

Submission to the Yoorrook Justice Commission: Land, Sky & Waters

Submission title: Reflections on Indigenous land injustice

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- My name is Nikki Moodie, I am a queer Gomeroid (*Kamilaroi/Gamilaraay*) woman, born to a Gomeroid mother on Gomeroid land. I was raised knowing who I am and who my families are, and with a deep commitment to education and justice for Aboriginal people.
- I am an educator and a researcher, with specialties in Indigenous higher education, leadership, governance and public policy.
- I have lived in Naarm since 2010, and whilst I am not from here and have no family connections here, I make this submission on the basis of my experience and knowledge as an Aboriginal woman and as an Aboriginal academic who has served as a member Yoorrook's Expert Advisory Committee since 2021.
- My submission is in four parts:
 - First, a personal narrative reflection about how I understand land injustice.
 - Second, a historical overview of land injustice.
 - Third, a discussion of accountabilities that might emerge from land justice.
 - A conclusion noting the benefits of Indigenous land justice for all Victorians.

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This submission was written on the unceded lands of Wurundjeri People of the Kulin Nation.

Note. The text submitted here is in narrative form, articulates my personal positioning and reflections, and does not include references or citations because this submission was not written as a scholarly work intended for academic peer-review. It is important however, to acknowledge that many of the ideas presented here are my interpretations, however imperfect, of decades of scholarship written into the world by Indigenous and non-Indigenous thinkers dedicated to First Nations rights, including:

- Aunty Mary Graham and Aileen Moreton-Robinson, and their various works on understanding the complexity of different types of sovereignty.
- Daryle Rigney, who writes about 'speaking lawfully as Country' and 'acting lawfully as Country'.
- Leanne Betasamosake Simpson and Glen Coulthard, and their many works on Indigenous resurgence.
- Stephen Cornell, Miriam Jorgensen and others, and their many works in support of Indigenous nationhood, governance and economic development.
- Patrick Wolfe and Lorenzo Veracini, and their works analysing settler colonialism, genocide and the logic of elimination.

Reflections on land injustice

They came for the land. We were just in the way.

We're still in the way. They still want our land.

Our societies were complex and thriving. We had legal systems, economic and political systems. We had language, education, healthcare and knowledge systems. All these systems come from the land and exist to ensure our societies continued to thrive on this dry, fragile continent.

They wanted our land. So first they tried to trick us out of it. Then they tried to physically destroy us and remove us from our land. They stopped us from speaking our languages that come from the land. Our words contain the knowledge of how to care for land, how to teach the next generation their responsibilities to people and land. They tried to stop us speaking our knowledge of land.

They separated us from our children, parents, families and communities. They divided us from each other so we couldn't teach our children how to care for their land. They divided us from each other to make it harder to tell each other stories of our land and ancestors. They divided us from each other to keep us weak, separated, and dependent. They divided us from each other to make it harder to keep the land and ourselves strong. They stopped us going home.

They wanted our land to grow their food, build their houses, their roads and their ports. They wanted our water to irrigate their crops, to fish for food, drill for gas and nourish their cities. They told themselves we weren't using it anyway. They told us and themselves we were just in the way.

We weren't in the way. We were at home.

When they couldn't physically destroy us, and we survived massacre, dispossession and poverty, they told us we had lost too much. They wanted to know how many of us there were, so they could count us. They wanted to count us to prove we were vanishing. Then they told us we were no longer Indigenous enough to be counted and not Indigenous enough to qualify for help. That we were beyond help. They told us we were too damaged to have rights. They told us there weren't enough of us to make a difference. That we were making too much of a fuss.

They told us that our rights to land couldn't exist at the same time as theirs. So, after the massacres, dispossession, child removal, family breakup, imprisonment, and punishment for speaking language and practicing culture, they told us that we could only have some rights to land if all those injustices somehow hadn't affected us. They told us whatever rights we did have were cultural, not political or economic or about land, and only existed if we hadn't been damaged by everything they had done.

They took our land and tried to destroy our families, language groups and nations. When we speak together, from our places our strength, to keep the land and our people healthy, we keep fighting the injustices that we have survived and for the right to keep our land and our people healthy.

