A rather dubious title for a discussion on Native Title, but it is one that continues to ring in my ears after it was presented to Traditional Owners by the Victorian Government, in its current ‘Native Title Settlement Framework Agreement’ consultations, October, 2009. A similar ring, I must say to that which was brought home to me as a native title holder in the historic *Yorta Yorta Native Title Claim* (1994-2006). Most of the resources for our case were syphoned off by what became the bourgeoning ‘Native Title Industry’, a gravy train of lawyers and experts who quickly emerged from the *Mabo* decision, 1992. Only a small portion of the substantive funds allocated to assist native title holders in mounting their claims ever got to the Native Title holders while the majority estimated to be at least 80% is said to have feathered the nest of members of the industry. Let’s take the 80/20 equation further.

It is something that continues to permeate itself though Indigenous Affairs generally and is said to be one of the contributing factors to the widening gap in Indigenous socio-economic status. The extent to which our affairs are increasingly dominated by non Indigenous interests, one of the key findings of the Black Deaths in Custody Royal Commission, almost two decades ago, needs to be factored into the 80-20 equation and the increased level of Indigenous
disadvantage. Since the delivery of the apology, 2008, the current ‘Indigenous Disadvantage Report’ of Reconciliation Australia, 2009, and the Productivity Commission Report, 2009 found that across virtually all indicators there are still wide gaps between Indigenous and other Australians’ and in almost all cases ‘the gaps’ have in fact increased as mainstream economic prosperity has accelerated away from that of Aboriginal Australia’ (Formal Apology made by Prime Minister Kevin Rudd, 13 February, 2008; Age, 9, October, 2009; Productivity Commission (2009) Overcoming Indigenous Disadvantage: Key Indicators 2009. Canberra Productivity Commission).


Returning to how the 80-20 equation works in Native Title, it goes something like this:

Out of the $37.5 million dollars allocated for the resolution of native title in Victoria only $7.2 million (20%) flows to Traditional Owners to mount their claims and to organise their communities to participate in the gruelling and costly native title process. Take native title holders out of the equation as it is often said and the industry would be out of business. Another view held by many, of those who have attempted native title, is that it may be in the interests of representatives of the lucrative native title industry, who stand to prosper from the native title holders, to prolong native title proceedings rather than to seek their resolution. Indeed it was confirmed during the consultations on the new Settlement Framework that ‘claims take too long to resolve’. On average they can take up to 10 years from filing the claim to its resolution’ and native title costs the State approximately $5.4 million per year (Consultations on Native Title Framework Agreement, Barmah, 10 October, 2009).

Having defined how the 80-20 equation works in native title, it is perhaps the main reason why the Victorian Government is seeking an alternative pathway to achieving ‘real and genuine land justice’ outcomes through its ‘Native Title Settlement Framework Agreement’. Indeed the Attorney General, Rob Hulls sums it up nicely when he said that “Business will only be finished …when the
legacies of dispossession and assimilation, of racism and disadvantage, are dismantled on every front. The possibilities of genuine land justice are one such front”. These are fine sentiments that will hopefully be delivered to the Yorta Yorta on the northern front (R. Hulls. Attorney General of Victoria, AIATSIS Native Title Conference, 2009. [http://ntru.aiatsis.gov.au/conf2009/papers/](http://ntru.aiatsis.gov.au/conf2009/papers/)

The Native Title Settlement Framework Agreement arose out of a package of land justice and other measurers of empowerment for Traditional Owners in Victoria that was presented by the Land Justice Group as an alternative to the native title process to deal with the current rate of native title claims which according to government advise could take up to ‘55 years to finalise’ (Consultations on Native Title Framework Agreement, Barmah, 10 October, 2009). Whether the new approach to land justice delivers fairer and just outcomes for Victoria’s Traditional Owners, and removes the burden of the industry that native title holders have had to carry, and continues to be dominated by those eager to exploit native title holders to feather their own nests, will be closely watched as the new Native Title Settlement Framework takes its shape and form.

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