

Tasmanian Ocean Summit 2023 Spring Bay- Key Note

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Our people are coastal people we always have been and always will be. Our people lived life in between the water and the land, and both the land and sea are home for us. Since Moinee and Rrumatinas creation of our ancestors we owned lutruwita, the lands, the seas, and we set laws for how we used country, how we allow others to use country and for country to be recognized as apart of us and us part of it. Everyday those laws were relevant and everyday those laws were respected. Everyday the ancestors saw the value of those laws and could adapt to any rhythm within the laws of our people and within the laws of milaythina/Country, both land and sea.

To understand the depth of this time we can say some of these laws were over 65000 years old, these laws led to one of the few known indefinitely sustainable societies known on the planet. There's no doubt our people changed the landscape to suit better living, to create more food, to allow for ease and comfort of daily life, to favour some species over others or to create diversity. But in doing so no species were wiped out, no rivers degraded, no dead patches formed in the ocean, no desertification occurred on the land and there was no growing fear and anxiety in younger generations as to what their parents and grand parents are doing to their world. There's no doubt where the cultural values were placed in relation to respect for the sea.

That's the kind of ownership we had of the land, a non possessive non abusive and reciprocal relationship. Where ownership is afforded by the relationship to Country and not by reduction of it to a simple commodity.

Today, after invasion, the colony asserts its ownership of the sea and all the life in it.

Despite sovereignty never being ceded, our people own next to nothing of the Sea in lutruwita and have no legal recognition of ownership of the important cultural species within it.

Some small and limited entitlements are afforded to our people. The Living Marine resources Act provides for a waiving of small license fees for Aboriginal people to undertake non commercial cultural activities such as necklace making and allows for the waiving of license fees for participation in recreational fishing that all Tasmanians are entitled to. But no substantial recognition of prior ownership or rights to sea country or marine resources are to be seen for palawa people.

Yet, In 2016 the Tasmanian Government made changes to the Tasmanian constitution to recognize the existence of Tasmanian Aboriginal people, it added :

And whereas the Parliament, on behalf of all the people of Tasmania, acknowledges the Aboriginal people as Tasmania's First People and the traditional and original owners of Tasmanian lands and waters; recognises the enduring spiritual, social, cultural and economic importance of traditional lands and waters to Tasmanian Aboriginal people; and recognises the unique and lasting contributions that Tasmanian Aboriginal people have made and continue to make to Tasmania:

So what did this mean for the Aboriginal community? In effect nothing yet. So far this has not led to any change or increase in Tasmanian Aboriginal rights or legal interests over the waters around lutruwita.

At the same time in 2016 the Tasmanian Government also agreed to pursuit of the National Closing The Gap target that aims to provide for Palawa People to : maintain a distinctive cultural, spiritual, physical and economic relationship with their land and waters, by 2030, through creating a 15

per cent increase in areas covered by Aboriginal and Torres Strait Islander people's legal rights or interests over land and sea. Tasmania is falling behind with more than one closing the gap target. And no approach to the Tasmanian Aboriginal community to work together towards meeting this land and sea target has been made.

We see the words spiritual, cultural, social and economic repeated, all the elements important to identity and to palawa Nation building or rebuilding. The term First Nations while used to describe indigenous people regularly is often used without thought to the ongoing existence and rights of those Nations and the ongoing struggle for those Nations to restore functional self determining societies, within, but also with a degree of independence from the colonial Australian nation. Indeed spiritual, cultural, social and economic are all required.

And while a spiritual connection cannot be broken, for many dispossessed communities maintaining or restoring social, cultural and economic connections requires deliberate action and requires change and justice in places where those things have been taken away. These things won't happen by themselves, they require leadership and commitment to change.

In some places around Australia there has been some progress in restoring Aboriginal rights and interests over the sea. The Torres Strait sea claim was a successful Native Title claim ultimately resulting in Native Title being upheld over 2 million ha of sea country involving 5 groups across the Torres Strait and Northern Australia, significantly the determination included the right to economic use previously excluded from Native Title claims, and the Blue Mud Bay case in the Northern Territory led by the Yolgnu that granted exclusive tenure under the Northern Territory Land Rights Act to Aboriginal people on over 6000km of rich intertidal waters including coastlines, rivers and estuaries.

These claims are significant in that they recognise the cultural, social and economic rights of Aboriginal people and the ongoing existence of Aboriginal nations and their law. The Blue mud bay case in particular provides for the Yolgnu to exercise exclusive rights for management of cultural resources, fisheries, to uphold traditional laws and practices and to develop economically in ways they see fit.

