

Yidindji's Position

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In General

The Yidindji Tribal People are a separate and distinct society of people from what the world know as Australian citizens.

The Yidindji Tribal People live under the rule of law, that law being the Yidindji Tribal Law, that is to say that the Yidindji Tribal People live pursuant to Yidindji Tribal Law and not subject to Australian and or State law.

The Yidindji Tribal People have never relinquished sovereignty and or the dominion.

The Commonwealth of Australia and State of Queensland have acknowledged the above facts through various instruments. All such instruments are created and or produced under the authority of the Commonwealth of Australia and or the State of Queensland.

To comprehend this position of the Yidindji Tribal People, the need to comprehend the instruments of the Commonwealth of Australia and or the State of Queensland is imperative and from the perspective of the Yidindji Tribal People.

The now Prime Minister the Hon. Tony Abbott PM made a very important speech to the House of Representatives, Parliament House, Canberra, on the 13th of February 2013 giving the Gillard administration, the Liberal party's support for the Aboriginal and Torres Strait Islander Peoples Recognition Bill.

“Australia is a blessed country. Our climate, our land, our people, our institutions rightly make us the envy of the earth; except for one thing- we have never fully made peace with the first Australians.”... “We have to acknowledge that pre- 1788, this land was as Aboriginal then as it is Australian now and until we acknowledge that, we will be an incomplete nation and a torn people. We only have to look across the Tasman to see how it all could have been done so much better. Thanks to the Treaty of Waitangi in New Zealand two peoples become one nation. So, our challenge is to do now in these times what should have been done 200 or 100 years ago:”... “I believe that we are equal to the task of completing our constitution rather than changing it. The next Parliament will, I trust, finish the work that this one has begun.”¹

¹ <http://www.liberal.org.au/latest-news/2013/02/13/tony-abbott-transcript-second-reading-speech-parliament-house>

Tony Abbott made it very clear that the nation known as Australia is incomplete, there is no treaty and the aboriginal people being separate from Australian citizens are the first in time people and that the Australian Constitution is incomplete.

The then Prime Minister, Hon. Julia Gillard PM, gave a speech defining the 'Governments Position' at the miners conference held on the 30th May 2012.

"And here's the rub: you don't own the minerals; they own it and they deserve their share, she added. Governments only sell you the right to mine the resource- a resource we hold in trust for a sovereign people."² The government do not own the resources; they hold the resources in trust for another people. Who are the other people?

What is an Australian citizen and implications to the Yidindji Tribal People?

Australian citizen "A member of the community of the Commonwealth of Australia, who enjoys certain privileges and is subject to particular obligations of the community: *Australian Citizenship Act 200(Cth)* Preamble. It marks full and formal membership of the civil community and may be obtained by birth, descent, conferral, or resumption"³

From the above definition the word 'may' is the operative word. The word 'may' does not mean compulsory and or must.

"and the word *may* is used, the act or thing may be one at the discretion of the person, court or body"⁴

To be an Australian citizen the man and woman is to use their discretion and voluntarily take up citizenship by applying.

By taking up Australian citizenship it is taken that the applicant gave free, prior and informed consent to both receiving all the privileges and giving all the obligations conferred in Australian citizenship.

People taking up Australian citizenship must make a pledge of commitment, and in the case by birth, people are taken to have agreed with the conditions of the pledge.

Australian Citizenship Pledge "It is important for all Australian citizens to understand our responsibilities and what it means to be a citizen, whether we are Australian by birth or by choice. It is a crucial part of building our nation."⁵

The pledge of commitment "A solemn undertaking of commitment to the Commonwealth of Australia and its laws and institutions, made prior to a conferral of citizenship: *Australian Citizenship Act 2007(Cth)*"⁶ shows that a formal promise has been made by the people taking up citizenship.

This raises the question; how can a Yidindji Tribal member be committed to the laws and institutions of the Commonwealth of Australia whilst remaining committed to the Yidindji Tribal Laws that are in opposition to the laws of Australia?

² <http://www.abc.net.au/news/2012-05-31/gillard-faces-down-mining-bosses/4043276>

³ LexisNexis Concise Australian Legal Dictionary

⁴ Acts Interpretation Act 1901, Part VII, Section 33 (2A)

⁵ <http://www.citizenship.gov.au/ceremonies/pledge/>

⁶ LexisNexis Concise Australian Legal Dictionary

Are the Yidindji Tribal People Australian citizens?

At a quick glance it appears that everyone on the land mass now known by the western world as Australia is an Australian citizen or is a citizen from some other nation allowed to reside here under an Australian visa or as a shorter time tourist.

A deeper look at some of the instruments created by the Commonwealth of Australia and or the State of Queensland creates a different reality.

