

# **INTERNATIONAL HUMAN RIGHTS DAY ORATION LINKING OUR PAST WITH OUR FUTURE: HOW CULTURAL RIGHTS CAN HELP SHAPE IDENTITY AND BUILD RESILIENCE IN KOORI KIDS**

*By Andrew Jackomos*

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## **Introduction**

Thank you to my life-long friend and confidant Carolyn Briggs for your warm Welcome to Country. It is good to be here on your traditional lands, the lands of the Boon Wurrung. I also acknowledge all the good people here this evening—both Koori and non-Koori—you have taken time out from your families to be with us tonight. You would not be here if you were not good of heart.

As the Commissioner for Aboriginal Children and Young People I have the great honour and privilege to be in a position to strongly advocate for all Koori children and young people; and to bring their lived experiences and their voices to the forefront. I have a role to particularly advocate for our most vulnerable babies, children and youth.

The right of Koori children to their culture, along with the other core human rights of children—to life, to family, to protection—was one of the immediate priorities I set when I commenced as Commissioner in August 2013. Cultural rights directly impact on a child's ability to meaningfully enjoy every other human right and freedom, let alone their health. Like all human rights, they are universal, indivisible and interdependent.

For Aboriginal and Torres Strait Islander peoples, Indigenous peoples, First Nations peoples, for Koories, this human right is crucial to our wellbeing, it is crucial to our sense of pride, to our sense of belonging. Culture is the most resilient factor protecting our children. Culture links us to our past so we can navigate our future.

## **Koori Culture**

Our people, be they living on the Mornington Peninsula, or on the banks of the Murray River, will have a deep, rich, spiritual and emotional continuing connection to this land from time immemorial, which they will pass on to younger generations. It is who we are as people and who we are as a family and a community.

I am a Yorta Yorta man from the Murray River and the lands in north central Victoria and adjacent lands in NSW. I am also proud of my blood ties to the fighting Gunditjmara of the south west and the Taunarung peoples across the black spur, also of the greater Kulin.

Koori culture in Victoria, culture in my community, runs deep and strong and I see overwhelming evidence of this wherever I go. Our culture did not cease to exist when the Macassans first started to trade with our brothers and sisters up in the Top End. Both cultures adapted and changed with the times for the mutual benefit of both. Nor did the culture of

Boon Wurrung end when the English invaded our shores and sailed through the heads. The Boon Wurrung culture adapted and changed with the times, as it had done for thousands of years, and as it has continued to do so ever since.

But I will tell you what happened after our exchanges with these newcomers. Our dynamic and flexible culture, for the most part, remained vibrant, alive and strong. It wasn't until Eddie (Koiki) Mabo, the great Torres Strait Islander warrior from the Meriam people of Murray Island, successfully challenged the Queensland government and the immoral myth of Terra Nullius in the High Court, that you might now know that this land here always was and always will be Boon Wurrung.

Unfortunately, it is not all good news. In my role I see the symptoms of past and failed government policies. I see the results of intergenerational trauma, grief and loss. I see this in many of our children who are over-represented in the child protection and youth justice systems, often creating the foundations for their future admission to the prison system.

Every day I hear sad and traumatic stories from one end of the state to the other. The evidence suggests that the communities that are faring the worst are those without strong and well-resourced community infrastructure. In these under-resourced communities, there is a lack of strong advocacy that would otherwise help prevent family violence and protect the rights of children and promote their culture.

What do I mean when I talk about culture in this context? The expression has infinite scope and will mean different things to different people. The enjoyment of “culture” holds a special significance for Aboriginal and Torres Strait Islander peoples, as it does for all First Nation peoples and communities.

Culture is not something that just stops in time, nor an ideal that can be bottled and measured against the past. In the words of the United Nations Committee on Economic, Social and Cultural Rights, culture ‘is a living process, historical, dynamic and evolving, with a past, a present and a future.’ Aboriginal and Torres Strait Islander peoples from time immemorial have been growing, evolving, adapting for over 40 000 years.

