A new relationship?

Opportunities for land justice and reconciliation through Victorian local government

A position paper toward a possible research and engagement activity

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Purpose

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Executive Summary

A vital aspect of Indigenous demands for justice and self-determination is an attention to distributive justice and control over, or benefit from, land and resources. This activates an accountability of non-Indigenous governance systems, an accountability that has not yet been given sufficient discussion, scope and specificity. This position paper considers how existing policy mechanisms in the State of Victoria might offer potential for meaningful response from local and State Governments to Aboriginal peoples. These mechanisms sit within a broader conversation in Australia at the moment about Treaty, recognition and sovereignty. The purpose of this paper is to consider concrete mechanisms within existing state apparatus through which a sovereign relationship may be able to become known in practice.

Indigenous campaigns have argued for sovereignty and self determination since invasion. The paper briefly contextualises the history of those campaigns emphasising the way that land justice and sovereignty have been integral to those demands, and their resonance with international norms that explicitly link Indigenous self determination to redistributive and reparative land justice. A clear directive in international law therefore exists that expects states to acknowledge specific collective rights for Indigenous peoples. Aspects of these internationally recognised norms align with many Indigenous claims, but meaningful engagement with these dimensions of Indigenous self determination has been largely lacking in the Australian governance context.

At the same time, current approaches to recognition and engagement are deeply flawed. Considering existing approaches more critically, it becomes clear how the ‘politics of recognition’ has to date focused too much on activities around reconciliation and processes of inclusion. The more concrete aspects of redistribution and reparation have been ignored, and an appropriate response by non-Indigenous governments at all levels to meaningful self determination is yet to emerge. These dimensions work to solidify and perpetuate the ongoing dispossession and injustice that marks the relationship between Aboriginal and Torres Strait Islander peoples and Australian governments. We note however, that Indigenous struggles here as elsewhere have no choice but to engage this context and, therefore, must operate on a range of fronts. As such, there is a role for scoping the possibilities for small advances within existing state/governance frameworks, at the same time as struggling for broader systemic change.

A vital dimension is redistributive arrangements that underpin ‘self determining’ or sovereign systems of governance. Drawing on Canadian precedents that emphasise the

importance of appropriate fiscal arrangements for Indigenous nation building, we emphasise the need, in the context of Treaty negotiations, to foster new relationships between Indigenous and settler society governance. We explain that it is crucial, as one aspect of this commitment, to consider questions of (re)distribution, in order to forge a new relationship that is based in a substantive commitment to self determination and indigenous sovereignty.

Yet this link is yet to be made in Victoria. Instead, we find a policy environment that strongly emphasises self determination and international human rights norms, with no substantive conversation or action toward redistributive or reparative action. Such a context raises real danger of simply paying lip service to these aspirations. This is recognised to some extent by local government, and many councils are seeking better models and precedents that might inform their approach.

Current mechanisms exist that may offer potential for more meaningful relationships. In the final section of this paper we consider specific mechanisms in the Local Government Act already used in Victoria for environment and heritage conservation. These opportunities potentially open up some avenues for local Government to foster more meaningful, and substantive, land justice outcomes.

1: Introduction

The *Uluru Statement From the Heart* (2017) outlines an aspiration for 'a fair and truthful relationship with the people of Australia and a better future for our children based on justice and self-determination.' One undeniably important aspect of the justice and self-determination that this statement seeks is an attention to distributive justice and control over, or benefit from, land and resources. This aligns with consistent, and long-standing, Aboriginal struggles that call for attention to the history of, and ongoing dispossession of land, and the structures of ownership by which non-Indigenous people benefit from that theft. Land, and distributive, justice is much more than a historical concern, it is ongoing. Struggles for self determination are about Indigenous futures, survival, and resilience. They are live and dynamic and the new relationship they work towards offers an important opportunity for settler colonial society to change and benefit.

Australia has long been stuck in a cycle of cynical, paternalistic and inclusion-focused approaches by non-Indigenous society and settler institutions of governance in regard to these matters. As the only Commonwealth nation not to have a Treaty with First Peoples, Australia is an outlier internationally and has failed, to date, to consider meaningful methods of reparation and reconciliation. Most recently in the State of Victoria, however, the Government has invested considerable energies into reconciliation efforts including last year an unprecedented move towards Treaty negotiation with Aboriginal peoples, committing $28.5 million and considerable goodwill and engagement effort over the next four years (NITV 2017), a move cautiously welcomed by Aboriginal groups. This represents an enormous opportunity to consider more concrete outcomes and prepare for a post-Treaty context. The question of reparations is a long-term one, one that can likely only be addressed through a reconfiguring of the relations on which land theft continues to occur and the wrongful mal-distribution of resources that results. It is the responsibility of the settler colonial society to do the labour of recompense, including the work of transforming existing institutions.

This paper maps the Victorian policy environment in order to provide some insight into one potential avenue for this work. This avenue is the provision in the existing Local Government Act that enable private landowners to enjoy a rate rebate when they agree to covenants for particular purposes on their land. While currently used mostly for biodiversity conservation covenants, this paper considers whether this mechanism could be similarly used to redistribute wealth from land to Aboriginal communities, and facilitate access to land and country.

In this paper, we consider first the broader Australian and International context in which these new discussions about Indigenous sovereignty in Victoria take place. Second we explain the pressing need to ensure that these discussions remain substantive, on the terms of Indigenous demands at the same time as recognising that the necessary labour of designing a response must rest on non-Indigenous society. Exploring this we look at some of the documented risks, and lessons learned from other jurisdictions, about the ways in which they might be rendered toothless. Third we discuss some of the potential opportunities to proceed despite these deep risks, and highlight the crucial importance of redistributive mechanisms. Fourth, acknowledging that the policy environment in Victoria, especially at the local government level, is both committed to reconciliation and self determination, we also highlight a need for more substantive approaches to land justice and self determination. To this end we outline some opportunities for this through the Local Government Act, emphasising that mechanisms exist already that might be repurposed in support of reconciliation and self determination. Lastly we revisit some issues that make this work both fraught and pressing, and outline some next steps.

2: Framing and context

'Australia is a crime scene' (Thorpe 2009). This statement signals that Aboriginal and Torres Strait Islander peoples never ceded their land or sovereignty and that the history of Indigenous-settler relations in Australian society is built on multiple forms of ongoing genocide and land theft. It further signals the long struggle that Indigenous people in Australia continue to wage in the face of persistent structures and processes of land usurpation and the non-recognition of Indigenous laws and governance approaches. The question then of reconciling those relations in a more meaningful and just way is still very much an open one. Current debates concerning the value of constitutional recognition, the *Uluru Statement from the Heart* and the Australian Government's abject failure to respond appropriately appear to be a signal moment in the politics of Indigenous recognition in Australia. The controversy surrounding the pursuant statement from the Referendum Council demonstrates how hotly contested these matters remain (Middleton 2017).