We speak for Country. We are Country. We are the land, we act as land and for land.

Settler colonialism is a shapeshifter that is hungry for one thing—land. It will change form and pretend to be and do many things. But it will do anything it can to stop us acting as Country, acting for Country, from acting together as our rightful Nations. It will always want Aboriginal land, unless we find a rightful, just way to walk together.

Compensation is due for the damage the State—and the Crown—has caused to our ability to act as Nations, for the violation of our rights to land, for stopping us acting as our rightful Nations to care for land, and it must return to us the land we need to heal our people and heal Country. The State might walk with us, through the land, to a place where all Victorians have a place around the

fire, where we sit in recognition of the past, but with a vision of the future where Indigenous rights are understood and understood to benefit all Victorians in a more just partnership and a more plural democracy.

The fullest expression of Indigenous rights benefits not just First Nations.

Our knowledges of land, sky and water are essential to mitigate against climate change.

Our knowledges of land show that there are healthier, more profitable and more sustainable opportunities for development that benefit all Victorians.

Unlike Queensland and Western Australia, in Victoria wealth is not dug out of the ground, it is built on it. But in Victoria, culture and tourism are also integral to small businesses, economic development and employment, and there are opportunities afforded to all Victorians in this economy by a just and progressive recognition of Indigenous rights.

The cost to the state of Indigenous ill-health, poor educational achievement and imprisonment is immense. When Indigenous people have a connection to Country, culturally appropriate and land-based healthcare and education, and an understanding that Indigenous people are not only subject to government law, but also to Indigenous lore that comes from land, we are less of a burden on the state. When non-Indigenous people are guided by us to learn about Country, and how to treat the land and each other, they do not become Indigenous, but they do learn more sustainable, ethical, accountable ways of being in the world. They learn how to sit at the table with us, to share and be here in a way that connects us all together, in a place where we all belong.

All First Nations around the world are purposeful Peoples. Our purpose is to care for the land, and to teach the next generation about how to care for Country by caring for the stories and languages that come from land. Everything we are and all our pasts and futures come from land. We have an obligation to care for Country so that our languages, law/lore, lives and livelihoods continue to come from land, to heal ourselves and to heal Country. Our right to do so is being denied, and our rights will continue to be denied unless we walk new ways forward together.

Our sovereignties can co-exist. It always was and always will be Aboriginal land, but a younger, newer sovereignty is here to stay. There is a way these complex sovereignties can strengthen each other and mature into a more developed, plural, safer and more stable democracy, but it must proceed firstly from the fullest recognition of Indigenous rights.

Historical Context

When the British Empire expanded around the world, it created many different types of colonies. Some colonies were set up as companies, some were governed from England, and some were more independent. The colony of Australia, after being claimed as *terra nullius* by the British, was set up as the more independent type of colony, initially for the purpose of imprisoning convicts. For 80 years Australia received prisoners who were then often given land on their release.

All colonies, regardless of the type of administration the British set up, existed to make the empire wealthier and more powerful. All colonies have a different story tell, but all colonies have a story to tell about how they were used to make the British Empire richer.

In Australia, the only thing the British Empire came for was land.

In Victoria, the only thing settlers came for was land.

Of all the different types of colonialism, the type of colony that requires land for farms, plantations, mines or fisheries to make money, also usually requires that the First Nations on those lands are debilitated to a point they can't effectively assert their rights anymore.

Colonies that were created before and after Australia used similar kinds of strategies to remove, displace or damage the societies that existed before the Empire arrived. But by the time the British arrived in Australia, and in Victoria especially, the military strategies, company structures, legislation and policy required to displace First Nations had been refined with particular brutality in the Americas. After the colonisation of Australia, the international community and many British citizens became concerned about the way the British treated Indigenous peoples. This is one of the many reasons why the British developed a treaty in their colonisation of Aotearoa New Zealand. Both before and after the colonisation of Australia, the relationship between First Nations and the Empire was managed differently in other places. The type, scale and intensity of violence with which Australia was colonised—largely by rum-soaked freed criminals, the rabble that follow on the heels of any military front (but authorised and enabled by the state for the sole purpose of land acquisition)—didn't happen the same way either before or after colonisation here.