The Australian nation builds its wealth from the premise of ownership of the lands and waters across Australia. Benefits derived from these lands and waters fund the aspirations of the Australian Nation. The economy is used to fund services, for health, education, the justice system, football stadiums and the nation's cultural direction. This economy comes from Aboriginal owned land and seas. Aboriginal Nations have a right to do the same and share in that economy.

Recognition of this right would result in the necessity for shared decision making and in some cases exclusive decision making by Aboriginal people as to the use and management of the seas. But this isn't only limited to being an exercise in providing justice for Aboriginal people. This is a solution to a burdening problem. A problem that we all face and in some ways a problem that brings us all in this room. The failure of colonial knowledge and power systems (ie the Australian Government and allies) to ensure long term survival of the earth's living systems. The failure of decision makers to make right decisions for our future generations, the failure of the colonial values system to value the importance of respecting the natural world and the problem of sustained and ongoing abuse of Indigenous people. According to National Geographic Indigenous people make up only 5% of the world's population but are protecting 80% of the world's biodiversity.

Aboriginal values and knowledge guide decisions around use and management of our lands and waters. Remembering that this is one of the few indefinitely sustainable values systems in the world, Aboriginal culture and knowledge has much to offer in changing the trajectory of the planet.

demise. By sharing power and decision making with Aboriginal Nations, colonial governments can begin to shift their paradigm and dependence on an inverted values system, that in a short time of a few hundred years has caused irreversible damage to our only home, the earth, that will be felt by every future generation to live on the planet.

But it seems based on the current state of Aboriginal affairs and recent attention on the events surrounding a certain referendum that recognition of rights and true shared decision making is far away. Unfortunately, this is fairly consistent with the 235 year long experience to date so perhaps not a surprise. However, the good news is that referendum's aren't usually how our decision making occurs in the course of normal life, nor in politics. Its through leadership and the application of our values and judgement to change laws. Rights are an expression of values and moral judgement and are based in our sense of justice and fairness. Most people understand the concept of human Rights, animal rights, moral rights or intellectual rights. But the evidence is that perhaps less people are familiar with (or perhaps less amenable) to Indigenous Rights as an international or a local standard.

The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) was adopted by the General Assembly in september 2007

It establishes a universal framework of minimum standards for the survival, dignity and well-being of the Indigenous peoples of the world and it elaborates on existing human rights standards and fundamental freedoms as they apply to Indigenous peoples. Australia is now a signatory to this declaration. After some years of objection the Australian Government agreed to the principles of this declaration in 2009.

However, the Rights afforded to our people within the declaration are along way from being activated within the political realm. There is very little implementation into law, policy or practice of these internationally recognised rights in Australia. Other Nations who along with Australia also originally rejected the declaration such as Canada, and New Zealand have at least expressed a commitment to incorporate the declaration further into law and policy. In Canada the declaration received royal assent, affirming the declaration as a universal international human rights instrument with application in Canadian law and requiring the government of Canada to take all measures necessary to ensure the laws of Canada are consistent with the declaration and to prepare and implement an action plan to achieve its objectives.

In Aotearoa/New Zealand, the Government asserted an intention to develop a national plan to implement the declaration and consultations are currently underway with Maori organisations, and the wider public a with a view to create a plan for how the country will meet commitments under the declaration.

The spotlight is on Australia and there is work to do. But, should the Declaration be integrated fully into Australian Law and policy it would surely necessitate a transformation of not only the relationship between Aboriginal and Non Aboriginal Australia but also in the way our lands and waters are managed and cared for. It would provide agency for the implementation of a knowledge and values systems that supported healthy lands and seas for millenia under multiple global climatic fluctuations and changing conditions. Its not about doing away with modern society but about dealing with the self destructive culture that has emerged within it and creating a future with the right values and knowledge to guide our decisions about Country and community.

There are 46 articles within the declaration that describe Indigenous rights, too many to introduce here. But if we look briefly at two of those they help to envisage the keystones of a structure for the future that may emerge:

One article within the declaration is the Rights of Indigenous people to country, resources and our knowledge, including

- Rights to maintain and strengthen our spiritual connection to country.
- Rights to control, own and develop our country.
- The right to ensure that governments develop systems for the legal recognition and protection of our country.
- Where we no longer possess our country, we have the right to have this addressed through some form of compensation.
- Rights to the protection of the environment on our country.
- The right of protection of our cultural heritage and traditional knowledge.
- The right to determine how and if our country is developed.

Another article is about Self-governance. Self-governance rights expand on how the rights to self-determination and self-government can operate. These include:

- The right to determine our identities, the membership of our groups and our responsibilities to our groups.
- The right to develop and maintain our own institutions, laws and customs.
- The right to maintain relationships with people outside Australia.
- The right to have treaties and agreements respected and recognised

These elements are important in shaping the relationship between the Aboriginal and non-Aboriginal nation and how we can and should be negotiating and sharing decision making. These are just two but important elements being- The right to our own representation and governance, and the right to decide the future of our Sea Country.