Aboriginal and Torres Strait Islander peoples in Australia continuously assert, claim and practice their rights and responsibilities to their country as sovereign peoples. That sovereignty was never ceded. Those claims also expose how non-Indigenous people are the beneficiaries of dispossession, particularly through the tremendous wealth that has amassed and continues to amass through land theft. Reparations and restitution for that land theft have never been made, despite a long history of insistence by Aboriginal activists, leaders, and scholars of the centrality of that redress to meaningful reconciliation (Cromb 2017; Foley & Anderson 2006; Haines 2016; Mansell 2016; Thorpe 2006/7/9; Watson, I 2009/14; Watson N 2013). These calls have often taken the shape of grassroots campaigns such as 'pay the rent', and the 'Black G.S.T.', the acronym signifying what reconciliation to date has not addressed: Stop the Genocide - Recognise Sovereignty - Make a Treaty (Treaty Republic 2017).

These campaigns have provided a clear call, echoed widely in a diverse range of political, legal and community actions and organisations, for both land rights and reconciliation. They demonstrate the concrete legal and governance context faced by Indigenous people in Australia. Importantly when placed in an international context, these demands also reflect what are widely regarded as some of the basic building blocks of Indigenous self-determination (UNDRIP 2007, see especially Articles: 3;4;8;20;28;37;43 for reference to sovereignty, self determination and restitution). This reflection of international norms and law is important, and also complex. Indigenous peoples, in their ongoing struggles for self-determination, have a long history of strategic use of recourse to international laws and norms. As outlined in Reynolds (1996) text *Aboriginal Sovereignty* recourse to international law and

moral/legal authority, initially (ironically) to British authority, has been part of indigenous struggle in Australia since invasion and colonization. There are, Reynolds explains, many examples of recorded petitions and sentiment stating that the treatment of Aboriginal people would be even worse if were not for the feeling of the 'world watching' (155-6). However because international law too is built on colonial histories and, being state centric, aligns with and recognises only colonial power it has often also been the vehicle through which indigenous claims are quashed (Watson 2017 p.2; Wolfe 2006 p.391). Furthermore according to Aboriginal lawyer and scholar Irene Watson, international law has been unable to enter into a 'horizontal' or equal dialogue with indigenous ways of knowledge, law or philosophy (Watson 2017 p.3). This has led to either an inclusion that leads to *assimilation* within the state, or an exclusion that leads to *elimination* in material and/or legal terms (Merino 2017 p.121).

A choice between assimilation and elimination illustrates well the dilemmas Indigenous peoples face in claiming their rights, but is not an acceptable finishing point. The realm of international law and norms, while fraught, has provided a number of points at which Aboriginal people in Australia have been able to leverage a better position in regard to the state with major milestones like the *Racial Discrimination Act* (1975), and the High Court decision in *Mabo No. 2*(1992). Furthermore, even within the liberal rights based language of international law, there are to some extent ways to express, more fully, the unique struggles of indigenous peoples. Especially in regard to the complexities of group rights alongside societies built on individual rights. Recent decades have shown an increasing emphasis on articulating the specific and differentiated rights of Indigenous peoples (see Kymlicka 1995 p.21-23). There is, as a result, a growing consensus internationally (exemplified by the The United Nations Declaration for the Rights of Indigenous Peoples (UNDRIP) which was 30 years in the making and completed in 2007), that Indigenous people have specific, collective / or group rights, relationships to country, and a need for recourse to reparative and distributive justice. The calls of Aboriginal leaders, scholars, and activists outlined above often, but not always, align closely with these now internationally accepted dimensions of indigenous self-determination and fundamental rights.

In Australia, however, none of these dimensions have been seriously or respectfully addressed. Instead, the Australian context is littered with a combination of both profoundly regressive and violent policies, at the same time as approaches of inclusivity and mainstreaming that are best conceived as 'inclusiveness without sovereignty'. Of these, the R campaign is emblematic, in its commitment to equality, without recognition of difference (Little and McMillan 2016). The violence of measures such as the Northern Territory Intervention,

income management schemes, and the forced closure of communities each coordinate ideologies of control over Indigenous lives and lands. Seemingly more progressive moves such as native title and other forms of land return and co-management arrangements of protected areas overwhelmingly attempt to settle indigenous claims within mainstream institutions and norms, this leaves fundamental questions of sovereignty and land reparation unaddressed. As the only Commonwealth nation not to have a treaty with Aboriginal and Torres Strait Islander peoples, such policy interventions can only be read as a re-concentration of state power over resources, land and people, that place indigenous communities under further racialized systems of scrutiny. As such, this policy fundamentally contradicts calls for meaningful self-determination and recognition of indigenous rights and responsibilities.

Any contemporary effort, then, to consider forms of reparation, recognition or reconciliation in a settler-colonial context such as Australia immediately signals these dilemmas and tensions. Settler-colonialism is a ‘structure not an event’ (Wolfe, 2006 p.388) and this means that contemporary Australia today and tomorrow remains just as embedded in colonial relations of power as it was during the frontier wars. Consequently, when indigenous demands for power, self-determination and sovereignty come into negotiation with the settler state, a fundamental paradox becomes immediately present. Those negotiations are underway with a state that many indigenous people consider illegal and yet constitutes the primary language and tool through which those demands must be asserted.

This is an underlying paradox that appears impossible to transcend. Settler institutions of governance and white formulations of power and ownership are not going away. Indigenous political campaigns, then, are always faced with the dilemma of seeking change inside and with the settler state, or outside and beyond to create self-determining and sovereign spaces of action. Or, often some combination of action or operation on both fronts. We acknowledge and respect the many campaigns that operate solely in the latter formulation, where an explicit political choice is made to refuse non-Indigenous settler society and its institutions of governance. This paper cannot and does not speak directly to that dilemma because we are focused here on a particular mechanism within existing legislation that may offer some redistributive opportunity. It may be possible to repurpose existing mechanisms toward the imperatives of meaningful and more equitable redistribution with an ethic of Indigenous self-determination.

Working within the existing settler frames of reference which this entails, however, contains some clear and present dangers. While we are suggesting in this paper that there may be distinct opportunities, we are also alert to the slippery dimensions that are immediately evident when operating within settler institutions and frames of reference. For it is clear that a key problematic at work in contemporary liberal settler-colonial states is how the contemporary politics of recognition and inclusion works to settle and contain Indigenous claims in ways that reorganise non-Indigenous control and possession. A politics of inclusion 'promises to reproduce the very configurations of colonial power that Indigenous peoples' demands for recognition have historically sought to transcend' (Coulthard, 2007, p. 437). We argue then, that being alert to these risks is more than simply being aware of their presence, or relegating them to the realm of the too hard. Instead, being critically alert requires applying that in practice, allowing an ethic of critical awareness to underpin and shape our efforts to scope, assess or (re)form opportunities for reconciliation within state frameworks.

