

Land Justice for a Treaty Now Victoria



The arrival of the latest AIATSIS (Australian Institute of Aboriginal and Torres Strait Islander Studies) Newsletter before Christmas 2019 is both timely and enlightening. Its 'Native Title Snapshot' page gives an update on the amount of land under Native Title in Victoria. Keep in mind that we are nearly three decades down the track from when the High Court handed down its historic Mabo decision in 1992, which recognised the continued existence of native title and overturned the legal fiction of terra nullius. It can be said that the wheels turn slow in Indigenous affairs, and they don't get much slower than the delivery of Land Justice that's for sure (AIATSIS Native Title Newsletter, 2019, p.13).

It is very timely as Victoria's Treaty Assembly is about to begin its journey of discussing what will be included in the Treaty. And of course the question of whether land justice is uppermost in their thinking of the Treaty equation is an important issue.

Going by the two graphic images presented on the amount of land that has been returned before and after Native Title, there is not much to rave about at all. While patience has been a virtue for those who have labored tenaciously in the struggle for their just rights, there have been some rewards along the way, but the overall returns have been miniscule and disheartening to say the least. As can be seen by the calculations in both graphs, the amount of land returned to Traditional Owners in Victoria out of the total amount of the original lands held amounts to 0.014%. This is merely a dot on the map of the traditional lands and resources occupied, owned, and enjoyed by its traditional and sovereign owners since time immemorial. That was the status of land justice in Victoria at 2006 delivered not by overarching State Land Rights laws as it is in

other States but by separate pieces of legislations as indicated in the graph of Victorian Land Justice.

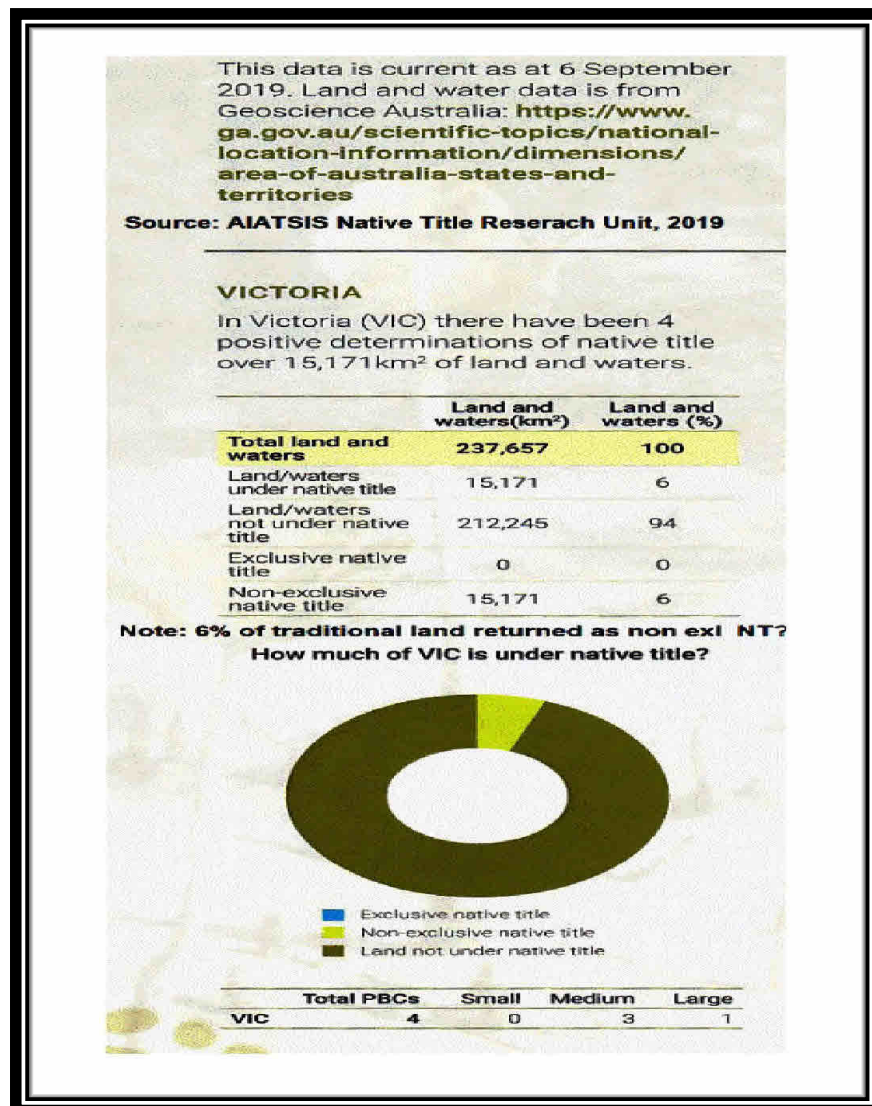
The Victorian Government dragged the chain badly in its enactment of a formal Land Claims process for claimants under statutory land rights legislation. Most states (NT, NSW, SA, and WA) had introduced legislation designed to transfer and grant land to Indigenous communities. Even in the absence of state-wide legislation, State governments like Victoria have powers to grant land to Indigenous people on the basis of traditional connections, and for the purpose of community development and cultural maintenance. While statutory laws gave Indigenous communities some control over the land the ultimate control is vested in the Crown and the question of common law rights was a matter that was left to the Native Title Act,1993 – see [Balancing the Scales of Land Justice, Victoria, 2006](#).