Treaties and relationships between imperial powers and First Nations happened both before and after the colonisation of Australia in other places. The doctrine of *terra nullius* allowed the British Empire to claim either that there weren't people here to make treaties with, or that the societies here were somehow incapable of making treaties. *Terra nullius* was overturned in 1992, after being in legislative effect since 1835, finally recognising that First Nations people in Australia did indeed have prior occupation of the land now called Australia. Usually, a treaty would have been made. In other places, before and after, treaties *were* made.

When scholars and historians examine the colonisation of Australia generally and Victoria specifically, one motive explains the denial of Indigenous peoples' rights and the scale of injustice here: access to land.

The primary cause of all Historical Systemic Injustice and Ongoing Systemic Injustice towards Indigenous people is colonial land theft. All historical injustice stems from the State's possession of Indigenous land or authorisation of settlers to take possession of land, and all ongoing injustice stems from the State's refusal to allow First Nations rights to land to be exercised by First Nations land-based groups.

The primary motive for genocide is not racism but the destruction of a group. It is groups that are the foundational units of any society, and groups that assert collective rights. In Australia, First Nations societies are made up of groups of people connected by language, institutions, politics, economics and culture but defined by their connection to land. Indigenous societies developed

from land-based rules to manage ecological fragility and social relations. The purpose of genocide here was not simply access to land, but the destruction of land-based groups, their knowledges, languages, rules for living and capacity to assert their rights to land, in order to grant settlers access to land.

Genocide is the vehicle, not the destination. Injustice is the vehicle, not the destination. Racism is the vehicle, not the destination. The purpose of genocide in Australia is the destruction of functional Indigenous polities that can assert rights over their Estates. The destination is colonial possession of land, and either, the refusal to consider—or perpetual diminishment of the collective capacity of—First Nations to assert our rights to land.

Land injustice therefore occurs:

- Whenever the state prevents First Nations acting as land-based polities,
- Whenever the state prevents the reconnection of individual Indigenous people to First Nations land-based polities,
- Whenever the state does not act to support dispute resolution mechanisms that enable the good governance of First Nations land-based polities, and the collective expression of their Indigenous-specific rights as coherent, capable, land-based governing entities with jurisdiction over their own affairs,
- Whenever governments, companies, religious institutions, individuals or entities have enabled or benefitted from the diminishment of the Indigenous Estate,
- Whenever governments, companies, religious institutions, individuals or entities have enabled or benefitted from the diminishment of the collective capacity of First Nations to assert their collective rights over their Estates,
- Whenever collective First Nations rights to land, or to their Estates, are diminished, made conditional, restricted, obstructed, subject to caveats, circumscribed or impeded in any way,
- Whenever an Indigenous Nation does not have a land-base from which they can develop the fullest expression of their self-determining rights (for example, as per UNDRIP),
- Whenever the state creates new policy or legislation that diminishes First Nations collective rights to land (for example, as described in UNDRIP),
- Whenever governance and decision-making institutions (e.g. agencies, organisations, representative structures) do not have accountability to a land-based polity. For example, when it becomes possible for anyone other than a Wurundjeri person to represent a Wurundjeri electoral district (a geographic area on Wurundjeri land, regardless of constituency) in an Indigenous representative structure,
- Whenever government services, agencies, policy or legislation, do not acknowledge *and enable* the reconnection and strengthening of the land-based grouphood of First Nations.

Accountabilities

For government, business and community to prioritise land *justice*, and address the historical and ongoing harms of land *injustice*, consideration should be given to:

