU which was seen as over-fishing Greenland's staple resource. The toughest political issues for the Greenland government — all cabinets since home rule in 1979 have been made up exclusively of Inuit — are always environmental or fisheries protection, and Inuit identity and autonomy *vis-a-vis* Europeans and European industrial society. In 1994 the Greenland premier visited Australia and added visits to the islands of Torres Strait and a Cape York Aboriginal

workshop on 'regional agreements' to his schedule, encounters where he generated much interest and gave both inspiration and sympathy to indigenous coastal peoples.[17]

The Inuit Circumpolar Conference has given Inuit in Greenland, Northern Canada, and Alaska a wider frame of reference, a vehicle for sharing ideas and experience, and for positive cooperation in projects. Inuit had been scattered and divided for centuries, but ICC has re-created an international environment-centred society sharing central social and environmental values. It has also given the 'empty Arctic' a voice, custodians, and vivid character.[18]

ICC has been a big player in world environment forums. Perhaps the most amazing moment came at the ICC assembly in Sisimiut in 1989 where most people were thrilled by the first Russian attendance. At an international 'accountability session' leading representatives from national and sub-national governments (regional premiers, national ministers, *et al.*) got up and reported to the assembled Inuit how the USA and Russia, Canada and Denmark, the Northwest Territories and Quebec and Greenland, Chukotka and Alaska, were implementing the demands and resolutions of ICC. The roles and relationships were totally reversed from those days not so long ago in 1973. Now Inuit set the agenda.

ICC took nothing for granted. Keenly aware that decisions for the Arctic were taken elsewhere, just as the Arctic's growing environmental woes come from outside the region (most notably the industrial world's effluents brought into the shallow Arctic Ocean by north-flowing ocean currents and rivers), and aware that it would take a long time before Inuit had sufficient control or influence in international affairs, they set about developing a book of policy guidelines covering everything from atom bombs to x-rays, teaching maths to treating drunks, fostering international goodwill to developing Inuit government.[19] The purpose of this 'Arctic Policy' is to help everyone active in the Arctic, whether governments or industry or others, adopt the best possible behaviour. Considering the nuclear follies of Americans in Northern Greenland and North Alaska, and the Soviets across their Arctic, and lesser fiascos in every Arctic country, all resulting from the view in national capitals that the Arctic is 'empty', this approach is understandable. Perhaps the most important sections and the ones most likely to endure scrutiny through time are those relating to ecologically sustainable development. Some Australians have also found them useful.

The ICC was itself a practical example of how to conduct international cooperation, and its ability to draw the major media organisations of its

member countries into the Arctic for its three-yearly assembly week during the dead news time of summer has meant that North Americans have become first startled and then aware of polar issues and peoples. The result of all this effort and information has been the Arctic Council, tirelessly advocated by Inuit for years so that the Canadian government made the unprecedented move of recruiting ICC president and long-time Inuit politician, Mary Simon, as the country's first Circumpolar ambassador with special responsibility to bring this new body into being. This happened in 1996, with the governments of USA and Russia joining with Canada and the five Nordic countries, together with the international associations of Inuit (4-country ICC), Sami (4-country Sami Council) and the association of Russian indigenous peoples, in a permanent structure whose very large initial focus will be the coastal and marine environment and related indigenous and non-indigenous needs and livelihoods.[20] Quite apart from the unique linking of superpower governments and indigenous peoples, and the recognition of the latter as special custodians of a region of the world newly 'discovered' by those outside it as much more than an empty and forbidding vastness, the Arctic Council includes the most politically and environmentally successful indigenous peoples, and the governments which have done most in recent decades to work with them and rewrite national and regional policies in a spirit of reconciliation or accommodation. Thus, it is likely that the Arctic Council as a forum, whether formally itself or through its spin-offs, will generate even more active precedents and set even higher standards for indigenous rights and environmental work world-wide. It will be worth watching by Australians.