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>Note: 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. http://home.vicnet.net.au/~samliv/</p>			

Whether the attempt to redress the absence of a structure for land justice reparation and the delivery of inalienable freehold title is possible through the Victorian Traditional Owner Settlement Act 2010, is another question.

Returning to the import of Native Title, the amount of land returned to Traditional owners not as freehold but as 'non-exclusive' Native Title is indicated in the AIATSIS snapshot below. The estimates for Victoria is 6% of the 94% total Victorian land mass. Slightly higher in the broader context but a lesser degree of title and control to that of inalienable and conditional freehold. Either way both classifications of land, whether its freehold or non-exclusive native title, hold far less status than that of the original and oldest ownership under customary law principles.

Land under Native Title in Victoria, 2019



If we factor this analysis into the Land Rights equation we can draw some conclusions on what's actually been delivered given the investment in the Native Title industry since Mabo. Factoring the input of resources for output of land justice however leaves us with some rather grim realities. Just how much money has gone into the Native Title Industry via its Native Title Services and the dependant industries that quickly emerged on the backs of the Native Title holders? It must be said that it created an economic enterprise of its own making. Getting to the bottom of the amount of money invested in the burgeoning industry for such dismal returns remains a work in progress. From a Traditional Owner perspective however, it is an important question that requires accountability, and scrutiny for expenditure of moneys allocated for Native Title holders to pursue land justice claims.

With the handing down of the Mabo decision our hopes were raised somewhat that Native Title would deliver fair and just outcomes. The watered down version of 'non exclusive rights' from its original status however, is a shame job on any Government's credibility. Moreover, the way the original and oldest ownership rights have been dwindled away by the Native Title process is discriminatory. Indeed it is an act of sacrilege on our ancestor's cultural integrity. They would be turning in their graves to see what's been allowed to happen to the sacred lands and resources belonging to one of the oldest living surviving cultures in the world.

A Pandora's Box has certainly been opened with the appalling results of Land Justice in Victoria on the eve of the Treaty Assemblies induction. The question of where land justice sits with the Treaty Assembly and their deliberations on behalf of the Treaty beneficiaries is ever present. Will Land Rights get its call as a priority rights matter on the Treaty agenda? We shall see.

Ref: Native Title Newsletter, Issue 2/2019 Native Title Research Unit,
AIATSIS.P.13.

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