So maybe some reflection on some areas for improvement would be helpful.

We've heard the term 'reset the relationship' used before in Luruwita used as a phrase that indicates the dawn of a new era, a new beginning as proposed by the Liberal Government in 2016, and we know that for our community that reset was more of a regression than a reset. The actions of that so-called 'reset' were anti to self-determination and Indigenous rights, in that in effect it led to the dismantling of community-led structures and policies. The result being an increased decision-making role by government over Aboriginal affairs and disempowerment of our representative bodies. I mention this 'reset' particularly, not just to criticise the architects but because we must hold a measure to claims that are made on initiatives said to support Aboriginal people. We must measure against standards that are founded in an internationally accepted rights-based approach. This reset was far from that, yet was promoted as progressive for Aboriginal people. Instead we see the ongoing heartache and conflict that has resulted.

Yet in the spirit of adaptation and survival, some important opportunities have been seized by the Aboriginal community which provides some agency for developing Aboriginal community interests over Sea Country.

In 2022 the federal government announced the expansion of the Indigenous Protected Area Sea Country Program. This led to the establishment of our Tayaritja or Bass Strait Islands Sea Country program which covers the coast and waters between Luruaratana/ Cape Portland and around Flinders Island. These waters are part of our ancestral sea country estate and hold many important cultural and ecological values.

This program provides funding for Aboriginal communities to develop programs and projects to be involved in management of their Sea Country on behalf of their community. While the program does not afford any rights or entitlements to Aboriginal people and has no effect on existing licences

or tenures, the program has been an important opportunity for resourcing Aboriginal communities around Australia to address cultural needs and provide care and protection for Sea Country areas.

The impact of these programs provides an insight into some of the tangible benefits of increasing Aboriginal interests over Sea Country. Programs such as this combined with Indigenous Ranger funding provide for the maintenance of valuable cultural knowledge of the Sea, knowledge that can't be replaced by scientific research. Knowledge that will be essential in shaping the way we manage these areas into the future. In Lutruwita our Tayaritja Sea Country program is providing important employment opportunities that assist the community to maintain connection to Sea Country and maintain culture. The community's aspirations to Care for and protect cultural species has led to the development and collaboration across multiple research projects where Aboriginal values are centred into the outcomes of the research. This research helps fill important knowledge gaps and would not happen without the Aboriginal community's presence in management of this area.

Through these activities and as we navigate the imbalances between our rights, values and those of the dominant systems, we are able to create change in the status quo. By ensuring that our rights are implemented within agreements and processes we bring to attention to the need for greater systemic change. The current legislative and policy structures consistently do not meet the international standard on the rights as defined under the Declaration on the rights of Indigenous people, and without a commitment to implementation of those rights we are currently relying on goodwill and negotiation to have our rights addressed. There are many positives to this but it is also exhausting work which relies on leadership and advocacy on behalf of our people and those we negotiate with. Some institutions are making steps towards better understanding their responsibilities when dealing with Aboriginal communities and those institutions should be measuring their own targets against the articles within the Declaration of Indigenous Rights.

So too with the large scale push to further industrialise the Sea with infrastructure. Renewable energy production, carbon storage for example are all important issues where society is looking for answers to big issues. But the impact to Aboriginal rights and values with these projects is greater than the impact to most other people. We expect that our Sea Country is treated with the respect that we ourselves afford to it, we expect that our rights are respected and that we aren't bearing the burden of sacrificing the little Country we have left for renewable energy projects or being held to ransom for agreement to undertake activities said to be for the greater good while others with much more than us have licence to destroy, pollute and add to Carbon emissions.

Recently in the Tiwi Islands, a successful case was argued by Traditional owners to halt gas drilling on the sea floor. Lack of consultation with the traditional owners was upheld as a critical point which led to a halt to the drilling activities and revoking of an approval granted by the Government regulator. A case such as this highlights both the problems with the status quo and also what is possible in the future. It highlights the need for genuine shared decision making with Aboriginal people and the need for better integral process to ensure that free, prior and informed consent is sought from Aboriginal communities when undertaking activities that affect Country. The Gas company in their disappointment stated that their 'good faith dealings with foreign investors were made on the back of Australia's historical reputation as a safe and stable investment destination.

For us this historical reputation tells a different story, for us it hasn't been safe or stable.

I urge you to consider your own context for the work you do and how it relates to the concepts in this presentation. How you would measure against the Declaration of Indigenous rights and how you see the principles within it expressed around you. I also urge you to consider the importance of

justice and Aboriginal rights in the environmental movement and to understand how the need to save the environment and find answers is inextricably linked to the rights of Indigenous people.

Thank you