The Sami of Norway, Finland and Sweden

Most Sami (the Lapps) live in Norway, *c.* 50-60,000, although no reliable figure exists. Sometimes in recent decades whole villages or townships have transformed themselves overnight from Norwegian to Sami, finally shaking off the stigma of Lappishness in a regained cultural pride. After a thousand years of interaction with the Scandinavians and Finns, there are many regional cultural hybrid outcomes and a distinct northern culture. Nevertheless, the Sami have retained cultural vitality and are seeking a new relationship with once oppressive governments. The Sami coastal villages and fjord townships of North Norway are under particular pressure, and at times strike the observer as having a dual personality. On the one hand they often stress their adherence to a unified national Norwegian political vision and society (despite the fact that a recent constitutional amendment recognises Sami as a distinct people with distinct rights including their cultural base, officially understood to include resource and land/sea rights), while on the other they put forward strong

demands of a clearly indigenous rights kind. The hinterland social opportunities personal and community living standards underwritten by the state, and high quality of infrastructure for Sami and all other residents shame those of us from Anglophone countries. It is worth noting that Norway's Sami north is interested in *Mabo,* Australian indigenous sea rights claims and coastal management, etc., and that North Norway Sami Studies scholars like Professor Terje Brantenberg have been studying the Australian experience for years.[21]

Like Australia in the past year, Norway is currently having an unpleasant native title setback. Despite earlier reports which were admired worldwide, the Sami Rights Committee, a sort of national 'royal commission' operating since 1980, has been back-peddling and confusing the scene with its new-found doubts about Sami rights. For those of us brought up with world maps clearly printing 'Lapland' across Northern Scandinavia, though we were not always sure which of the nation-states came in which order on the map, this is rather startling. After a moratorium on debate since 1981, the retirement of Prime Minister Gro Harlem Brundtland and her replacement by Mr Jagland of the same Labor party has seen furious pressure from prominent northern politicians trying to seize the backlash agenda in advance of the September 1997 national election. Many Sami feel they have painted themselves into a corner: by welcoming the developments which have brought many life improvements for all residents to the region, they now feel unable to assert an agenda which would rescue lands, reindeer herding territories, freshwater, and seas from national and regional decision-makers contemptuous of 'primitive' Sami ways.[22]

In adjacent Finland things are much worse as non-Sami try to hijack the whole Sami movement by claiming some fraction of Sami blood in order to defeat Sami rights and environment agenda by their numbers.[23] In Sweden, the defeat of Sami rights by official obfuscation has become an art form in recent years.[24] Despite leading the world for decades in commitment to indigenous and minority rights around the world, the Scandinavian capitals have apparently not understood that they cannot now reverse that approach at home without undercutting their own credibility and throwing peoples like the East Timorese, to whom they gave the recent Nobel Peace Prize, to the wolves.

On the other hand, Sami are strong internationalists, are well supplied with professionals and academics, and many of their leaders have visited and developed an affection for Australia beginning with the 1980 WCIP conference in Canberra. Their culture and society at home are strengthening, and there can be no doubt that they will play a strong role

in the future of their regions. In each of the three countries there is a nationally elected Sami Parliament organised around locales in the north. These bodies have the ongoing function to make governments and national parliaments of their countries aware of Sami interests, needs and demands. Meanwhile, the crises faced by coastal dwellers and the inland reindeer herders remain acute. The manner in which these are resolved in the months and years ahead in Norway, especially, will be important for all indigenous peoples everywhere. After all, Norway has long been a world leader in sensitive local and environmental planning, although many of the North Norway 'white shoe brigade' who dominate regional politics would happily pave the whole place if only to create some seasonal work for paving crews. Meanwhile, North Norway is one of the most beautiful land-, sea-, mountain-, and fjord-scapes on earth, a place whose ancient history revealed in many rock carvings, historical lore, and Sami religion and culture make it both haunting and captivating for any visitor.[25]

Regional Agreements and Co-Management Models

The USA and Canada draw their modern indigenous rights law and policy from the same document, the Royal Proclamation of 1763. Useful brief legal and political summaries on indigenous Canada and USA are provided by Macklem and Kickingbird.[26] On the Pacific coast, Indian peoples in both countries have been re-asserting their traditional rights in law and politics, with success, and are now leading the way in rescuing the failed coastal and marine management policies of those countries. In Canada the indigenous self-government movement of recent times has embraced environmental issues in both land and sea territories. That movement may be said to break into a *northern* and a *southern* model. The northern model is the so-called 'regional agreement',[27] whereas the southern model builds on one or more Indian bands with their limited or small reserve lands.[28] Many more possibilities are available in the northern model because development and settlement have been less intensive and extensive in the north. The story of indigenous-white relations and native title battles in Canada's Queensland-like Pacific coast province of British Columbia — battles at last won in some large part by Indians in recent court cases — is told by Tennant, while Cassidy has explored the issues and the biggest test case of British Columbia's indigenous and environmental present and future.[29]

