

More than a word. Reconciliation takes action.

Speech delivered to the QUT Law Society Reconciliation Week 2021 Breakfast

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I pay my respects to the traditional owners and acknowledge my long-time friend and mentor Uncle 'Cheg' Egert.

I also acknowledge the passing of Justice John Jerrard QC. As a young lawyer John was a source of both inspiration and fear, and sometimes much laughter, and I know he is fondly remembered by the Quandamooka mob for his work on the Minjerribah native title claim.

This year's Reconciliation Week theme is *More than a word. Reconciliation takes action.*

Later on today I will be speaking at another QUT Reconciliation Week event, this time at Kelvin Grove campus, and Karen Mundine the CEO of RA will also be speaking. I don't want to get myself in trouble with Karen (after all who would want to pick a fight with a Mundine?). I am a big supporter of the work of Reconciliation Australia and acknowledge the huge strides that it has helped Australia's non-Indigenous population take in the last 20 years.

Back in the late 80s when I first became involved in Indigenous justice issues, I would never have guessed that we would one day find big mainstream corporations signing up to action plans called "Stretch RAPS" and making various commitments toward reconciliation. Whilst many of these RAPS have been symbolic, many practical benefits have flowed from them, and clearly RAPS have provided a valuable framework for forging untold relationships between both individuals and organisations across the continent.

However, there has always been a question mark in my mind as to what the purpose of reconciliation is. What is it? When do we know when we have achieved it?

One of the great things about the modern world is you can, as my 9 year old daughter says, "search up" stuff in seconds.

Google tells me that there are 2 definitions of reconciliation, neither of which sit very comfortably with me.



Firstly, *“the restoration of friendly relations.”*

As I have heard many Aboriginal people point out over the years, there is a fundamental problem with this concept of reconciliation: that is, the premise that there *were* friendly relations between Australia’s First Nations and their colonisers.

How can you formally *restore* a friendship if there was no *formal friendship* in the first place?

I will return to this question about the nature of the relationship a bit later, but now let’s look at the second meaning of reconciliation: *“the action of making one view or belief compatible with another.”*

The example provided for use in a sentence is *“any possible reconciliation between such clearly opposed positions”*.

I’m pretty sure Reconciliation Australia wouldn’t be promoting this version of reconciliation, as history tells us that when the views and interests of Aboriginal people collide with the views and interests of non-Aboriginal Australians, it is the aspirations of Aboriginal people that are typically wrought into ‘compatibility’ – that is, *reconciled* - with those of the dominant society.

A good example of this is the Wik decision. For those of you who have studied land law you might remember the Wik decision recognised that native title could survive the grant of a pastoral lease – but to the extent of any inconsistency, it was the native title rights that had to yield to the interests of the pastoral lease holder.

So I think it is time we moved beyond the excellent groundwork provided by the reconciliation movement.

In fact I believe it is time Australia started to embrace another R word. No, it is not ‘recognition’ (although Constitutional recognition would necessarily be an important byproduct of the process).

The R word I have in mind is *Reckoning*.

Dictionary.com has a very snappy definition of *Day of Reckoning*, which I think is a perfectly apt description of what is required for Australia to come to terms with its relationship with its First Nations:

“ – the time when one is called to account for one’s actions, to pay one’s debts, or to fulfil one’s promises or obligations.”

Let’s take those three elements one by one:

Called to account for one’s actions

This accounting could obviously take different forms but the form that Australia’s First Nations have called for in the 2017 Statement from the Heart is for the establishment of a Truth and Reconciliation Commission.

Is there anybody in the room who has heard of David Thomson Seymour? He was appointed Queensland’s first police commissioner in 1863, and remained in that role



until 1894. It is a well-established, if not well known, fact that the police force established under Commissioner Seymour's command was responsible for many thousands of deaths of innocent Aboriginal men, women and children right across Queensland. In fact, some academics have speculated that as many Aboriginal people in Queensland were killed by police during this period, as Australian soldiers were lost in WW1.