When the struggle for sovereign self-determination is reduced to 'inclusion' only, we can see these powerful politics at work. Contemporary forms of recognition and reconciliation have been charged with just such a dynamic of managing and co-opting Indigenous expressions of sovereignty. The 'Recognise' or 'R' campaign for recognition of First Peoples in the Australian constitution has been roundly critiqued by some Aboriginal leaders, and most activists, as an attempt to extinguish sovereignty in the name of equality (Haines 2016). Indeed, a meeting of around 500 Aboriginal and Torres Strait Islander people in Melbourne in February 2016, voted unanimously against the constitutional recognition process, and as pointed out by Little & McMillan (2016) this is largely to do with the tension between a non-Indigenous agenda of sameness or equality that 'would be anathema to many Indigenous activists'. Inclusion-based programs such as advisory boards, employment programs and consultation mechanisms can be equally criticised for their display of the same careful ploy to solidify claims of jurisdiction over Aboriginal bodies, societies, culture, law and land through incorporating Indigenous people into the jurisdiction of settler-colonial law. Such approaches work to incorporate Indigenous peoples within the ontological and legal domains of the state, maintaining the grip of settler colonial states, in a range of domains, over land and resources (Povinelli, 2002; Alfred and Corntassel, 2005; Corntassel, 2008; Coulthard, 2014; Moreton-Robinson, 2015; Watson, 2015).

These tensions are inevitably at play in the scope of this position paper. The fundamental contestation between Indigenous sovereignties and non-Indigenous settler-colonial state power cannot be transcended even by hard-won interventions to change laws or find ways

within existing laws to redistribute resources and control. As such it is entirely conceivable that the opportunities scoped in this paper conjure equally cunning modes of recognition and redistribution (Povinelli, 2002). Yet to do nothing is equally an operation of colonial power by simply enabling a consolidation of the status quo.

While we are alive, then, to the cunning dimensions of white governance and property we think it is worth scoping the possibilities. Our specific interest is the possibility of building more redistributive mechanisms from existing legislative and policy frameworks that practice reparations and redistributive possibilities and also link to wider Treaty negotiations and sovereignty work. While doing this work we emphasise concurrently that:

> Care should be taken not to elevate day-to-day survival outcomes or small advances to a level that suggests that there is no need for a treaty or some form of significant settlement dealing with substantial matters. (Mansell 2016 p.127)

As such the discussion here aims to contribute to “small advances” in re-distribution and reparations on a range of fronts, in the context of a broader commitment to much more substantive change, and an acknowledgment of ongoing injustice.

3: Self determination, Indigenous governance and (re)-distribution

The remaking, rebuilding and repurposing of existing legislative and policy frameworks mentioned above (sometimes with recourse to justification through the norms and aspirations of liberal (settler) governments, and often through strategic use of international law and norms) has long been part of Indigenous campaigns. It is a crucial, though often deeply fraught, aspect of Indigenous self-determination. This is in part because, as discussed above, it is a simple fact of contemporary conditions that the organisational aspects of Indigenous justice happen in the context of settler societies. Furthermore the survival and self-determination of Indigenous peoples, in the current national, and international, architecture, requires an ability to form new and renewed forms of governance in order to foster recognition. These include the formation of representative bodies that are, to varying degrees, autonomous from settler societies/states. These can both benefit those they represent as well as participate in relationships of co-governance, multilevel governance, and negotiation, with local, state, national and international institutions. Indeed the importance of this capability is enshrined in UNDRIP Articles 4 and 5 as an essential aspect of self-determination and a collective right.

Article 4: Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

Article 5: Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

Aligning with calls for re-distribution and reparation more generally one important aspect of achieving this is commitment and attention to the establishment of sustainable and long-term fiscal and economic aspects of governance. As Wilson-Raybould & Raybould (2010) assert:

> Traditionally, Indigenous societies had mechanisms to redistribute wealth and to look after their people — for example, through the division of labour and the sharing of food and other resources among the group.' … 'Today, all governments require revenue to redistribute wealth and to provide programs and services to citizens as well as to manage or "govern" the society and to protect that society. (Section 3:29 p.2)

Put simply it is not enough to recognise Traditional Owners right to self govern, and to form representative bodies in the abstract only. A true acknowledgment of un-ceded sovereignty

must also pay serious attention to the material logistics of governance, and the context of historical, and often ongoing, deprivation and theft of these material means. As such, questions of reparation and redistribution, while rooted in past struggles and events, are also very much current questions of ongoing self-determination and sovereignty. These are questions that must be engaged in the formation of new relationships between Indigenous peoples and settler colonial states. Furthermore, they concern the responses and actions of settler colonial states, and must surely be considered as a core part of the work needing to be done by those state apparatuses, to consider a meaningful response to Aboriginal and Torres Strait Islander sovereignties. An attention to distributive justice and fiscal capacity is, therefore, future looking, and of direct consequence not only for self-determining organs of Indigenous governance, but also for non-Indigenous people to grasp the centrality of reconciliation and coexistence to our shared futures.

In Australia, Indigenous economic development and sustainability has predominantly been framed around paternalistic federal funding, resource extraction, or job creation (and often these last two are linked). At times this has led to reliance on the extraction of natural resources as the only source of revenue, and to fierce debates around the extent of ownership and control of these resources through Native Title claims (for example: Robertson 2015; Langton 2017 p.4-5; for analysis see: O'Faircheallaigh 2006; Altman 2010 p. 263-70). However, while resources and jobs are important, this focus locks Indigenous people into often intractable conflicts between care for country and economic development (Birch 2016). Furthermore, it simply does not take into consideration the full range of ways in which the fiscal and economic aspects of governance usually operate for all other levels and types of government. As reflected in the quote above, a crucial aspect of governance, in any jurisdiction or era, is its ability not just to extract but to also maintain, distribute, and redistribute, resources (Graham & Bruhn 2010; Wilson-Raybould & Raybould 2010).

In all British based settler colonial states this is largely achieved through complex systems of taxation and regulation. In fact, so important has the role of taxation been deemed in political theory that the right to tax has been intimately linked to sovereignty and democracy. It is generally believed that taxation creates a strong link between government and society, and forges bonds of accountability and legitimacy (Nehring & Schui 2007 p.8). Notwithstanding these broader theoretical claims, and questions, what is clear is that all levels of government in settler-colonial states are funded, at least in part, through the revenue of rates and taxes, and that all levels of government participate in re/distributive practices through these.

> Governments have designed many forms of contemporary taxation, and it is the most common way to generate revenues to pay for all aspects of governance, including the exercise of jurisdictions. (Wilson-Raybould & Raybould 2010, Section 3:29 p.2)

To date, though, most Traditional Owners and Indigenous representatives in Australia have access to these funds only through the political winds, funding cycles, and gatekeepers of the settler-colonial state. Treaty, which surely involves the recognition of sovereignty, demands something different.