So promising is the northern model of regional agreements that Canada's Royal Commission on Aboriginal Peoples, concluded in late 1996, has urged that it become the basis for the whole country's indigenous policy

and social renewal.[30] This is worth noting in light of the insistent trivialising in Australia of the regional agreement concept in the past couple of years. The difference, of course is that the Canadians know what the agreements are, how they work, their faults to be remedied, and their strengths to be replicated in new agreements under consideration. No-one doubts their specific problems, but the point is to overcome or work through or replace these, not to walk away from the concept of territory, environment, resource management, and self-government powers for indigenous peoples. Non-indigenous Canadians in southern Canada had a century of failed or stalemated self-government experimentation themselves from the later 18th century to the 1867 Constitution, and the northern territories have seen ongoing trial and error, by no means complete, throughout the 20th century. Perhaps Canadians are therefore more relaxed about indigenous peoples and their federal or provincial interlocutors taking a few years to find the best solutions to the unique challenges of political economy in indigenous Canada. Australia will surely waste more time seeking a one-size-fits-all solution than the organic processes of the Canadian regional approach. The Canadian processes now include more pre-planning for implementation and accompany that phase with more training and other preparation, e.g., the Nunavut story now in progress.[31]

The 'big story' coming from North America now is the co-management of territory and resources by indigenous peoples and governments. That is, governments have begun to share their enforcement and regulatory powers with indigenous peoples who contribute their greater local traditional ecological knowledge (TEK) to a joint management and decision-making regime.[32] This has been done for marine species, migrating land species, local environments, whole huge regions (e.g., through claims settlement, a.k.a. regional agreements). Among other things it greatly enhances the environmental credibility and political clout of indigenous groups involved. The James Bay and Northern Quebec Agreement (signed in 1975) and Inuvialuit Final Agreement (in 1984) have seen the most experience to date, but undoubtedly the large Nunavut agreement (legislated into national law in 1993 and now being implemented) and Nisga'a agreement-in-principle in British Columbia will be the most interesting and important to watch because of their scale and complexities.[33]

Australia itself provides some interesting precedents. It must be remembered that within Australia, there are three inhabited island territories (Cocos-Keeling, Christmas, Norfolk) each of which has a tailor-made local constitution reflecting, among other things, environment and

resource needs and cultural circumstances.[34] In light of this it is difficult to understand the reluctance among some Australian politicians and officials to accommodate indigenous islands and mainland territories with appropriate political arrangements.

Torres Strait Islanders have been pursuing a marine environment, sea rights, and fishing strategy as part of their regional effort. Saibai Island is running a Torres Strait sea claims test case in the National Native Title Tribunal. The Mabo decision has helped raise the profile of coastal and marine issues, and the work of Beckett, Sharp, and Ganter is the more valuable in that context.[35]

Various groups in Arnhem Land east of Darwin are pursuing marine strategies and sea claims. There is also work in the Kimberley. The national Coastal Zone Inquiry of the Resource Assessment Commission made significant recommendations for indigenous interests, and excellent work related to that is available. My own study overseas for that Commission was written with Queensland and Australian coasts and islands in mind.[36] A fine new book with a valuable introductory overview brings together Australasian experience with South-East Asian cases and general international reflection.[37]

Australian Policy in International Context

The public debate in Australia on indigenous policy since the federal election campaign of February 1996 has probably had no equal in any other country. It has had many negative features, but also positive elements. It has highlighted the need for a new understanding between Aboriginal and non-Aboriginal Australia. It has brought many previously silent non-Aboriginal people and institutions into the debate in a way favourable to Aborigines. And it has reminded Australians, especially through the Pauline Hanson and Sydney Olympics factors, that negative race relations threaten non-Aboriginal jobs and economy as well as humiliating Australia in the eyes of the world.