If the Constitution of the Commonwealth of Australia vests all the authority in the Parliament of the Commonwealth of Australia to make laws for the peace, order, and good government of all people living on the land mass known as Australia thereby giving the law enforcement officers all the powers for enforcement of such, then why did the Parliament of the Commonwealth of Australia assent and enact the Aboriginal and Torres Strait Islander Peoples Recognition Act 2013 (ATSIPRA) on the 27th of March 2013?

What are Australia and the Australian Constitution?

Australia when used in the context of any instrument it is important to comprehend what Australia really means.

“Australia- Australia means the Commonwealth of Australia but, when used in a geographical sense, does not include an external Territory.”⁷

“Australia became a nation on 1 January 1901 when six British colonies- New South Wales, Victoria, Queensland, South Australia, Western Australia and Tasmania- united to form Australia.”⁸

When ATSPRA was given assent the Parliament of Australia was really meaning the Parliament of the Commonwealth of Australia. The Commonwealth of Australia is the legal entity and or nation which is not the geographical landmass.

“The Australian Constitution is the set of rules by which Australia is governed. Australians voted for the national constitution in a series of referendums. The Australian Constitution establishes the composition of the Australian Parliament, and describes how Parliament works, what power it has, how federal and state Parliaments share power, and the roles of the Executive Government and the High Court. It took effect on 1 January 1901.”⁹

Australia is a legal entity that is governed by a set of rules, to which people can apply to take full and formal membership via a solemn promise to obey all the rules and laws created subject to the authority the constitution vests with the Australian Parliament.

The importance of this statement is what has determined the standing of the Yidindji Tribal People. British subjects of the colonies on the land mass now known as Australia who were later to be deemed Australians voted for the national constitution in the late 1890's through to 1900. Were the Yidindji Tribal People classified as British subjects and or Australians at the time of these referendums?

Why does Citizenship really matter?

Citizenship or standing determines who can and who cannot take part in the referendums.

⁷ Acts Interpretation Act 1954; 36 Meaning of commonly used words and expressions

⁸ CLOSER LOOK SERIES Federation – produced by the Parliamentary Education Office | www.peo.gov.au

⁹ CLOSER LOOK SERIES The Australian Constitution – produced by the Parliamentary Education Office | www.peo.gov.au

From the outset the Yidindji Tribal People were excluded from participating in any federation referendums. “Indigenous Australians, Asians, Africans and Pacific Islanders were not allowed to vote in Queensland or Western Australia unless they owned property.”¹⁰

Further exclusion from voting in any Australian election clearly demonstrated that the Yidindji Tribal People were not and are still not Australian citizens.

The Commonwealth Franchise Act 1902 disqualified the coloured races. “No aboriginal native of Australia, Asia, Africa or the Islands of the Pacific except New Zealand shall be entitled to have his name placed on the Electoral roll unless so entitled under section forty-one of the Constitution.”¹¹

As to why this was so, the Commonwealth of Australia Constitution Act 1900 which is still current to this very day, and remains unamended states “In reckoning the numbers of the Commonwealth, or of a State or other part of the Commonwealth, aboriginal natives shall not be counted.”¹² The tribal people were not British subjects and or Australian citizens.

With regards to the proposal for a referendum for the constitutional recognition of Aboriginal and Torres Strait Islander Peoples, only Australian citizens can take part in the referendum.

So what is a referendum? “A referendum is a vote of the Australian people on measures proposed or passed by the Australian Parliament. There are a number of different types of referendums that can be held- the most common is a Constitutional referendum. Any proposed change to the Australian Constitution must be put to a vote of all Australian voters in a referendum.”¹³

As clearly stated an Australian referendum is for Australian voters. These voters are created subject to the authority the Commonwealth of Australia Constitution Act vests in the Australian Parliament. This is the Australian person.

If the recognition referendum is for Australian citizens and they are seeking to have another society and or group of people recognised within the Australian constitution, then by default that society and or group of people must not yet be recognised within the Australian constitution, and by default again are not subject to the authority the Australian constitution vests within the Australian Parliament to make laws for the peace, order, and good government.

As this recognition referendum is still a proposal, then not referendum has been placed before the Australian voters and is still an act of the future. Yidindji Tribal People are excluded from the referendum as they are not Australian citizens. As the Yidindji Tribal People then they are foreign and or alien to the Commonwealth of Australia. This would then indicate that international law and definition is required for the word ‘recognise’.

“Recognition- In international law, a unilateral political act by a state acknowledging and confirming a specific legal situation or consequence, such as the emergence of a new state or

¹⁰ Australian Electoral Commission Fact Sheet 1 THE REFERENDUMS 1898-1900

¹¹ Commonwealth Franchise Act 1902, Section 4

¹² Commonwealth of Australia Constitution Act 1900, section 127

¹³ <http://www.aec.gov.au/elections/referendums/>

government. No entity can claim to be recognised as a matter of right; nor is there a duty to recognise.”¹⁴

This definition of ‘recognition’ ensures that the Commonwealth of Australia does not breach anti-slavery conventions and laws. If Australia was to state that the Yidindji Tribal People are now recognised you are now subject to the authority the Australian Constitution now vests in the Australian Parliament would be breaching such anti-slavery conventions and laws.