This is but one chapter of many – including some positive stories – that needs to be told, and listened to, in a truth telling process.

Pay one's debts

It seems a long time ago now but at the last Woodford festival at the end of 2019, Noel Pearson reminded the crowd that the Native Title Act, in which he was a key negotiator, was part of a bargain struck by the Keating government. The deal was that in return for the Native Title Act's validation of all pre-existing titles, compensation would be payable for extinguishment that occurred after the Racial Discrimination Act was introduced in 1975.

Here we are almost 30 years after Mabo and Australians still haven't made good on that deal.

The High Court finally delivered some guidance on calculating compensation in the 2019 *Timber Creek* decision. Since then lawyers have speculated that the compensation bill could run into the billions – one lawyer has estimated \$56B. Back in 2019, \$56B seemed like an impossible ask for Treasury. In the post-COVID world, where week-long shut downs of capital cities are tolerated despite costing close to a billion dollars a pop, \$56B no longer seems like such a stretch.

We should not be forcing First Nations to go through protracted litigation simply to recover a debt that was acknowledged as outstanding 30 years ago.

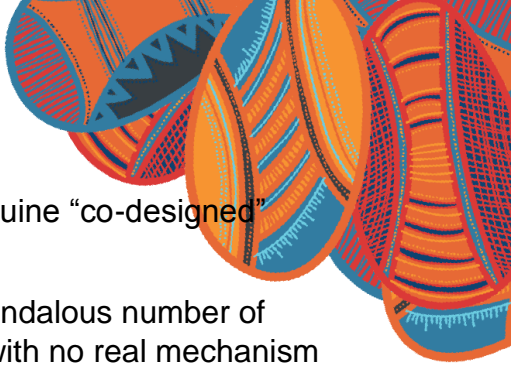
The Reckoning requires a process for paying this debt and perhaps others – for example, compensation to the Stolen Generations – and to ensure there is incentive to settle the debt sooner rather than later, just like your HECS debts, a generous interest charge should be payable.

Fulfil one's promises or obligations

The final element of the reckoning – to fulfil one's promises or obligations – would require both parties to consider their ongoing relationship.

Since the abolition of ATSIC in 2004, despite the growth in capacity of many Indigenous controlled organisations, there has not been an effective formal mechanism for engagement between governments and Aboriginal and Torres Strait Islander communities.

The absence of such a structure makes it extremely difficult for Indigenous communities to hold governments to account. I have recently seen an example of this in the implementation of the Closing the Gap strategy in Queensland. Without a recognised and properly resourced Indigenous body with an appropriately authorised



mandate, it is impossible for governments to embark upon genuine “co-designed” programs or partnerships.

The result is a list of worthy targets – such as reducing the scandalous number of Indigenous children in youth detention by 30% by 2031 – but with no real mechanism or plan for actually achieving the them.

Again this where we need to revisit the Statement from the Heart. Australia needs a constitutionally entrenched Voice to parliament that gives effect to a new power sharing relationship that goes well beyond the well-meaning statements in Reconciliation Action Plans.

Unless and until Australia is prepared to move beyond acts of symbolism, and embrace the need to hand over some power, than our First Nations will continue to languish in what they have described in the Statement from the Heart as the torment of their powerlessness.

In the year 2000, at the Sydney Olympics, I’m figuring that most of this audience might still have been in their nappies. Older folk like Uncle Cheg and I were glued to our TV sets watching Cathy Freeman win gold in the 400m. Much has been made of how Cathy Freeman was running with the weight of Australia’s unfinished business on her shoulders.

In 2032, there is now the real prospect of the Olympics returning to Australia and in particular to Queensland, where more than a quarter of Australia’s Indigenous population resides. The return of the Olympics presents a golden opportunity for us to show that we have moved beyond mere words, beyond reconciliation and to a point where all of us can celebrate the reckoning with the world’s oldest living culture.

Let us hope we take the opportunity.

Thank you.