

Native Title a powder keg of corruption and rorting now just waiting to explode

Native Title is a powder keg of improprieties and corruption just waiting to explode. If and when it does then at long last there may be a version of Native Title crafted with the necessary changes which does indeed result in the peoples of the land, the impoverished communities, actually receiving the financial benefits which have to date flowed to others.

To pretend Native Title is not being rorted is a crime second only to the actual theft of the money from the communities it has always been intended. The problem is governments and their vested instruments such as the Office of the Registrar of Indigenous Corporations, have been accepting the rorts as part of the whole Native Title process in the inane belief that somehow some of the Native Title benefits would ultimately reach the people of the lands.

But there are no Robin Hoods among the carpetbaggers and scoundrels who are raking in tens of millions of dollars. These are the rich stealing from the poor with the only intention to swell their personal bank accounts.

Tanganekald and Meintangk Elder and lawyer, Irene Watson has described Native Title as both the greatest disaster and greatest missed opportunity of the last two decades. She said "the lawlessness that is now part of Native Title" has turned people against people.

"The principle of Native Title as we know it here in Australia is really just to extinguish Native Title and our Peoples' connection to Country. Native Title has divided communities and ripped apart the fabric of societies. Native Title is not about the people. It is in my view corrupted at the core."

Courts ruling add further weight of widespread rorting in Native Title but there is rarely any prosecution following those rulings.

In some instances Chief Executive Officers and legal principals of Aboriginal corporations have blown the whistle on the rorting taking place to the Office of the Registrar of Aboriginal Corporations and to Federal Senate Committees again and again. First the complaints languish, then they are tinkered with and then they are shut down.

Only a few years ago, former Western Desert Puntukurnuparna Aboriginal Corporation Chief Executive Officer, Bruce Hill and a WDPAC lawyer travelled to Canberra and blew the whistle on what they claimed to be a litany of improprieties.

They went to then Indigenous Affairs Minister, Jenny Macklin, to ORIC and their testimonies were presented to a Senate Committee. But what happened? After more than a year, the investigations were shut down and the deplorable line offered to justify the shut downs was "some slack" had to be cut to Aboriginal corporations "which need special assistance". This racist motherhood statement has just further undermined Native Title and allows those who are rorting the system a free run to keep taking millions of dollars in payments while the communities which should be receiving the money continue to languish in acute poverty.

The mess in the Western Desert involving the Martu People which has been revealed by the Fairfax press in recent weeks is tragic but it is a tragedy taking place across this continent and affecting many First Nations communities. The question is who will fix it?

In recent weeks, the Sydney Morning Herald, through the courageous journalism of investigative reporters, Paul Baker and Nick McKenzie and The National Indigenous Times have revealed how more than \$50 million in mining rights payments to the Martu People has simply gone missing.

The Fairfax reporters have also revealed many millions has been paid to people not associated with the Martu for questionable services.

International land litigation lawyer, Canadian Dr Sharon Venne has described Australia's Native Title system as "flawed" and that "it should be rejected."

Dr Venne has worked in land rights for four decades and has been with the United Nations since 1977. She said a fair system would require whoever wanted to benefit

By National Indigenous Times reporter **Gerry Georgatos**



from the land putting their case to the people of the land and seek their approval and then share with them fairly the proceeds. This is not happening.

A review of Native Title in terms of access to Country for miners and developers and also some changes in terms of benefits from Native Title is being considered by the Federal Government but will this be a case of too little too late? Will the Native Title Review findings be skewed as many fear in favour of miners and developers? Will the Native Title Review go anywhere near where it matters, that is for the peoples of the land? But unless any review ensures the rorting ends and the proceeds for mining rights goes to the communities there will be no justice.

Aboriginal corporations which handle Native Title benefits need to be restructured as predominately Aboriginal-run Aboriginal corporations and they should not be vulnerable to being hijacked by the queue of non-Aboriginal people dreaming of lazy executive jobs.

Royalties and benefits raised should be directed holistically, to whole-of-community spending approaches and targeted to augmenting and sustaining cultural integrity, empowerment and self-determination, upgrading schools and services, promoting shared emotional wellbeing agendas and these need to be acquitted to noble standards which must have real oversight.

The Office of the Registrar of Aboriginal Corporations should be pulled into line or replaced. ORIC is not just a lame duck overseer but it is the majority of the problem in effectively making permissible the rampant rorting and short-changing that should have always been legally impermissible.

The poor governance is the fault of the Native Title Act, of the legislation that ORIC is guided by and in general by one neglectful government after another.

"We know the corruption and the rorts are rife but head office in Canberra does not want to deal with it, it's political," an ORIC insider said to me.

"The philosophy has been we need to give latitude to Aboriginal corporations in ways ASIC would not with non-Aboriginal corporations."

This ridiculous premise has opened Native Title up to every charlatan under the sun.