Here is the problem, if the majority of Australian voters vote yes to recognise the Yidindji Tribal People does that achieve anything other than creating an entrance point for the Yidindji Tribal People to subject themselves to the authority the Australian Constitution vests within the Australian Parliament if the Yidindji Tribal People so choose?

The problem of Australia’s Defined Territory.

The definition of a nation and or a sovereign state is “An entity which has acquired the attributes of statehood under the *Montevideo Convention on the Rights and Duties of States 1993(Int)*; namely, a defined territory, a permanent population, an effective government, and the ability to enter into international relation.”¹⁵

If the Yidindji Tribal People are acknowledged as to be the true and correct owners of one small piece of the landmass then the Commonwealth of Australia has made a false and misleading statement to the international world as to having a defined territory should the Commonwealth of Australia be claiming the whole land mass known by the world as Australia.

Here is the problem for the Commonwealth of Australia.

From the Native Title Consent Determination handed down by Justice Dowsett in the Federal Court of Australia 14th of December 2012: “I have not come here today to give anything to the Tableland Yidinji people. Rather I have come to recognize, on behalf of all Australians, that they are the traditional owners of this land pursuant to traditional laws and customs which have their roots in ancient times. I now recognise that traditional ownership.”¹⁶

“Yidindji country stretches from the Cairns and coastal region south of Cairns up through the Goldsborough Valley and Mulgrave River regions to the Atherton Tablelands. Yidindji territory has previously been described as divided into separate ecological zones, with a corresponding division of the social world.”¹⁷

“Neither the Australian Parliament, nor the Australian Government, nor the Australian Courts have created the native title which we are acknowledging today. The Act simply provides a way which Aboriginal people can prove traditional ownership of land, which ownership has existed since before European settlement in Australia. Thus I have not come here today to give anything to the Mandingalbay Yidinji-Gunggandji people. I have come to

¹⁴ LexisNexis Concise Australian Legal Dictionary

¹⁵ LexisNexis Concise Australian Legal Dictionary

¹⁶ Johnson on behalf of the Tableland Yidinji People #1 v State of Queensland [2012] FCA 1417, point 30

¹⁷ Johnson on behalf of the Tableland Yidinji People #1v State of Queensland [2012] FCA 1417, point 2

acknowledge to them, and before all other people that all Australians recognize and accept them as the traditional owners of the claim area.”¹⁸

As the Commonwealth of Australia are not the acknowledged and or recognised owners of these pieces of land then by the Commonwealth of Australia claiming them as being part of its defined territories would be false and misleading to all other nations.

If the Yidindji Tribal People are not an Australian citizen then who are they?

The Yidindji Tribal People are a separate and distinct society of people occupying and or inhabiting the Cairns region and hinterland from time immemorial.

“Aboriginal people have inhabited this area for a very long time. They were there when Captain Cook sailed past in 1770 in the Endeavour, and they are there today.”¹⁹

“As members of a regional society, they subscribe to a common system of laws and customs.”²⁰

“Despite early dispossession, traditional laws and customs have survived,”²¹

The Yidindji Tribal People are an ancient continuing society of peoples subscribing to a separate system of laws and customs that have survived from ancient times to present day. The Yidindji Tribal People by enforcing the rights to revitalise the ancient continuing laws, customs and institutions are acknowledged, by the Commonwealth of Australia, as the owners of all lands, waters, airs and resources within the Yidindji Tribal Territory as defined and represented by the Yidindji Tribal Map.

“The Indigenous Cultures of Australia are the oldest continuing cultures in the world. Australia’s Indigenous people have lived here for between 40 000 and 60 000 years.”²²

As acknowledged by the Commonwealth of Australia, no treaties have been done with the Aboriginal tribal people and or the Yidindji Tribal People.

The Yidindji Tribal People are acknowledged as being the first in time people occupying and or inhabiting the Yidindji Tribal Lands with continuing relationship to the lands and waters, and continuing cultures, language, and heritage.