In Canada, especially by First Nations groups negotiating with and in British Columbia (BC), there is a very live debate about these matters. Reliance on a singular source of revenue, usually through resource extraction, has received much scrutiny and has been coined by some as the "curse of oil" (Graham & Bruhn 2010 p.60). It is seen as often undermining First Nations governance and hindering sustainable futures. In response to this "curse", and in the context of establishing new relationships between First Nations and settler colonial governments, that honour self-determination and build First Nations capacity, there are robust discussions about the ways in which First Nations can also benefit from both existing, and new, systems of taxation and redistribution. (Graham & Bruhn 2010; Wilson-Raybould & Raybould 2010).

These discussions and the models being developed, while differing from the Victorian context, reflect the impetus of this paper, and align with the Victorian State and Local Government's recent commitments to take the next steps in opening discussions of what a new relationship might look like. Indeed as there is no level of government in Australia that does not benefit from the revenue raised through redistributive fiscal instruments any serious commitment by a settler state to Treaty must include an acknowledgment of requirements for governance that it already considers fundamental, and relies upon.

Questions about mechanisms of economic capacity and the distributive aspects of Aboriginal economic development have been raised in Australia intermittently, although less often with relation to rates and taxes as redistributive mechanisms. There are many instances of asking what the economic capacities of Indigenous representative bodies might be and where they might be sourced. This has been an especially pressing issue since the federal government ceased funding the national representative body the *Aboriginal Torres Strait Islander Commission* (ATSIC) in 2005. This lack of funding has left the remaining representative body, the national congress of Australia's first peoples' in financial jeopardy, and facing potential dissolution, making this a pressing and timely concern (Little & McMillan 2016).

Historically some efforts for financial capacity building have linked fiscal revenues to land justice and reparations. For example the establishment of the NSW Aboriginal Land Council under the *NSW Aboriginal Land Rights Act (*1983), enabled a system of land compensations to be made to Aboriginal people in NSW for the dispossession and loss of their lands and professed to address reparations. This was in part by committing to fund the organisation through the equivalent of a percentage (7.5%) of statewide land-taxes for a set period of years (see Altman 1991 p.11,16). While, in the broader scheme of reparations for colonial land theft and genocide, the amount of money this represented was tiny when set in the context of the larger leveraging of wealth from Aboriginal land that has taken place in NSW since 1788, it does establish a connection between land-tax, property, and reparations in NSW. Furthermore, it has resonance with some Treaty discussions in Victoria where visualisation sessions of what Treaty might look like included the raising of questions about powers of taxation, and the financial capacity of Traditional Owner groups.

These discussions, and the problems they address and raise, have broad relevance in the contemporary era, with debate about Indigenous governance, and distribution, presenting opportunities for better governance more generally. In an era of deregulation, liberalisation, and economic globalisation, the question of sustainable government and the funding of governance is an area of increasingly important debate. Despite a tendency to see tax and government frameworks for re-distribution as fixed, there are no states or nations where these arrangements are not in flux (Nehring & Schui 2007 p.9), especially in the context of economic globalisation. Questioning of unsustainable models that presume endless growth, associated with free market economies and the need to shift to more economically, socially and ecologically sustainable approaches is increasingly present, though apparently unable to as yet puncture the contemporary forms of neoliberalisation. Indeed, political factions within settler colonial states are themselves caught up in fierce debates about the roles of taxation, resource extraction, and other revenue raising activities, as well as the reach and role of the state in society. While there is not scope here for an in depth discussion of these debates, they are evidenced on the one hand in popular uprisings, and movements worldwide, and on the other hand more locally and with specific focus on distribution, in a range of research into land tax and rents in Victoria that recommend extensive rethinking of the ways that government is funded (see: Anderson 1996; Daly & Wood 2015; Daly & Coates 2015; Prosper 2017).

While it must be acknowledged, then, that fiscal arrangements of governance generally are in flux as global economic conditions change, and that the relations between indigenous groups

and settler states are inherently difficult, there are nonetheless in British settler states a set of well-worn assumptions and mechanisms that underpin the fiscal and democratic capacity, legitimacy, and accountability of government at all levels. These mechanisms are, in turn, fundamentally redistributive and that redistribution is generally linked to the legitimacy and accountability of government. Their existence may present opportunities to repurpose and rework existing instruments and think through new ones, in the context of working towards Treaty. It is however very important, in making this claim, to emphasise that the economic sustainability of Indigenous peoples will not mirror the arrangements of the settler state. Indigenous peoples throughout the world have their own processes for designing and determining the shape of their institutions and governance arrangements. It is not the role of settler colonial administrations (or scholars) to determine this.

The bottom line is that the fiscal capacity, and role of states and nations is not a settled matter (no matter how much proponents of small government and the free market may present it as such). It is instead a matter in contemporary flux with, for example, a move in the last 40 years in Australia and many other states, from monolithic government to multi-level stakeholder, and network, governance (Sørensen, E., & Torfing 2016 p.1-20). Urgent questions related to growth and sustainability from local to global scales, remain under debate. Indigenous peoples have much to contribute to these debates, drawing on extended traditions, including meaningful connections to country inclusive of custodianship and responsibility, as well as ownership, that present opportunities for more sustainable and just governance (Behrendt 2006). As such, it is important that the emergent and experimental qualities of working through these new relationships, which are often difficult and complex, are seen as opportunities for the current settler colonial state/society to benefit and change, rather than viewed as deficits in Indigenous capabilities.

Attention to distributive and redistributive aspects of Indigenous self determination is then both essential for meaningful engagement with Treaty and self determination and a real opportunity for positive contribution to broader debates on governance and distribution. In Victoria there are many signs of the willingness to participate in this kind of discussion and action, both within reconciliation processes as well as around governance more broadly, and there are also many risks involved. An understanding then of the dynamics of the policy environment is a crucial starting point. This mapping of policy must proceed with close attention to the distinction between aspirational approaches that may, unchecked, consolidate settler colonial power, and approaches that may foster small advances in the direction of more substantive self determination and Indigenous sovereignty.

4: Policy Environment in Victoria

In February 2016 the Victorian Government began to make a substantive response toward Aboriginal peoples calls for a Treaty. The Government frames this process on their website as 'creating a new relationship between the Victorian Government and the Aboriginal community, a partnership that will empower Aboriginal communities to achieve long-term generational change and improved outcomes' (VIC GOV Treaty 2017). However this new commitment to Treaty must be understood as arising out of a wider policy environment that has undergone rapid change in the past 15 years. Furthermore, the connections between State-wide Treaty and local government policy environments are still being made and analysis to consider as yet unrecognised opportunities. The next section outlines some formative and important aspects of this policy environment in light of this paper's aims, but should not be seen as an exhaustive overview.