Then there is the National Native Title Tribunal, which like the ORIC needs urgent and extensive repair. Both the ORIC and the NNTT have failed as overseers of Native Title. Nearly 300 Federal determinations and more than 900 Indigenous Land Use Agreements later, the peoples of the lands continue to endure a myriad of social ills, worsening impoverishment, shanty-town living, they are dying at the nation's highest suicide rates while not only carpetbaggers but also some executives of Aboriginal corporations are lining their pockets and have their hand in several biscuit tins.

There is copious evidence of multiple material conflicts of interest and they should be blown out of the water. There are some very wealthy Aboriginal corporations, predominately run by non-Aboriginal executives, who still cry poor when it comes to them claiming they are unable to provide urgent funds to communities for services and opportunities to the peoples of the lands.

Each year tens of millions of dollars pour through some of the wealthiest Aboriginal corporations but the populations they represent, usually totaling only between 1000 to 3000 people in total, get jack.

The former Chief Executive Officer of the Western Desert Puntukurnuparna Aboriginal Corporation, Bruce Hill has been one of those propriety-driven individuals who went to Canberra and blew the whistle on a litany of improprieties and alleged corruption.

He did this for the sake of the Martu peoples. However despite the information he provided investigations came to an end more than a year later. ORIC and a Senate committee



Tanganekald and Meintangk Elder and lawyer, Irene Watson with activist, Jenny Munro at The Block in Sydney ... "the lawlessness that is now part of Native Title has turned people against people". Image: Gerry Georgatos

argued effectively they were toothless.

Mr Hill believes what many more than before are beginning to argue, that people from around the nation need to unite and "force change."

Mr Hill said it "appears little may change at the important top end - that is ORIC - unless there are public displays of outrage by many Indigenous people at ORIC's headquarters in Canberra."

"ORIC is plainly a waste on taxpayers," Mr Hill said. "It is just not performing as per legislation."

Native title benefits should not be measured in terms of individual operators but in terms of holistic indicators, whole-of-community works and enterprises. Native Title benefits should not be measured in terms of how wealthy the operational and foundational arms of an Aboriginal corporation are but how Native Title benefits are meted out to community as a whole thus transforming the benefits into social wealth.

The Western Desert debacle will come and go if attrition has its way as it has in so many other similar stories. It is up to the Federal Government to deliver the systemic difference, to craft the changes so desperately needed and these changes must be in the interests of the communities - the people of the lands.

Last year the Federal Court of Queensland ordered an Aboriginal group to hand over millions of dollars paid by companies, including Santos, Origin Energy and QGC, after Justice Steven Rares raised concerns of rorting of the Native Title system.

The decision by Justice Rares in the Mandandanji claim in south west Queensland was touted as likely to have wide implications for Native Title nationally but as per usual the implications petered into a deafening silence.

In the case of the Mandandanji, Justice Rares ordered a court registrar manage all money paid to the group by gas companies in any future payments as a result of their Native Title claim. Members of the Mandandanji need to apply to the court for disbursements and fully account for any payments to them.

Should it have come to this? If ORIC and the National Native Title Tribunal did their jobs better, Justice Rares would not have needed to have made the ruling he did. If the Government stepped in and set standards and bestowed adequate acquittal in Native Title benefits then we would have a whole different show.

Justice Rares said: "I'm going to see the court controlling that in making sure whoever gets this money accounts for it publicly and transparently because rorting this system has gone on through the community for much too long."

"It's time people realised when they're making Native Title applications they're not doing it to feather their own nests, they're doing it to benefit the whole of the group and the community is entitled to know what the money is and where it's going and I'm not going to have secret deals done on the side that benefit particular people protected from public scrutiny and supervision by the court."

"Unless the court took the initiative of imposing controls over what has now been shown to be the very substantial monetary entitlements there was a real risk no proper person would be able to control and protect those monies," Justice Rares said.

This should not be the way. The way should be that the crap about "good faith negotiations" and latitude for Aboriginal corporations needs to be done away with. There should be no burden on the mining companies and Aboriginal corporations to negotiate in "good faith". Some play a straighter bat than others but in general there is no consistency, that's human nature, we're not homogenous.

The Native Title Act needs urgent amendments where disbursement of Native Title benefits at base levels are at least equitably quantified and defined. Aboriginal corporations must be made up predominately of their own people. Spending must be whole of community foremost before other enterprise. ORIC and the National Native Title Tribunal must be strengthened in their oversight and capacities to work to these interests exclusively. And as instruments of the Commonwealth ORIC and the Tribunal personnel must have no material conflicts.

The day after Justice Rares delivered his ruling, the then Attorney-General, Mark Dreyfus did not go to the defence of the Native Title system and a statement from his office noted Justice Rares was committed to "ensuring Native Title payments provided real benefit to Native Title holders now and for future generations."

But nothing has changed. Native Title benefits are not providing real benefits for the communities and past and present Federal, State and Territory governments have failed First Nations People by failing to end the rorting of Native Title.