




## **'Balancing the Scales of Indigenous Land Just, Victoria, 2006'**

**“Let me first observe the appropriate Indigenous protocols by recognising the traditional owners of the lands on which this particular event is taking place today”, are words that have become common practice in Indigenous affairs etiquette today. Whether words like these are purely symbolic or token gestures, used by government officials to cover over and to ignore the rather dismal picture of Indigenous land justice in Victoria requires deeper analysis. The Indigenous solidarity protest on the lawns of Government House during the Commonwealth Games has kept the issue of land justice on the front of the unfinished business agenda.**

**This paper examines the Victorian Governments shameful legacy of Indigenous land justice, in 21<sup>st</sup> Century Victoria, and challenges its lack of political will to deal with the matter in a fair and just manner.**

**The path to Indigenous land justice in Victoria has been a hard and hollow one and the returns have been miniscule. In 2006 the status of Indigenous land justice in Victoria is one that can be indicated with a dot on the map. Indigenous Victorians have been returned the derisory amount of less than a half of one percent of their ancestral lands. Up until the late 1990s the amount of land held was 0.014 percent (100<sup>th</sup> of 1%), which has increased marginally in 2006, but the overall amount is still less than a half of one percent-see table below.**

STATUS OF INDIGENOUS LAND JUSTICE IN VICTORIA, 2006			
State	% of Land Held	Nature of Title	Land Rights Legislation-Comm/State
VIC	0.014	Inalienable freehold  Freehold subject to conditions that land be used for community cultural and burial purposes.	<i>Aboriginal Land Act 1970</i> (Lake Tyers-Framlingham) (Vic) <i>Aboriginal Land (Lake Condah and Framlingham Forest) Act 1987</i> (Cwth) <i>Aboriginal Land Fund Commission 1974</i> (Cwth)  <i>Aboriginal Land Rights (Aborigines Advancement League Watts St Northcote) Act 1982</i> (Vic) <i>Aboriginal Land (Northcote Land) Act 1989</i> (Vic) <i>Aboriginal Land Act 1991</i> (Vic) (return of cemeteries at Coranderrk, Ebenezer, Ramhayuck <i>Aboriginal Land (Manatunga Land) Act 1992</i> (Vic) Transfer of Land at Healesville by Commonwealth and purchase of land at Coranderrk by Indigenous Land Fund, 1998.
			
<p><b>Note:</b> There have been some additional land purchases and hand backs since 1998, but the amount of land held as freehold by traditional owners is STILL less than a half of one percent - a dot on the map-see Strategy for Aboriginal Managed Lands in Victoria, 24th September 2003.  <a href="http://home.vicnet.net.au/~samliv/">http://home.vicnet.net.au/~samliv/</a></p>			

This does not include the ‘consent agreement’ reached by the claimants in the Mallee-Wimmera region, 2005, which the court states are ‘not a grant of native title’. The agreement offers no ownership or exclusive rights over land and waters and provides for no more say over its management than settler interests. The claimants traditional based rights to occupy possess and enjoy the two percent of their claim area along the Wimmera River have been normalized to the extent that their inherent rights to continue to camp, fish, and enjoy the land as their ancestors have done, are treated the same as other Victorians. In exercising these rights they also will be required to comply with the imported Anglo laws and regulations that govern these activities. Should there be any inconsistency between the native title rights of the claimants and the rights of other license holders, the latter’s rights prevail.

The question of whether this is land justice or continued dispossession by stealth is one of critical importance.

The nature of the title and the rights to land returned to Victoria’s original owners by way of Government grants, transfers and the purchase of land is worth noting.

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

The lack of progress towards land justice in Victoria made by the current Brack's Labor government offers little joy to Indigenous Victorians following the expressions of regret made by the last two outgoing Labor premiers, John Cain and Joan Kirner, during the reconciliation process. Regrets for not being able to do enough for Indigenous Victorians during their period of office are fine sentiments, but their failure to deliver is inevitably our loss. Feelings of regret may well be exacerbated for the Brack's government which unlike its predecessors has the numbers and the power to deliver land justice to Indigenous Victorians on the basis of fair and just principles. This should also include the allocation of substantive resources to allow for land and cultural development. Added to this rather embarrassing track record is the fact that Victoria is the only state apart from Western Australia that has not introduced a formal state-wide land claims process for Indigenous claimants. All other states and territories including Tasmania, (*Aboriginal Lands Act 1995 (Tas)*), have introduced land claims processes that allow Indigenous claimants to achieve some degree of land justice on the basis of traditional and historic connections and in light of the need for land. The handback of Cape Barron Island and Clark Island, to Traditional Owners in Tasmania is an example of what can be achieved through a State land claims process.

John Cain's commitments to land justice in the early 1980s had some success but his attempts to introduce a state land claims process, the *Aboriginal Land Claims Bill, 1983*, failed, because he did not have the numbers in the upper house - a privilege that the current Government holds. Whether this Government is morally and politically committed to rectifying the legacy of dispossession remains at the front of the unfinished business agenda. The Victorian Minister for Aboriginal Affairs, Gavin Jennings and the Victorian Attorney - General, Rob Hulls seem committed to

**this process. Minister Jennings, ability to influence land justice issues through his party's whole of government approach to Indigenous issues, however has chosen to prioritise changes to existing Aboriginal Cultural Heritage legislation, 2005.**

**The Cultural Heritage draft document, 2005 and its attempts to undermine the rights of ownership and control of cultural heritage by Indigenous Victorians, has already met with strong opposition from Traditional Owners. Minister Jennings ability to achieve greater positive social, cultural and economic outcomes for Indigenous Victorians, is further exemplified in a radio interview in which he said that 'he is prepared to roll up his sleeves and get a bit of dirt on his hands' (Interview 3CR Radio, 2 August, 2005). An obvious step for commitments like these to be walked into political realities, would be to set up a land claims process that will allow for a lot more dirt than that which has currently been returned to Victorians traditional owners. Taking away and or diminishing any of those hard fought cultural heritage reforms that Kooris achieved in the 1980s will produce negative rather than positive outcomes for Indigenous Victorians.**

**Rob Hulls seems to go much further by acknowledging the legacy of dispossession. In his talk at the announcement of the Wimmera determination, December 2005, Hulls admitted that 'We are complicit in this atrocity, unless we can return autonomy and integrity to our relationships and reunite grieving custodians with the home lands they so love'. Fine sentiments again, but matching the rhetoric with the political action required to rectify complicity and to alleviate feelings of grief are the moral and political challenges that confront the Government and Indigenous claimants today.**

**Profile:**

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