In spite of — or because of — the colonial history of European countries in the past, there is a very strong commitment in Europe to just white-indigenous relations around the world. That scrutiny is especially strong for areas where Europeans control or controlled national governments outside Europe, notably Australia, New Zealand, USA, Canada, Siberia, and, until recently, South Africa, and the Portuguese and Spanish speaking countries of Central and South America. It also extends to the conduct

of companies owned or operated by European peoples such as those logging, mining, or extracting oil in indigenous territories. During the recent months of speculation about the trade treaty between Australia and the European Union (EU), a treaty which did not proceed, there was news coverage in Europe of Aboriginal grievances. There has also been interest in Europe in the shifting positions and regular intemperate outbursts of the Queensland government in relation to native title matters such as Wik, Cape York land use, Century Zinc, the High Court, and stronger grazier rights at the expense of Aboriginal rights. The Northern Territory's 'premier' did the credibility of his bid for statehood and the full takeover of Aboriginal lands and governance little good in Europe with his recent verbal abuse of the head of the Northern Land Council.[38]

Some Aboriginal leaders in Australia have already spoken of the need for international support in the face of negative policies at home. This has drawn angry responses from some white politicians. However, such politicians might better ask what else can Aborigines do? They are already the poorest and sickest people in the country, and the government changes the law when the courts uphold their rights and interests. If Aborigines cannot find justice at home, they will have to seek the help of whomever they can.

Australia is drifting away from the consensus of 'first world' countries on accommodating indigenous rights and cultural autonomy within the nation-state, a consensus which is presumably what Australians mean by the word Reconciliation. At the top, a Prime Minister who is known to be uncomfortable with social and cultural pluralism (that being a major subject of the book about him by his former chief of staff, Henderson)[39] heads a government which seems to view anything which happened between 1983 and March 1996 not as the forward movement of the world and time but as impertinences contrived by Labor cabinets in Canberra. Such paranoia is dangerous for any politician and helped cripple the last three Conservative governments in Canada from the outset. The irony is that overseas, many of the major steps forward in indigenous rights recognition and self-government have come under Right and Centre governments and politicians. The idea that indigenous peoples are so far outside the world of public decency that only left radical groups care about them seems to be a peculiarly Australian outlook. If the Mabo decision ended *terra nullius* in law, *terra nullius* seems to remain on the mental map of many Australians.

The rhetorical attacks in Australia since February 1996 on Aboriginal leaders, institutions, court-recognised rights, and political imperatives,

and on the rights of Aborigines to exist and function as political communities at all, will undoubtedly be viewed in the future as a shameful episode in Australian history. In terms of practical politics, the most unfortunate part for Aborigines has been that a new federal government has had the biggest issues to tackle — native title and indigenous funding — before it has had time to learn the realities of indigenous Australia. It has often seemed that the 'principles' driving the Howard government in indigenous policy have been facile one-liners heard in the pub rather than anything based on accurate information, experience, or analysis. Governments which do foolish things in their early days can mellow, or even become progressive, none more than the Trudeau governments in Canada, 1968-84. Even a rigorous thinker and constitutional expert like Canada's Pierre Trudeau presided over the development of regional and local indigenous self-government and regional agreements as prime minister while making occasional fierce statements against all forms of ethnically specific political structures.

It is important, therefore, that there is now a thorough and thought provoking collection of studies of ATSIC's role and prospects edited by Sullivan, including an excellent summing up by the editor on Australian policy in international context.[40] These studies analyse the difficulties which ATSIC and indigenous peoples working through ATSIC face to achieve good outcomes, and highlight the almost impossible paradoxes ATSIC is expected to overcome in its daily work.

What seems more broadly lacking in Australia is a coherent or workable national policy or set of general principles to guide indigenous policy. There is no excuse for this. In 1994-95, the work on an 'indigenous social justice package' began with an issues paper and, after two rounds of hearings around the country plus intense workshops and seminars, three overlapping reports were issued.[41] Clearly visible in these reports is a way forward — probably the only possible way forward. The national government today apparently sees basic social programs for indigenous peoples as the sole way to go, unaware that the directions of the Hawke-Keating government were not so much ideologically driven as merely a sensible response to the failure of precisely such social programs over many years.

Australia's national, state, and territory governments are now trying to impose an old line disguised as a new line in indigenous policy, that indigenous peoples are merely social unfortunates who have failed in the white man's system and require health, education, welfare, and job programs to fit in. Quite apart from moral and ideological quibbles with

this line, in practice it has not worked anywhere, and its failure, rather than any political adventurism (of the type Prime Minister Howard inaccurately ascribes to his predecessors Hawke and Keating), has been the motive for 'first world' countries to move successfully to a 'rights and recognition' approach, however much in hindsight they may claim noble ideals as the motive.