State level context

Native Title and the Traditional Owner Settlement Act

Aboriginal self-determination is connected to country and land justice. As such any mapping of the policy context must start with the relevant land legislation. To understand the context of Indigenous land claims in Victoria it is useful to first be familiar with the impact of the Yorta Yorta case in which the judges ruled that the Yorta Yorta could not prove continual connection to land and culture and therefore were denied Native Title (Strelein 2003). The court's decision to deny native title, and by extension land justice, to the Yorta Yorta people in Victoria is widely regarded as a continuation, perpetuation, and result, of a much longer history of paternalism, dispossession, and genocide, both against the Yorta Yorta people and Aboriginal people more generally (Moreton-Robinson 2004; Atkinson 2002; Godden 2003; Strelein 2003). The decision attracted scathing critiques from a broad swathe of Indigenous and non-Indigenous commenters, and achieved somewhat of a consensus in this regard, albeit for varying reasons. (see: Atkinson 2001; Pearson 2003; Moreton-Robinson 2004). While there is not scope in this paper to discuss the complications of Native Title in Victoria in depth, it must be noted that there have been significant issues with Native Title where historical dispossession has led to apparent disconnection from land and then in turn have been used in court to justify a denial of land justice (Watson, N 2013 p. 291). This is well known as compounding the injustice of dispossession and as hindering reconciliation.

The *Traditional Owner Settlement Act (2010)* has its origins in the frustrations experienced by Aboriginal traditional owners in Victoria and the specific injustice of the Yorta Yorta decision, and Native Title more generally. The legislation aimed to 'streamline Native Title resolution

and provide alternative means of settling Native Title claims' (TOSA 2010). Like Native Title TOSA applies to public lands only, and Traditional Owners must relinquish some of their rights to future Native Title claims in order to enter into an agreement. There are some aspects of this legislation that are important for understanding the policy environment in light of this paper as they represent significant shifts in policy language towards self determination.

The legislation allows for a process by which Traditional Owner groups can negotiate a "Recognition and Settlement Agreement". In respect to this process it does present a significant shift in policy in Victoria in a number of important ways. Some that are of relevance to this paper are:

a) It aims to acknowledge and establish broad areas of connection to country, for the first time recognising the ongoing rights and responsibilities of Traditional Owners.
b) It does include a range of language that is very strongly in the arena of self - determination, and even reparation. It is, for example, unequivocal about the importance of connection to country as a cultural right, as well as a historical disenfranchisement.
c) It establishes recognised (by the Victorian Government) Traditional Owner groups which has implications across Victoria at all levels of government, as it establishes a frame for new relations. The formation of representative bodies has been, and still is, a key, and extremely fraught aspect of Indigenous settler relations.
d) Finally, it includes provision for 'aboriginal title', as *fee simple* title, offering the most effective and powerful form of title in Australian property law.

Overall the legislation represents an important shift in the policy environment. However, it is largely untested, only one Traditional Owner group has actually established an agreement under this legislation (the Dja Dja Wurrung). Furthermore, this group approaches the agreement with a concurrent insistence on their right to continue to form a new relationship through partnerships on their own terms.

> There are a number of principles which are critically important to Dja Dja Wurrung people as we collectively define our self-determination and philosophy for how our land and natural resources should be used and managed. They inform the way we engage with others who share our Country and are the foundation of our partnerships with government and non-government agencies, industry and community groups. (Dja Dja Wurrung 2017b)

These principles see the agreement as a starting point, not an end point, and this differentiation is important to emphasise. Because there are some important ambiguities in the role of the Act in Indigenous land justice that are apparent from a reading of; a) policy documents; b) documentation of the process establishing the Act (including the aspirations and statements of the Victorian Aboriginal Land Justice group (VLAJ); and c) the discussion of the Agreements and what they mean to Traditional Owners on the Dja Dja Wurrung website.

These ambiguities, or different interpretations of the role of the agreements, are relevant for this paper, and more broadly for attempts to understand Aboriginal land justice in Victoria. This is because on the one hand there are many aspects of the statute and agreements that fit squarely into the cunning of recognition discussed above. This occurs by limiting and further foreclosing potentially more extensive Native Title claims. It also occurs if TOSA agreements are understood as a final step. They can, in this light be seen to be firmly interested in finalising inclusion of Traditional Owners into colonial structures, without a commitment to more ongoing, and perhaps more substantive processes and outcomes. In this way the TOSA agreements could be seen as closing down opportunities for further reparative and restitutive justice.

Another way to interpret the role of agreements, however, is as one step on a much larger journey. In other words, as the *beginning* of land justice and reconciliation. As this excerpt from the Dja Dja Wurrung website explains:

> The Agreement gives us Aboriginal title of some of our traditional lands, including the right to actively managing Country. The Agreement is an important *starting point* for the self-determination of Dja Dja Wurrung, and we *now continue to build* up the structures and processes that will enable us to make the most of these rights. (Dja Dja Wurrung 2017a our emphasis)

From this perspective there is no reason that the aspirations and intentions of these agreements should not continue to be strengthened and deepened. In this light the legislation fits the 'small acts' (Mansell 2016 p. 127) or agreements that matter but should not deflect from a broader goal of Treaty, as mentioned above.

Statewide Charter for Human Rights and Responsibilities:

The Victorian State Government's commitment to the specific rights of Indigenous people via the Victorian Charter of Human Rights and Responsibilities is crucial. This necessitates the

foregrounding of self-determination of Aboriginal people, albeit in the context of a national environment more focussed on inclusion. The Charter:

> requires the Victorian Government, public servants, local councils, Victoria Police and other public authorities) to act compatibly with human rights, and to consider human rights when developing policies, making laws, delivering services and making decisions. (Equal Opportunity and Human Rights Commission 2017)

It also specifically states in section 19 that Aboriginal persons hold distinct cultural rights. Furthermore, it calls upon new international precedents which have recognised Indigenous rights as distinctive and states that Aboriginal persons have collective rights to 'maintain their distinctive spiritual, material and economic relationship with the land and waters and other resources with which they have a connection under traditional laws and customs' (Section 19(2)(d)).

While the Victorian Charter was enacted in 2006, the establishment of the United Nations Declaration for the Rights of Indigenous Peoples (UNDRIP) in 2007 only strengthens the human rights basis for self-determination and restitution. In the context of this paper it appears that the move towards a substantive engagement with these commitments by local government in Victoria is a crucial aspect of the overall policy environment, and should be considered as such in any intervention.

The Municipal Association of Victoria published the Toomnangi report in 2002 which provides a snapshot of Indigenous issues across all Victorian local government areas. That report identified massive inequalities, and can be contextualised as responding to the State level Charter of Human Rights and responsibilities. Federal initiatives such as 'Close the Gap' have become part of this commitment, as have the proliferation of Reconciliation Action Plans (RAPs), all of which has been substantially supported by two peak bodies for local government in Victoria: Local Government Victoria (LGV) and the Municipal Association of Victoria (MAV). Both are overtly committed to reconciliation, and to the importance of local government in enabling reconciliation. This is apparent in the high levels of involvement with Reconciliation Victoria, the development of RAPs, the establishment of Indigenous advisory committees, support for conducting research related to reconciliation and local government, and developing a range of platforms through which local councils can become supported, connected and engaged in learning about reconciliation. These local government organisations, then, form a crucial element of the policy environment, and their objectives, initiatives, and research findings, may provide inroads aligning with the aims of this paper.