“The Parliament, on behalf of the people of Australia, recognises that the continent and the islands known as Australia were first occupied by Aboriginal and Torres Strait Islander peoples.” ... “The Parliament of Australia, on behalf of the people of Australia, acknowledges the continuing relationship of Aboriginal and Torres Strait Islander peoples with their traditional lands and waters.” ... “The Parliament of Australia, on behalf of the Australian

¹⁸ Mundraby on behalf of the Combined Mandingalbay Yidinji-Gunggandji People v State of Queensland [2012] FCA 1039, point 26

¹⁹ Mundraby on behalf of the Combined Mandingalbay Yidinji-Gunggandji People v State of Queensland [2012] FCA 1039, point 1

²⁰ Mundraby on behalf of the Combined Mandingalbay Yidinji-Gunggandji People v State of Queensland [2012] FCA 1039, point 21

²¹ Johnson on behalf of the Tableland Yidinji People #1 v State of Queensland [2012] FCA 1417, point 21

²² Australian Citizenship: Our Common Bond, page 55

people, acknowledges and respects the continuing culture, languages and heritage of Aboriginal and Torres Strait Islander people.”²³

All evidence so far produced by the Commonwealth of Australia through its various representatives and institutions clearly define who, what and where the Yidindji Tribal People are.

Do the Yidindji Tribal People need to do any more to prove standing other than to just revitalise the Yidindji Tribal laws, customs and institutions?

The Commonwealth of Australia has acknowledged that such laws, customs and institutions do exist.

“A system of cosmological narratives, credited with the original of the regional laws and customs, and identified as connecting the various groups of the regional society and their respective country;

A system of group nomenclature, wherein groups are variously classified and named based upon the names of places, ancestors, moiety terms, affinal categories, localized environmental features (eg sand people), broad geographic differences (eg ‘tablelands’ and ‘coastal’), dialect/ language, and dialectal differences (eg the name Majay)

A system of land tenure, wherein language-labelled groups are associated with identifiable areas of land and water, and localized family-based kin groups are acknowledged as the ones who speak for country at the local level;

A system of subsistence based upon a range of unique adaptations to a rainforest environment, including the preparation of toxic plants species, the seasonal exploitation of resources across a number of ecological zones, and rules regarding age and gender-based food prohibitions;

Distinctive and unique forms of material culture, including large wooden ‘fighting’ swords, decorated shields, bicornual and coiled grass baskets, bark blankets, and large edge-ground stone axes;

A regional system of walking tracks, which facilitated the seasonal movement of Aboriginal people within and between the territories of the language-labelled groups for the purpose of resource exploitation, ceremonial participation, trade and exchange, warfare and raiding, and social interaction and communication;

A system of kin classification and kinship terminology, which differs from the ‘unique’ system observed by southern rainforest Aboriginal people of the Dyrbal language group;

A system of marriage rules and affinal avoidance relationships;

A system of authority and decision-making, based upon the focal social role of elders;

A system of dispute resolution at both the local and regional level, organized around established fighting grounds, and;

A system of ceremonial practices (including initiation), focused upon a regional system of ceremonial grounds.”²⁴

²³ Aboriginal and Torres Strait Islander Peoples Recognition Act 2013, section 3

²⁴ Mundraby on behalf of the Combined Mandingalbay Yidinji-Gunggandji People v State of Queensland [2012] FCA 1039, point 21

Mandingalbay Yidinji and Gunggandji people, together with the Wanyurr Majay, Dulabed and Malanbarra, Tableland Yidinji, Djabugay and Ngadjon-Jii people, can be identified as members of a northern-focused, rainforest-based, regional society.”²⁵

The Yidindji Tribal People are still here.

Whilst there are numerous references to aboriginals, indigenous, and indigenous Australians though out this document, the Yidindji Tribal People only ever refer to ourselves as Yidindji and or Yidindji people due to our language not having translations for such.

We are Yidindji.

Definition of Certain Words

Aboriginal- The tribal inhabitants of tribal lands

Australia- when referenced in a legal sense of international law, it means the Commonwealth of Australia constituted as a sole person in the eyes of international law.

Australia- when referenced to in a geographical sense, means the land mass consisting of all the tribal lands as a single land mass on the land commonly known as Australia.

Australian citizen- the person created subject to the authority the Australian Constitution vests within the Australian Parliament, for which a man, woman or child pledge their body as surety and or security through a solemn undertaking of commitment to the Commonwealth of Australia and its laws and institutions, made prior to conferral of citizenship

Australian people- Australian citizens as a collective and created subject to the Australian Constitution.

Indigenous Australian- a tribal member that has abandoned their tribal law to be subject to the authority the Australian Constitution vests in the Australian Parliament by pledging allegiance to the Commonwealth of Australia

Traditional- 1 past customs and usages that influence or govern acts or practices within the tribe 2 The delivery of an item or an estate from one generation of tribal people to the next generation of the same tribal people

Yidindji Tribal People- people who have a pledge of commitment to the Yidindji Tribal laws and institutions, and to no other sovereign state including but not limited to the Commonwealth of Australia

²⁵ Mundraby on behalf of the Combined Mandingalbay Yidinji-Gunggandji People v State of Queensland [2012] FCA 1039, point 21