

## ***“Doing Business with Indigenous Peoples”***

*A Presentation by Dominic McCormack\*, Director, MARLUK Link-Up  
to the International Bar Association Conference, Chicago,  
delivered by Mr. Tim Bugg, President of the Law Council of Australia*

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### **Introduction**

As we move through this Conference program, it is worthwhile reflecting on the variety of agreements with Indigenous peoples that have been the subject of discussion:- Resource co-management, extraction and infrastructure development, to name just a few. Many are major agreements, leading to opportunities and benefits not only for the Indigenous peoples concerned, but also for the wider community, town or city. Sometimes, the positive benefits are even gained by the nation state as a whole. In order to proceed, however, a crucial ingredient is a strategic partnership i.e. a relationship derived from a solid foundation based primarily upon cooperative strategies.

These strategic partnerships can range from being engaged to work for an Indigenous organization as a business planner, lawyer or project manager, through to a solid joint venture arrangement where each party is securing profits or some other benefit from the endeavour concerned. Regardless of the level, a number of issues arise:-

- 1) In a bi-cultural context, what knowledge is required?
- 2) How does one form an appropriate relationship? and
- 3) What is needed to ensure its success?

In order to examine these matters, I will utilize as a central case study a project in which I am currently involved that has received positive media coverage in local and national newspapers (“the Project”). Where required, other examples will also be referred to.

### **The Crocodile Farm Project of the *Yek Dirrangara* Clan**

The aim of the Project is to commence a small business in the form of a crocodile farm. The location of the farm is Wudipuli, a small Aboriginal community some 360 kilometres south-west of Darwin in the Northern Territory of Australia. Wudipuli is on the clan land (“the land”) of the Yek Dirrangara people (“the Traditional Aboriginal Owners”), a people who still speak their traditional language of Marri-ngarr. The land is classic fresh water flood-plain country – perfect for breeding crocodiles!

Legally, the land is held by the Daly River / Port Keats Aboriginal Land Trust (“the Trust”) on behalf of the Traditional Aboriginal Owners as a result of being gazetted as Schedule 1 land in 1976 under the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) (“ALRA”).

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\* See [www.marluk.com.au](http://www.marluk.com.au) for Dominic McCormack’s biography and current business operations.

The legal agents for the Trust are the Northern Land Council (“NLC”) who must seek informed consent from the Traditional Aboriginal Owners regarding any use of or access to the land. It is not uncommon for issues to arise as to who in fact is a traditional owner for land which must then be dealt with by the NLC.

The idea for the Project is not a recent invention. Aloysius Narjic, a middle-aged male member of the clan who has been designated the task of conducting the Project by the elders of his clan, was quoted in the media recently regarding his ideas:-

“(He) always thought the huge crocodile he calls Boss that has lurked in a swamp near his house for more than 30 years would eventually bring luck. But now he sees it as the saviour of his clan that for decades has lived [some 40 kilometres away in the Aboriginal township of] Wadeye, ... where more than 2,500 people live in Third World conditions.

*“That old croc is a cunning thing ... I’ve been watching him for years and knew that one day I could do something with him,”* said Mr Narjic, a 53-year-old [man].

Mr. Narjic wants to develop a crocodile breeding business that he says will provide jobs for his family at ... Wudipuli ..., 40 minutes drive from Wadeye. Crocodile eggs sell for \$15 and mature crocodiles are worth hundreds of dollars.

*“It’s no good for my boys in [Wadeye]”,* said Mr. Narjic. *“All the clans are mixed up in there and the young fellas are in control. Here there is one language and the young ones listen to us elders”.*<sup>1</sup>



A road to somewhere ... Aloysius Narjic, with his grandson, Lachlan. (Photo: Glenn Campbell)

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<sup>1</sup> Murdoch, L., *Sydney Morning Herald*, 3 August 2006.  
See <http://www.smh.com.au/articles/2006/08/02/1154198204601.html>;

## The Steps Required

In order to gain and foster a successful strategic partnership – that cooperative relationship which derives from a solid foundation – there are a number of steps required.