The work on the indigenous social justice package should not be forgotten. It remains a project unique in the world: national policy development carried out by indigenous leaders and organisations. What is more, that project arrived at a consensus. Its conclusions were practical and moderate, and the third of the three reports, Mick Dodson's, provides readers with a 'virtual' journey through the new world of political reform. International experience shows that the main lines of that approach are workable for indigenous communities and peoples in Australia. It may also be the only approach to which indigenous peoples are likely to commit their political energies over the long-term. In 'first world' governments overseas, as well as courts and politico-administrative reform processes, and among Liberal and conservative parties no less than Labor, it has been recognised implicitly or explicitly that particular accommodations in national structures are required for indigenous communities to fit comfortably into contemporary nation-states. This is the small price for nation-states who are prepared to admit indigenous peoples to genuine citizenship and participation in national society. That is not a special privilege, but the ending of marginal and disadvantaged status which was long assuaged by social spending — spending with small results for a few, unintended results for many, and no great benefit for most.

Despite the many difficulties faced by indigenous peoples in Queensland and Australia with a recalcitrant public and governments, many of the circumstances today and the many precedents now available from elsewhere provide a more favourable climate than existed for indigenous peoples abroad over the past 30 years, years in which they won many crucial battles. There is no reason for indigenous people to accept the fleeting notions of uninterested new governments engaged in scoring points off their political rivals or tapping current public xenophobia in their statements on indigenous affairs, and every reason to adhere to a more lasting, workable, and acceptable political agenda such as that outlined in the indigenous social justice exercises of 1994-95. Indigenous peoples in Queensland, the rest of Australia, and the wider world have everything to gain from purposeful and tenacious work to achieve their environmental, social, and political goals regardless of short-term negative responses and policies by governments. All the overseas successes have

shown indigenous organisation and purpose remaining steadfast through various changes of government, policy, and even regime. As Aboriginal spokesman and lawyer Noel Pearson said of the federal government on the last morning of the Australian Reconciliation Convention, 'They are only the government of the day; they are not God!'[42] Essentially, indigenous politics today requires the educating by indigenous peoples of governments and the wider public in a new approach to the environment and politics, and the negotiation of new legally-binding arrangements to secure indigenous territory, environment, and communities.

Learning from Others

Environmental protection and ecologically sustainable development are world movements based on knowledge, information-sharing, and non-government 'people power' and have become the most important vehicles for recruiting non-indigenous public and political support domestically and internationally to indigenous social, cultural, economic, and political agendas. Indigenous politics and indigenous environmental concerns are usually so intertwined that environment politics provide a natural context for pursuing indigenous goals. It is no accident that the focal points of government-indigenous conflict usually involve such situations, e.g., mining in Australia, pollution of marine and fresh waters in Australia, oil and gas projects on and off shore in the Circumpolar Arctic, hydro-electric power projects in Canada and Scandinavia, marine transport in sensitive areas like the Great Barrier Reef-Torres Strait and ice-covered Arctic waters, disposal of chemical and radioactive materials and wastes in Kakadu, northern North America, and northern Eurasia, etc. The only satisfactory way to understand other situations is to visit them. One must talk to the political practitioners, the critics, the primary producers, the officials, the old, the young, the educators, and the national or sub-national government authorities which claim the region in question.

Literature surveys and atomised analyses are interesting, but not always useful out of context. It may not matter very much whether one approaches these issues from environmental, or economic, or social, or medical, or legal, or political, or constitutional perspectives, or which sort of issues triggers local or regional indigenous political mobilisation. Indigenous realities are whole, and whatever thread one may follow into the circle, all others quickly come into play. One finds oneself dealing with a whole human society, even if only a ghost of its former self.

