# From Mississippi to Broome – Creating Transformative Indigenous Economic Opportunity

**Jane O'Dwyer, Counsellor (ANU), Embassy of Australia, Washington DC.**

Self-determination is the single most important ingredient for the prosperity and success of Indigenous communities—be they in Broome, Mississippi or Nova Scotia, a distinguished panel of speakers led by ANU Professor Mick Dodson told a capacity audience of close to 100 people at the Australian Embassy in Washington on 29 September.

Professor Dodson was speaking at the invitation of Australia's Ambassador to the United States, Kim Beazley as part of the 2011 Ambassador's Lecture Series. Professor Dodson is in the United States as the current Gough Whitlam Malcolm Fraser Chair in Australian Studies at Harvard University.

He was joined in the discussion, which compared the Australian and North American experience of economic development in Indigenous communities, by Professor Manley Begay, a Navajo man who is a social scientist with the American Indian Studies Program at the University of Arizona and Co-director of the Harvard Project on American Indian Economic Development.

Rounding out the discussion was anthropologist and mediator Toni Bauman, a Research Fellow from the Australian Institute of Aboriginal and Torres Strait Islander Studies and a current Visiting Fellow at the Kennedy School of Government in the Harvard University program on American Indian Economic Development.

In examining the common thread in prosperous Indigenous communities, the panel looked at success stories in North America, such as the Choctaws of Mississippi who run a portfolio of businesses, can boast zero percent unemployment, and employ some 7000 people from surrounding towns. Their story is not unique, with numerous Indigenous communities transforming into large employers and drivers of economic endeavour not only for their community, but the surrounding non-Indigenous communities.

'Indigenous country [in North America] has changed very quickly', Professor Begay said. 'We are in an incredible era, moving from self-determination to nation building'. Professor Begay compared the experience of Native American communities moving to self-rule, which began occurring in the 1970's, to the transformations of Eastern European communities at the end of the Cold War.

He said that current action in North America has shifted to questions of governance—how indigenous nations organise themselves, how they make decisions, how they develop culturally appropriate institutions to endure the long term sustainability of their communities. 'However, to get to those questions, you first need self-rule'.


From left: Professor Manley Begay, Toni Bauman, His Excellency the Hon Kim Beazley, Ambassador to the United States of America and Professor Mick Dodson.

But in Australia, 'self-determination' has become a whispered word, according to Ms Bauman. 'We now talk about 'normalization', which could be seen as code for assimilation', she said.

Ms Bauman described the native title agreement-making landscape in Australia, noting a contradiction between Commonwealth policies of more flexible, less technical and streamlined approaches and the ways in which connection materials are being assessed. She argued that without more long-term consistency in policy settings from all governments, Australia's Indigenous communities would struggle to emulate the success of their North American cousins.

One community grappling with turning its native title into economic development is Professor Dodson's

own Yawuru peoples, the traditional Aboriginal owners of land and waters in the Broome area of the southern Kimberley region of Western Australia. In March 2010 the Yawuru people signed an historic agreement worth some $200 million with the State of Western Australia and the Shire of Broome to finally settle the long running Rubibi native title claim, allowing the community to progress their plans for land management, care and development in the Broome area.

'The challenge now', Professor Dodson said, 'is to look at development models that will work. The government approach is too narrow for Yawuru people. We need all four sectors of our economy to come together—the private sector, the public sector, the not-for-profit sector, and the cultural sector'. Professor Dodson said the community was spending a great deal of time on the institutions and capacity for governance, seeking to ensure self-sufficiency, self-reliance and cultural preservation.

'The lessons we can take from the North American experience is that governments must let people make their own decisions', he said.

Professor Begay summed up the lesson from the US, 'the only Federal Government policy that has ever worked [to improve the prosperity of Native American peoples] is enabling Indigenous communities to make their own decisions. And when they do, they prosper. The self-rule policy supports the Indigenous community, it supports the broader regional community, and it supports the state community, and it contributes to the nation as a whole'.

# What's New

## Recent Cases

***Dunghutti Elders Council (Aboriginal Corporation) RNTBC v Registrar of Aboriginal and Torres Strait Islander Corporations (No 3)* [2011] FCA 1019**

**25 August 2011**

**Federal Court of Australia, Sydney NSW**

**Keane CJ, Lander and Foster JJ**

Dunghutti Elders Council had challenged the validity of a notice issued by the Registrar of Aboriginal and Torres Strait Islander Corporations (now known as the registrar of Indigenous Corporations), which had required the Council to 'show cause' why it should not be put under special administration. That challenge, heard by Flick J, was unsuccessful, and an appeal against Flick J's decision was dismissed by the Full Court. The Full Court ordered that this dismissal would not take effect for 3 weeks, and the Registrar undertook not to put the Council under special administration for that period. The Council has applied to the High Court for special leave to appeal against the Full Court's dismissal.

In the current judgment, by Foster J, the Council had applied for orders that would prevent the Full Court's dismissal from taking effect until the Council's application for special leave had been decided. The Council also applied for an injunction preventing the Registrar from putting it under special administration during that time. Foster J held that a stay of the Full Court's decision (which only had the effect of putting Flick J's orders back on track) was not the appropriate remedy to seek in any case, and concentrated on whether an injunction should be granted. His Honour considered that an injunction was not appropriate for the following reasons:

- The prospects of the High Court granting special leave to appeal are slim, since the Council's substantive arguments are weak and further the special leave application does not raise any point of general importance applicable beyond the facts of this single case.
- The grounds for the Registrar's original 'show cause' notice involve quite serious allegations, and there is a significant public interest in ensuring that the native title compensation funds paid to the Council are spent wisely and in the interests of the people for whose benefit they were to aid.
- There is an ongoing risk, if an injunction were granted, that the Council's assets will be further dissipated in litigation that will not benefit its members.
- His Honour did not consider the prospect of further damage to the reputation of the incumbent directors to be a matter of much weight in favour of an injunction when compared with these other matters.

***Cashmere on behalf of the Jirrbal People 1 v State of Queensland* [2010] FCA 1090**

**12 September 2011**

**Federal Court of Australia, Ravenshoe QLD**

**Dowsett J**

In October 2010, Dowsett J made consent determinations recognising native title held by the Jirrbal people over land and waters in the vicinity of