- describing the foundational importance of land to First Nations people,
- describing how impediments to land justice change over time (i.e., how specific forms of land injustice tend to adapt, but serve the same foundational purpose of undermining Indigenous land-based grouphood and preventing the fullest expression of collective Indigenous rights to land, skies and waters),
- enabling the continued and coherent existence of land-based groups (i.e., a First Nation, or Traditional Owner or language group), including recognition that First Nations have Estates and ongoing rights and interests to those Estates,
- explaining how government agencies have perpetrated and continued land injustice, and act to prevent the exercise of collectively held Indigenous rights to their Estates.
- explaining how the State obstructs the reformation of coherent land-based Indigenous collectivities (i.e., First Nations, land-based language groups, or polities, also known as tribes or iwi in other jurisdictions), including:
 - how institutions, policies, or other State mechanisms change over time to continue to obstruct the fullest expression of collective Indigenous rights and interests to land, skies and waters.
 - how child removal, policing and incarceration, and education systems disrupt the intergenerational transmission of knowledge about land, skies and waters, specifically about ancestry, language and community obligation that enable the collective good governance of Aboriginal lands, skies and waters by Aboriginal people from those lands, skies and waters.
 - how the State prevents First Nations groups accessing and exercising opportunities and responsibilities to land, skies and waters.
 - how the State can support land-based Indigenous collectivities/First Nations groups (also, Traditional Owner groups) to grow their Estates.
 - how land-based Indigenous governance mechanisms can be supported.
 - how the State plans to recognise ongoing First Nations interests in all land in Victoria.
- How 'pathways home' are enabled for Indigenous people of all ages to strengthen their connection to land and Country, and improve their wellbeing through belonging to community, learning language and understanding their intergenerational responsibilities to land, skies and waters,
- Acknowledging how Indigenous people and communities have maintained their connection to Country, languages and cultures that come from land, despite nearly two centuries of rights violations in Victoria,
- How the first order consideration of Indigenous rights and knowledge in the management of land, water, skies, environmental resources and climate, benefits all Victorians.
- How 'complex sovereignties'—the types of sovereignty that Aboriginal have rights to, and the newer types of sovereignty that settlers brought—can co-exist to the benefit of all Victorians.

Conclusion

It has become common practice in many government departments, educational institutions and other organisations to deliver an Acknowledgement of Country at the beginning of events and gatherings. This is an important step in the right direction toward understanding that Indigenous people were here first, continue to survive, and that connection to Country creates our identities, families and ways of relating to each other and the world.

A common phrase in an Acknowledgement is ‘paying respect’, for example ‘to Elders past and present’. If injustice, and the ongoing violation of Indigenous rights (even if those rights are defined in a limited way, as in UNDRIP) is to cease, and redress made for the violation of those rights, settler societies must do more than ‘pay respect’.

Investment in First Nations, our collective capabilities, intergenerational responsibilities, languages, cultures and rights, ‘pays the rent’ in ways that accept how Indigenous knowledges, authorities and capacities inhere in land—forever—and Indigenous rights to and interests in land, skies and waters are perpetual. Indeed, the stability, longevity and prosperity of Indigenous peoples based on their Estates, offers a distinctly Australian, if not Victorian, way to navigate uncertain global futures.

What lies in the past is not only violent dispossession from land and the trauma that has resulted, but also deep knowledge, wisdom and pride. First Nations people have so much to share; knowledge of the natural world, how to respect both the young and the old, how to make sure everyone has a valued place in society and feels part of something bigger than themselves.

But those knowledges and approaches to environment, humanity and society don’t function optimally if they’re carved up and segmented and disconnected from land. Those knowledges can only be shared if they come from a place of strength and cohesion—from a place of confidence that future violations can be made right, from a place where Indigenous rights to land are acknowledged to exist in the first place.

What lies in the future of a fulsome acknowledgement of Indigenous rights to land and environmental justice is Indigenous wellbeing, are families and communities that have greater capacity and security to care for themselves and for others, and different sets of accountabilities to people, place and future generations. New (or newly recognised) rights create opportunities to enact old responsibilities. Land justice is the first step towards a future where Indigenous rights and obligations create sustainable, flourishing and innovative solutions to both old and new challenges.

Just as land *injustice* is the foundational cause of Indigenous suffering, disadvantage, and anti-Indigenous racism, *land justice* is the heart of Indigenous wellbeing. Where Indigenous rights and interests to land are celebrated, then political, social and economic benefits flow not only to Indigenous people but to wider communities. Indigenous land justice is integral not only to righting the wrongs of the past, but to creating a new, more just, more sustainable future for all Victorians.