### Areas of knowledge – what you need to know

While not all may be required in each circumstance, the following is a general guide as to the areas of knowledge which will be of assistance in most situations:-

#### *1. Acknowledge & Understand the Dynamic*

##### a. Where am I? The Bi-cultural Context

The foremost concept to accept is that you are operating in a cross- or bi-cultural context. This means that the other party will not conduct themselves, nor will they think about matters, in the same manner as you. It is important to take the attitude that this is not right or wrong, merely different.

Some of the key elements to be aware of in an Aboriginal context in the Northern Territory include the following:-

##### i. The clan group

The way in which Aboriginal people view their lives is different to the non-Aboriginal or Western lifestyle. It is described as “communal” as opposed to “individual”, with renowned anthropologist Professor W.E.H. Stanner making the following observations in 1979:-

“... Aboriginal society is built up from types of clans, moieties and the like, which must remain separate but only in such a way that their separateness does not lessen the unity of the whole system or organisation. The separateness becomes an interdependent separateness”.<sup>2</sup>

Further:-

“[There is an] insistent official view that henceforth the Aborigines must be treated as ‘individuals’ and not as ‘groups’. I am afraid this shows that authority does not know what it is doing. No policy or law can transform the Aboriginal from what he is in this region – a social person, tied to others by a dozen ties which are his life – into an abstract ‘individual’ in order to make the facts fit a policy. It is the policy which is wrong”.<sup>3</sup>

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<sup>2</sup> W.E.H. Stanner, ‘*Continuity and Change among the Aborigines(1958)*’, in “*White Man Got No Dreaming*”, Essays 1938-1973, Australian National University Press, 1979, p.58;

<sup>3</sup> Ibid, p.43 – 44;

In my view, such comments are still applicable today<sup>4</sup>. The fact that people operate in a communal fashion is exceptionally important. From a business and workplace viewpoint, the impact is that such arenas are focused on and driven by family and relationships. For example, a regional airline is staffed on the ground by a male member of the clan group which owns that land, supported by his wife. In the case of the Project, it is being set up to be owned and controlled by the Traditional Aboriginal Owners, on their land, for the purpose of providing jobs for members of their clan group. Should outside clan groups wish to participate by providing eggs collected on their clan land, specific arrangements will be entered into as between those clans in order to recognise and facilitate this.

In order to acquaint yourself with the nuances of a particular Indigenous group and their related history, one of the most positive steps you can take is attending a Cross-cultural Course should one be available. Over the duration of the course you will discover the culture and its intricacies, learn to avoid mistakes and make contacts that have the distinct possibility of enhancing your relationship with the people concerned. They may even be able to assist in making the venture a success. The more specific your education in this regard, the better.

ii. Land ownership

Much has been said and written over the years regarding the manner in which land is held by Indigenous peoples. In my experience of the people in the areas I am concerned with, they consider themselves to have authority over land which they describe as their 'mother' – that is, they are *from* the land, rather than being *owners of it* in a Western sense. People have rights to both their father's and mother's country, with the rights to father's country being the strongest. Further, men have a higher responsibility and authority regarding land than do women. Overall, the people's relationship to the land is one of caretaker for current and future generations, operating with the knowledge and power handed down to them by their forebears. When on his father's country, a senior man is considered as a traditional owner with authority over that land, over his family and over the various opportunities to be derived from the land. This is a very positive structure to work with.

iii. Meetings

Meetings for the Project have been conducted with the leadership group of the Traditional Aboriginal Owners, comprising members of various families who in turn form the clan group. Liaising with them as to who else, if anyone, should be in attendance is always a wise move as, depending on the topic, other members of their group may be required.

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<sup>4</sup> (See also <http://www.theage.com.au/news/national/minister-attacks-clanrun-councils/2006/08/22/1156012542848.html> for recent attacks on Aboriginal structure);

Importantly, meetings are most effective if conducted on the land belonging to the Traditional Aboriginal Owners. As noted above, it is there that they have authority, therefore it is on the land that they feel strong and know that they are free to discuss their business openly and with authority. This is very difficult to achieve if meetings are being conducted on the land of another clan group.