Progressive, outward reaching, Municipalism

The emergence of a strong democratic local government voice, linked into networks beyond the state, is also related more broadly to the values and global perspectives of the New Municipalism movement. Local government has been identified by that movement as crucial for addressing issues of transnational and global relevance and advancing progressive, often rights based, aims (Fearless Cities 2017). This is evidenced in the MAV's material on local government and their annual Future of Local Government Summit held in May every year, which

> brings together experts from around the world to share their views on the influences shaping local government and the opportunities this can create for Victorian councils and their communities (MAV 2017).

Many of the conference presentations, and the language used to describe the summit aims are firmly couched in expansive understandings of a need to respond to climate change and global financial crisis and the increasingly important roles and responsibilities of local government in resilience and responsiveness to local community (and are sometimes couched in the light of waning federalism). Importantly a survey of the policy environment demonstrates that the peak bodies and councils involved are certainly not averse to seeing their work as linked into much broader agendas and responsibilities than simply implementing the local level of state of federal policy. This may be important to consider in the formulation and justification of any intervention. It also aligns with the discussion above about governance and redistribution in the contemporary context.

Reconciliation Action Plans (RAPs) & the Reconciliation in Local Government Project

RAPs have been seen by multiple levels of government as a way to approach 'reconciliation through the common language of relationships, respect and opportunities.' (McKinnon 2011 p.7) They have become a primary policy initiative through which local government structure their engagement with Aboriginal communities. However a cursory reading of RAPs in Victoria suggests that reconciliation action in these agreements, although often couched in the language of self-determination, is generally limited to practices of inclusion, which as discussed above cannot be seen as the end point of reconciliation, and does not align with calls for Treaty and sovereignty.

A 2011 report commissioned by reconciliation Victoria as part of the *Reconciliation in Local Government Project* (RLGP 2010-2011) (McKinnon 2011), concurs with this reading, stating that while RAPs are useful for relationship building they are lacking in their ability to foster or

'form long-term binding agreements with Aboriginal communities' (p.10). The report recommended that there is a need to 'Improve research and evidence base of impacts' (RLGP 2010-2011) and further recommended that peak bodies and stakeholders have a role in addressing this. The report suggested that they 'consider opportunities to support the Victorian local government sector to overcome challenges and progress reconciliation through:

- Understanding best practice approaches for Victorian local governments progressing reconciliation, based on case studies and further investigation.
- Improving research and evidence into the impacts of reconciliation initiatives and Indigenous aspirations and barriers to local government representation.' (McKinnon 2010 p. 17)

For the purpose of this paper, there may be an opportunity to engage here in the identification of a need for binding agreements, as well as the need for more evidence based research.

Victorian Local Government Aboriginal Engagement and Reconciliation Survey (2012)
A fairly comprehensive VIC GOV survey of councils was carried out by a coalition of local government and state government bodies in 2012. The Victorian Local Government Aboriginal Engagement and Reconciliation Survey, was conducted in response to the findings of the project outlined in the last point (*Reconciliation in Local Government Project)*. The survey engaged substantively with almost all councils in Victoria, finding that most councils did not see themselves as lacking political will to work towards reconciliation (although this would clearly be worth further interrogation). But it found, however, that they *did* see themselves as lacking capacity in a range of areas. These areas included especially; lack of staff and financial resources; lack of connections with Aboriginal community; and a lack of precedents, protocols and examples from other jurisdictions to use as models. These gaps align closely with the broader discussion in the first part of this paper, as well as the contribution this project aims to make in regard to suggesting some possible, opportunities.

Magolee website and Victorian Aboriginal and Local *Government Action Plan (2016)*
One outcome of, and response to, the project and survey described above was the development of the Magolee 'here in this place' website. This is a resource that compiles policy information and resources with the aim to 'bring Aboriginal and Torres Strait Islander people, local communities and the councils that serve them together' (Magolee 2017). Recent initiatives taken forward by various coalitions of the local government organisations discussed above have also included increased support for indigenous groups to form representative bodies in order to liaise with and negotiate with councils (this includes contributing towards

the establishment of formal TO's) and, in 2016, the development of a Victoria wide Local Government focussed action plan (VA&LGAP).

The Magolee website and the Victorian Aboriginal & Local Government Action Plan (VA&LGAP 2016) both provide a strong indication of the aspirations of local government, through firstly their presentation of strategic aims and objectives, as well as, secondly, providing a repository of what are considered best practice case studies, initiatives and examples of reconciliation focussed projects. This enables a greater understanding of the *talking* vs *doing* dynamics at hand in this policy environment.

A cursory reading of these resources suggests that there are strong aspirations for substantive change and even aspirations for a sharing of power at a range of levels. For example the action plan opens by making a strong statement of a new policy environment in Victoria that centres self-determination which, as discussed earlier in this paper, is crucial to indigenous struggles. The Action Plan is worth quoting at some length:

> In March 2015, the Premier of Victoria announced that self-determination would be the new and ambitious policy principle that would guide the Victorian Government's approach to Aboriginal affairs. This marked an important shift in Aboriginal affairs policy in Victoria.
>
> At its core, self-determination is about Aboriginal people being at the centre of decision making around the issues that directly affect their lives. In practice this means a substantive transfer of decision-making power from government to Aboriginal peoples. A policy of self-determination recognises that the ongoing impact of colonisation is still being felt today; that Aboriginal people themselves are best positioned to address issues in their communities; and that the resilience, strength, and resourcefulness of Aboriginal Victorians represents an enormous opportunity to build a healthy and prosperous future. (VA&LGAP 2016, p.)

The document is replete with these kinds of assertions, but a reading of the case studies indicates that there may be a need for further argument to take this beyond the inclusion model. There are for example many cases of art trails, cultural awareness and cultural survival initiatives, language and health related programs. However, substantive moves to power sharing and redistribution are manifestly absent.

While strategies of inclusion certainly help to meet the aspirations of the 'Close the Gap' initiatives, it is much less convincing that they meaningfully address the aspirations for shared strategic planning and self-determination that are so crucial to Treaty, and to the new policy

focus outlined in VA&LGAP. There appear to be no case studies that indicate a substantive move beyond participation and inclusion. There is however consistent language that invokes more substantive agreements and actions and ostensibly provides an inroad to proposing them. While beyond the scope of this initial position paper it would be useful to investigate these case studies more fully in light of understanding the ways in which the language of self-determination may (or may not) perpetuate problematic inclusionary approaches as discussed above.

Overall, it can be seen from a survey of the policy environment and initiatives at play that most examples of reconciliation action are articulated in the language of self-determination and power sharing, and that there has been a very significant aspirational shift in this direction in recent years. But it is also evident that their outcomes are often more focused on recognition and symbolism rather than actual self-determining governance arrangements. Few mention distributive justice or reparation. There is then a gap between the aspirational language, which is tied into international norms and self determination, and the practice. This gap is a pressing and crucial problem to address. Overcoming it aligns closely with the aspirations of and struggles for self-determination that have always been historically practiced by Aboriginal and Torres Strait Islander peoples in Australia. The remainder of this position paper seeks to consider small advances in addressing this gap through a specific existing mechanism that may offer a way to deepen and strengthen the aspirational language of self-determination and power-shifting with actual mechanisms to begin to deliver.