For us, culture is about our family networks, our Elders, our ancestors. It's about our relationships, our languages, our dance, our ceremonies, our heritage. Culture is about our spiritual connection to our lands, our waters. It is in the way we pass on stories and knowledge to our babies, our children; it is how our children embrace our knowledge to create their future. Culture is how we greet each other and look for connection. It is about all the parts that bind us together. It is the similarities in our songlines.

In communities where culture is strong, the force of identity and the knowledge of each other, **the knowledge of our ancestors is a shield against racist remarks and negative stereotypes.** Knowing family, community and connecting to culture, to land, to waters—these are the things that build up our young. As I travel the state and the nation I see and feel a great

cultural revitalisation growing all around me and it fills me with hope. In my travels I am witnessing greater celebration of our diverse, vibrant and distinct cultures.

### **Impact of loss of culture**

What happens when we destroy people's links with their culture and deprive them of their sense of identity, strip them of their dignity, of their sense of belonging? The results are catastrophic. We all know about the Royal Commission into Aboriginal Deaths in Custody. But you may not know that Indigenous incarceration rates across the country are higher now than then.

In 1991 the Royal Commission into Aboriginal Deaths in Custody handed down its final report. In undertaking its work across every jurisdiction, the Commission met with Aboriginal and Torres Strait Islander people who told them about the injustices they experienced in the justice system. Despite the glaring warnings and recommendations of the Royal Commission made over 20 years ago, more than 50 per cent of children and young people in youth detention in Australia are Aboriginal. For children under 18 years of age the rate is over 60 per cent!

The rate of detention of Aboriginal children and young people in Victoria is the lowest in the country, yet Koori children are still *13 times* more likely to be in custody than their non-Aboriginal brothers and sisters. This is simply unacceptable—not just to me but it should be totally unacceptable to all Victorians.

The Commission for Children and Young People's independent visitors have frequently reported that the majority of children aged 10 to 14 at the Parkville Youth Justice Centre are Koori. Many of these children are in custodial facilities un-sentenced, awaiting their court hearing, because there are not sufficient diversionary options available to magistrates. We know of children aged under 14 years who are held incarcerated separately from their peers for days on end.

We know that so many Koori children in detention have come from out-of-home care and remain child protection clients. They are in the vortex where the government has assumed the role as their parent but is at the same time their "jailer". Would this parent, being the government, advocate for their child with the same relentless passion as other parents to have the best legal representation, effective diversionary options, and the best possible outcome for them?

We know that **children who become isolated from cultural and community networks when placed in out-of-home care are more vulnerable to being abused and less able to seek help.** It is devastating to witness that some of our children being removed from a violent or turbulent home life for their 'protection' are placed in care that isolates them from relationships with their family, community and culture—the very things that would have otherwise grounded and shaped them. They can become disengaged and face further hardship and suffering.

The number of Aboriginal children in Victoria in out-of-home care today is greater than it has ever been. Of the approximately 6500 children in the Victorian out-of-home care system over 1200 are Koori and growing. This is a staggering ratio when the Koori population in Victoria is only around 1 per cent.

### **Taskforce 1000**

To provide better support to Koori children and their families and to reduce the level of their separation we must understand *why* Koori children are still being removed from home at such high rates.

Reports on Koori children are substantiated at a rate of 67.4 per 1000 compared to 7.2 per 1000 for non-Aboriginal children. We need to unpack how the system operates and how people in the services sector view Koori children; as well as confront the drivers that result in our babies, children and young people entering and languishing in care for many years. Most reports to child protection are for babies and preschoolers aged 1-4 years of age.

Taskforce 1000 was formed to critically review the case plans of 1000 Koori children and young people in out-of-home care. I have so far listened to the experiences of well over 200 children from Sunraysia, Latrobe Valley, central Gippsland, and Melbourne's western and southern suburbs.

Male-perpetrated family violence is the major reason these children have been removed from home. In most cases violence is coupled with alcohol and drug misuse. Other common themes in the cases we have reviewed are: intergenerational trauma driven by past government policies of child removal; prior parental involvement with child protection and the justice system; sexual abuse; mental health; incarceration; poor housing and transience. Learnings from the past are not changing the trajectory for our children. Generational cycles of poverty, disadvantage, disconnection and discrimination are not being broken.