Many observers among politicians and officials, the media, and scholars look at, e.g., indigenous 'regional agreements' and other community or regional situations overseas as finite and fixed, as clear and firm. Or they try to isolate some part and compare it with other cases. This is almost futile. The idea that a single static moment or document is meaningful is all wrong. Friends of mine from Canada have come away shaking their heads from meetings with Canberra officials who wanted to master regional agreements as a simple plan at a single meeting, and then turn around and enact an Australian version. Every situation at any given moment is a complex of inter-related parts, a whole package, a bundle of factors and aspects which go to make up an emerging ethno-region, with no part isolated from another. Furthermore, these things mature as a long process through time, with any given document or agreement no more than one stop along the way, opening the way for more possibilities and marking the maturation of some. Every indigenous community and situation has something to teach others; no indigenous group or even indigenous government has anything like 'all the answers'. The more knowledge and confidence indigenous communities have, the less they will be prepared to be treated as second-class citizens.

All indigenous community and regional situations should be approached positively and respectfully. Every indigenous people has similar aims, so instead of trying to show off, or prove how radical one is, or 'more advanced', it is best to learn in an attitude of openness and innocence. Indeed, one of the saddest aspects of world indigenous experience is that some leaders feel that they are self-sufficient in knowledge and available options, with no more to learn. Such an attitude is itself a sign of ignorance and accumulated disadvantage, of course.

Governments usually discourage broad networking of indigenous peoples because they don't understand its value, or because they *do* understand its value — that is, by learning more about the possibilities in government-indigenous relations, indigenous communities at home may become harder to manage, to 'keep in their place'.

As Australia's national Aboriginal Social Justice Commissioner, Mick Dodson, has said,

> *International contact is perhaps the most under-used of the major resources of Indigenous peoples in the world today. It is also under-valued and, even when available, little used by officialdom. This double failure is a principal reason why Australia has had so much catching up to do in social attitudes and public policy in recent years.*

The time has come for Australia to become a permanent member of the international Indigenous world... We have everything to gain by sharing ideas and inspiration with Indigenous peoples abroad... The pressing priority is to gather inspiration, information, and precedents from overseas experience to help develop negotiating positions, options, and policy in Australia.[43]

Notes

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Exploring Alternatives

*Vincent Martin**

We're not into Native Title. We have faded away from that from day one. That's another long story, but we have come to an agreement with the Quandamooka Land Council not to be in Native Title.

The other alternative is, for my people to go into some sort of business enterprise for self sufficiency in the long run, for our future. Mining companies may not be here in the future. I don't see tourism as being the whole answer to this island, that will only be some of the answer. If there is no employment in a few years time, we will go back to what it was fifty years ago. There definitely weren't many blacks on this island, they left for the simple reason there was no work here. And I don't think we would like to see a repeat of that, but it could happen again. We are only five hundred here on this island. There's thousands over there [on the mainland] of our people, and they are gradually coming back. And they are coming back to just sit around and do nothing, because we have got nothing for them. We have got aims and objectives, but we've still got nothing for them.

So Noonuccal-Ngugis are hoping to get some sort of base established. We have been going five years and it's all been worked out of our own pockets. We don't get funding, we get nothing. But we decided this year to take a gamble, take the plunge and go out and do something. I can't say exactly what that is, because we hit brick walls. I have asked for help from a few people on the island and on the mainland, government agencies and the mining companies too, if you like. We have never asked for money from anyone, and we still haven't. At the moment we have got a chance of getting something up and running with the blessing of the Quandamooka Land Council, and I hope that's forthcoming. If it not it doesn't matter, we will still go ahead. There is a lot of dissension on the island here among our own people. Hopefully it will go away.

We are three different tribes. It will always stay that way, until we get one common denominator, and that's the land, sorted out, then we can get on with our business. Until then, we've got a long way to go. Finally I would like to say that I am black and I'm proud of my Aboriginal

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* Vincent Martin is a member of the Nunukal-Ngugi Land Council.

history. I really can't talk on anything more, but I'm willing to answer some questions.

(Question from audience about Aboriginal culture before white people came to Australia.)

Well, we were brought up to share, no matter what it was. And that's still the custom these days. You can put modern life into all those changing attitudes. Some people want to go back to the old ways, some want to go ahead. It's spreading the culture in certain ways. But you'll find the majority of these people on this island have never really lost their culture, it's just done a different way. That's the only difference. We use a boat to do things. We don't use a gun any more. We're not allowed to do that. But there are a lot of things that we still do. As for being a very happy family, that's true. It's always been the case.

(Question from audience about mediation.)

I think that as far as everyone is concerned, mediation is all right. The people in my group have no problems with it.