5: Opportunities for reconciliation through the Victorian Local Government Act?

While there is much work to be done to unravel the inequities of colonial land and planning systems (Porter 2010; Porter and Barry 2016; Jackson, Porter and Johnson 2018), there may be potential for using existing frameworks that would represent substantive action on the reconciliation action plans that local governments have already put in place. As work on neoliberal governance has shown, there is often already existing room within inequitable systems for communities to exploit benefits that address their needs (Higgins et al 2010), as we pursue the broader agenda of overturning structural injustices.

Local governments in Victoria are already deploying substantive powers inscribed in the *Local Government Act* 1989 (Vic) to actively pursue progressive agendas on issues to do with environmental sustainability, including climate mitigation and adaptation, as well as biodiversity conservation. Moreover, some of the sustainability initiatives enabled through the *Local Government Act* have been implemented specifically on private land - a tenure context that has traditionally been more challenging than public land when it comes to policy action toward Indigenous recognition. This is especially so in urban contexts. The established history of leveraging planning and land regulatory frameworks for conservation goals on private land may yield useful insights for the implementation of aims and objectives that are being increasingly discussed at local government level, as noted above.

Private land conservation also provides a strong basis for arguing that governments (at all levels) are willing to develop and implement regulatory policy that affects private land on the basis that public land alone is not adequate or sufficient to preserve biodiversity as a social good. Australia is also seeking to engage private land as an avenue for meeting international commitments on biodiversity conservation through the UN Convention on Biological Diversity (Bingham et al 2017). Given the willingness to pursue conservation on private land through regulatory controls in order to meet public policy aims and international agreements, we must ask why such opportunities to explore a regulatory means for Indigenous sovereignty through private land have not been pursued as earnestly?

Rate rebates for conservation covenants

The use of rate rebate mechanisms for landholders who place a conservation covenant on the title of their property, whereby biodiversity care and maintenance obligations run with the land,

is one such example of regulatory utilisation which may hold relevance for questions of Indigenous land justice and reconciliation.

Local governments have long considered themselves to play a key role in biodiversity conservation through the use of planning controls, management of green open space, and policy advocacy to state and federal governments (MAV 2016). While the focus and extent of conservation work differs across urban and rural municipalities, the near ubiquitous presence of biodiversity conservation strategies or plans across Victorian local governments, much like Reconciliation Action Plans, indicates the widespread acceptance of conservation as a priority action. Yet, with a high proportion of biodiversity existing on private land (especially threatened species and vegetation communities), rural and urban fringe municipalities have looked to influence conservation outcomes on private property.

This has translated into the use of planning controls and regulations with the *Local Government Act* to encourage conservation through the provision of rate rebates to landholders who sign up to a conservation covenant. There are around a dozen municipalities in Victoria who have partnered with Trust for Nature (a conservation land trust that operates in Victoria through the *Victorian Conservation Trust Act* 1972) to provide rate rebates where landholders place a legal agreement on the title of their land that protects the ecological values of that site. Some councils, such as Mt Alexander Shire Council, south of Bendigo, also offer rebates to landholders with other types of permanent, on title agreements.

The intention behind the scheme is to provide a financial reward to landholders who are actively contributing to biodiversity conservation, based on the understanding that there is a broader community benefit that flows from the protection and management of ecosystems. Given that Trust for Nature covenants are in perpetuity and tied to the property title, they also represent a long-term commitment to conservation. These rebates are generally determined on a per hectare basis, with a minimum and maximum limit for each landholder. For example, Mitchell Shire Council in central Victoria offers a rebate of $20 per hectare for land covered by a conservation covenant, with a minimum rebate of $100 and a maximum rebate of $500 per property. The enabling mechanism for the rebate is noted in section 169 of the *Local Government Act* (1989), which states:

‘A Council may grant a rebate or concession in relation to any rate or charge—

(a) to assist the proper development of the municipal district; or

(b) to preserve buildings or places in the municipal district which are of historical or environmental interest; or

(c) to restore or maintain buildings or places of historical, environmental, architectural or scientific importance in the municipal district' (p237)

Of direct interest to Indigenous land justice is the clause that rate rebates or concession can be granted to 'restore or maintain… places of historical, environmental, architectural or scientific importance' (LGA 1989 s169, p237). Sites of *historical* importance suggests an avenue for using this mechanism for matters of importance that are beyond biodiversity conservation. To date, the use of this rebate mechanism clause appears to have centred on cases of ecological value and settler colonial heritage. Yet the clause offers potential opportunities.

Given the emphasis on land that is covenanted in the existing rebate process, could the same processes be used to facilitate Aboriginal access to land? In rural or peri-urban areas, is there potential to provide residents with a rate rebate as an incentive for signing up to covenants that enable Aboriginal people access to that land, or its wealth generation, in perpetuity? In urban areas, could residents nominate for a rate rebate where the value of the rebate is transferred to a local Aboriginal peak body?

There is a strong alignment with this idea and the ethic and spirit set out in the Traditional Owner Settlement Act (TOSA), and the associated Traditional Owner Settlement Framework. The TOSA applies only to public land, yet sets a broad framework for creating agreements, between traditional owners and the Victorian Government, toward recognition of traditional ownership, provision of specific Aboriginal title, and associated rights in land. Clause 9 of the TOSA provides that a recognition and settlement agreement may recognise a number of rights of the traditional owner group. The recognition may relate to any one or more of the following rights:

- enjoying the culture and identity of the traditional owner group;
- maintaining a distinctive spiritual, material and economic relationship with the land and the natural resources on or depending on the land;
- accessing and remaining on the land;
- camping on the land;
- using and enjoying the land;
- taking natural resources on or depending on the land;

- conducting cultural and spiritual activities on the land;protecting places and areas of importance on the land.

The idea presented in this position paper would enable some of these principles to begin to be applied to private land. In so doing, the aspirations expressed by local councils in Victoria, and peak bodies such as the MAV, through their RAPs and other frameworks can be put into practice. It is not the purpose of this position paper to prescribe how such a mechanism could be implemented for land justice outcomes. What the conservation covenant rate rebates shows is that existing local government planning regulations have been operationalised for conservation objectives in ways that highlight distinct possibilities for land justice objectives. This would enable local councils to explore practical implementation of land justice and self-determination aspirations expressed in their RAPs in concrete ways. The fact that the conservation covenant rebate was established as a partnership between local government and Trust for Nature, which has been adapted and altered to suit the specific circumstances of individual local government areas, demonstrates the importance of a commitment of collaborative approaches to such initiatives.