Koori children and young people are progressing from the out-of-home care system to the youth justice system at alarming rates, further disconnecting them from their cultural ties and identity. The age of criminal responsibility in Victoria, as it is nationally, is just 10 years of age. We are all failing these children and establishing patterns of involvement with the criminal justice system before they are old enough to be truant from school or drive a car.

### **A right to culture in legislation**

It is the sad truth that not all our children have access to their culture, and many do not have access to cultural relationships. Many are being denied their basic human right to culture. Victoria, along with the ACT, is one of only two states or territories in Australia to have enacted human rights legislation.

The *Charter of Human Rights and Responsibilities* is important because it elevates many of Australia's international commitments to observe human rights principles to legal obligations at home. In Victoria law-makers must now consider human rights when enacting new laws;

and public authorities must act and make decisions in a way that is compatible with human rights. This is an incredibly positive step. It is the right step.

The Charter also took an important step in recognising the unique rights of Koories in Victoria and in specifically recognising the importance of culture. Section 19 is modelled on the right to culture embodied in the *International Covenant on Civil and Political Rights* to which Australia became a party in 1980. As the United Nations Human Rights Committee has explained, this provision is directed towards ‘the survival and continued development of the unique cultural identity of minorities, thus enriching society as a whole.’ The Committee interpreted this right as extending to the cultural rights of Indigenous peoples.

Despite its initial resistance, Australia gave a formal statement of support for the United Nations Declaration on the Rights of Indigenous Peoples in April 2009. Whilst it is terrific that the right to culture is embedded in such documents, the challenge is what actually happens in the daily experience of Aboriginal people. How accessible are these rights and do they make a difference?

In Victoria, the human rights embodied in the Charter do not give rise to individual causes of action and the courts cannot strike down offending legislation—parliamentary sovereignty is maintained. In other words, the rights of minorities, our Aboriginal children, remain subject to the democratic process of majority decision-making.

The obligations relating to culture that are mandated in our child protection legislation—the *Children Youth and Families Act 2005* (Vic)—are not being implemented consistently or effectively, and there is no accountability when they are not implemented. Legislative entitlements give our children the right to demand that they be fulfilled. Victoria's child protection regime is underpinned by a principle that prioritises the best interests of the child. You might think this is obvious and should go without saying, but we need to ensure a culturally-informed understanding of what a child's best interests are or the principle is completely meaningless.

The legislative provisions seek to foster and maintain cultural and kinship connections when Koori children are removed from home. One such provision is the Aboriginal Child Placement Principle as contained in the Victorian *Children Youth and Families Act*. We know, through Taskforce 1000, that the application of the principle has significant scope for improvement. The Commission is currently conducting an inquiry in relation to this.

Unfortunately government—the system—is failing in practice to acknowledge that cultural identity and connectedness is vital to the best interests of Aboriginal children. There is a legislative mandate to implement cultural support plans for all Aboriginal children under Victorian guardianship orders. As at June 2013, cultural plans were being implemented in less than 10 per cent of cases and many of these are lacking in substance and meaning.

There is a lot to be done between now and March 2016, when the obligation to implement cultural support plans will extend to all Koori children in out-of-home care. It is vital to be aware that a cultural support plan is not about just taking a child to a NAIDOC march, or sticking up an Aboriginal flag. Cultural meaning comes from connections, relationships and socialisation with other Koori children and role models who will inspire and support the child as their life unfolds.

Culture is not a 'perk' for an Aboriginal child—it is a life-line.

*Andrew Jackomos is the Victorian Commissioner for Aboriginal Children and Young People. He has over 30 years' experience in Aboriginal affairs policy and administration.*

*Since this speech was delivered, the Productivity Commission's latest national Report on Government Services showed that Aboriginal babies and children in Victoria removed and living away from immediate family homes rose by 42 per cent in just 12 months to 30 June 2014. Commissioner Jackomos is calling on the government and the Koori community to work in partnership to stop the violence and the corresponding and alarming rise of Koori children being taken into care away from family.*