6: Caution and opportunities

There is now in Victoria a commitment, through Treaty negotiations, to reconciliation and self-determination that signals a need to build a new relationship between Indigenous peoples and settler society. However, as respected Ngāti Kahungunu, Ngāti Rongomaiwahine, and Ngāti Porou lawyer and academic Moana Jackson points out, '"treaties aren't settled; they are honoured." And they are only honoured when the treaty and the relationship it establishes are worked through' (Kelly 2017). Current conditions, we contend, present opportunities to participate in this work. However, they also present renewed risks. The discussion above establishes that such effort must foreground and acknowledge:

a. That there is already clear direction from Aboriginal people, rooted in consistent historical claims for meaningful self-determination, collective (group) rights and connection to country. The responsibility of non-Indigenous society and governance is to do the work of responding.

b. That these claims find strong backing in international law and norms for Indigenous peoples and align with many transnational Indigenous struggles. Recourse to international law and norms is an important, although fraught, tool for indigenous people in the context of the settler colonial state.

c. That a legacy of dispossession and genocide requires a reparative and redistributive response, a need to "pay the rent", and address historical injustices. This must include addressing, through redistributive mechanisms, the ongoing processes of land dispossession and material disenfranchisement. Vital attention needs to be paid to the governance that will manage the disbursement and strategic investment of resources generated through such mechanisms.

d. That self-determination and self-governance requires material, economic sustainability - a fiscal capacity. This itself surely requires access to ongoing distributive / redistributive justice and revenue into the future, to provide inter-generational justice. This aligns with fundamental presumptions of settler state governance themselves, and is vital in moving beyond the "curse of oil".

e. That there may be opportunities to repurpose existing instruments or mechanisms, such as local and state government agreements around fees, taxes or rates, towards the building of a new relationship While this would not in itself constitute reconciliation or reparations, it may be one of the many "small advances" in the cause/course of fashioning a new relationship, always within a more expansive commitment to Treaty.

There are a range of fundamentally difficult questions and politics to also consider. As recent turns in the Victorian Treaty debate demonstrate, the question of the relationship between traditional owners and clans with Indigenous people from elsewhere living in Victoria in a Treaty is fraught. Victoria's Indigenous population is growing strongly at 4.7% annually (Markham and Biddle 2018) resulting from both natural increase and population movement. The contemporary demographic context should also be placed in the wider historical context of colonisation, frontier wars and the dispersal and movement of Aboriginal people across the country. We cannot address the implications arising from this demographic picture here, but acknowledge the central importance of the implications for political jurisdiction and the politics of identity. We are keenly aware of the political economy that inevitably arises from systems that distribute certain kinds of economic or social gains.

As we discussed above, a continual interrogation of the gap between transformative aspirations for self-determination and actions of inclusion that consolidate rather than transform existing power relations is crucial. In the context of this paper we aim to include this risk as ever present, and requiring attention. This can be understood as the difference between:

a) *talking* about self-determination but maintaining existing power and resource relationships and

b) *doing* actions that respond to the real redistributive or transformative changes necessary to create actual conditions of self-determination.

While this risks some oversimplification, and is not always a clear-cut distinction, it is one of central importance. As shown in the survey of the policy environment presented here, this is a problematic with which some local government bodies in Victoria are already wrestling; around which they have identified gaps and deficiencies; and which they are actively seeking resources to address.

The work that this paper points towards might in part be framed as addressing some of these deficiencies/gaps, and as such extending or adding to work that local councils and peak bodies are already doing and promoting. As one example it could be that this project fills all three of the gaps identified in the Victorian Local Government Aboriginal Engagement and Reconciliation Survey (2012) as it:

- seeks to connect Aboriginal groups with councils (through workshops) (which reflects the broader statewide efforts to involve Traditional Owners in negotiation demonstrated in the TOSA processes);

- seeks to raise funds (addressing financial deficiencies);
- seeks to establish protocols and policies that can be replicated/ become a model for local government (and in doing so will draw on the experiences of other jurisdictions); and
- Seeks to contribute to the development of best practice models.

This project therefore directly contributes to a gap already identified by Victorian local councils. It contributes substantively to this by proposing concrete steps, and mechanisms, through the Local Government Act, as well as through refocusing discussion to the problems, opportunities, and responsibilities of doing Treaty work in this area.

This is manifestly important. For while the *Magolee* website, and the recent Action Plan provide a central resource for councils to share stories and precedents, the cases and examples shared are at best an initial step towards actual *sharing* of strategic, governance and planning responsibilities. In light of the context of settler colonial recognition discussed in the beginning of this paper, if not supported by more substantive change, these initiatives join the legion forms of shallow and symbolic recognition, where little attention to redistributive or other substantive material and cultural claims is made. Such an outcome would undermine both the aspirations of local government towards reconciliation and the efforts of Aboriginal campaigns. Therefore, there is a crucial need to be vigilant in the light of new Treaty negotiations, as well as more broadly troubling histories of settler colonial-Indigenous relations.

In alignment with the intended impact of local councils and the Victorian Government's aspirations for Treaty and reconciliation, the gap and distinction between *talking* and *doing* must be continually interrogated. Proposed action must substantively relate back to the complex problematic discussed in this paper, as well as address its actual manifestations in practice. This paper aims to support small advances in this work by considering the opportunity for existing mechanisms to be purposively turned toward a meaningful and concrete response to the need for a new relationship between local government and Indigenous peoples in Victoria.

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Appendix A

Relevant organisations in Victorian Local Government:

- Victorian Human Rights Commission <humanrightscommission.vic.gov.au>
- Local Government Victoria Professionals (LGPro) Special Interest Group: Indigenous http://lgpro.com/sigs/indigenous-special-interest-group
- Magolee 'here in this place' Website and Local Gobvernment resource < http://www.maggolee.org.au/>
- Municipal Association of Victoria (MAV) http://www.mav.asn.au/Pages/default.aspx
- Reconciliation Victoria http://www.reconciliationvic.org.au/
- Victorian Local Governance Association (VLGA) http://www.vlga.org.au/Home

Appendix B

Traditional Owner Settlement Act (TOSA) Documents:

- Full act available: http://www.legislation.vic.gov.au/Domino/Web_Notes/LDMS/PubStatbook.nsf/f932b66241ecf1b7ca256e92000e23be/7718A865B4A91AD0CA2577A5001DA3D1/$FILE/10-062a.pdf
- Succinct explanation here: http://www.justice.vic.gov.au/home/your+rights/native+title/traditional+owner+settlement+act

The Traditional Owner Settlement Bill:

- http://www.landjustice.com.au/document/Traditional-Owner-Settlement-Bill-2010-Memo.pdf

- The trust that manages the money that is settled http://www.traditionalowners.org.au/

- Magolee page related to this http://www.maggolee.org.au/respect-and-recognition/recognise-and-respect-traditional-owners/

Related Vic GOV Pages:

- Native title: http://www.justice.vic.gov.au/home/your+rights/native+title/

Victorian Traditional Owner Land Justice Group

- http://www.landjustice.com.au/
- LJG Library: (lots of info here): http://www.landjustice.com.au/?t=5
- Statement to vic government 2005 <http://www.landjustice.com.au/document/Communique-Statewide-Meeting-17-18Feb05.pdf>

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