A negative aspect of meetings, and one of the prime failings of dominant culture personnel doing business with Aboriginal people, is that non-indigenous people are invariably wedded to a time-frame. Decisions are required to be made quickly and such personnel are eager to meet and have discussions proceed with any member(s) of a clan group they can find, irrespective of their authority in the clan group. After pressing such members for a “decision”, they proceed to act upon it, only to find later (and perhaps at great cost) that the “decision” was not adhered to by the clan group. Often, the single most important reason why this occurs is that the ultimate decision-maker for the clan group – the senior man – was not present to provide his blessing. The lesson here is simple: short-cuts cannot be taken. Meet, have discussion and provide information, but do not expect final decisions unless the appropriate personnel are present.

iv. Leadership structure & decision-making

An important element in business in any arena is to clearly identify with whom one is doing business *and* who in fact are the decision-makers. For the Project, Mr Narjic is clearly the one with whom business is being conducted because he has been designated that task by the elders of his clan. Mr Narjic is able to make a variety of decisions. However, there will be a number of key areas where he will be unable to make a decision alone. When this occurs, his role is to take pertinent questions and relevant information back to his elders, male and female, for them to make the key decision. Once this has occurred, Mr Narjic will be free to proceed. An example may be the location of the farm itself, given that this will take up a particular area of land.

As noted above, it is essential to ensure that the right people are present. If they are not, curb your frustration and provide information, but do not attempt to seek a final decision as those present do not have the authority to provide it.

b. What is the political dynamic of the area

No matter the environment, and from small communities to nation states, politics is always a consideration. In this regard I make the general point that, to the extent that it is relevant (and possible), one should apprise oneself of the political dynamic operating as regards the clan group concerned and the wider region, in case there are key matters which may impact on the success of the venture concerned. This may be achieved through the local council, senior personnel of the clan and its council members, and/or well-informed and unbiased non-Indigenous personnel who have a good knowledge of the area.

c. What is the law applying to the land

As noted above, it is the ALRA which applies to the land the subject of the Project. It is essential that you discover what laws apply in your particular area, as these will have an impact on the timing, administration and, perhaps, viability of your venture. Engage expert help to ensure precise understanding of your obligations, as well as those to which the Indigenous group with whom you seek to work are subject.

d. Level of dominant culture education

In order to engage adequately with another, there must be a sufficient meeting of minds. For this to occur, communication must be effective. It is appropriate to ask yourself the following question, or something similar:-

*“Am I able to effectively communicate my intentions to those I am seeking to be my business partners?”*

Different factors arise here, including English capacity – oracy, literacy and numeracy – and specific intellectual understanding of the business proposal being dealt with. One of the key comments people I work with make is: “We don’t know what we don’t know”. This may be described as the Knowledge Gap, and your ability to work with Aboriginal people as partners in bridging it will be crucial to your mutual business success. Consider different communication tools such as working with appropriately qualified interpreters, constructing visual props and the like. While I will touch on further methods of achieving this below, it must be accepted by you that many such people do not have a great capacity with respect to dominant culture education. Should you not be aware of this lack of capacity, accept it and set about being part of the solution to bridging it, your business venture is doomed to fail from the moment you commence.

An example of the long term viability of a venture being jeopardised may be the lack of financial literacy of the business partners concerned. For the venture to be a success, ask yourself:-

*What support will be required by them, and what practices can be instituted with your assistance to ensure that in the future those persons, should they so choose, can control the finances of the clan business internally?*

A successful example is the regional airline, where on-ground staff receive mentoring and administrative/financial support from officers based in Darwin. The support includes the taking of most bookings and financial requirements.

## ***2. The Power of Established Relationships***

If you are in the fortunate position to already have an established (and positive) relationship with a particular group of people, then this is an advantage in working towards the next step of a successful business relationship. As is most likely the case, however, this will not be the position, and you will be required to work on establishing such a relationship from the ground up.

In this situation you should consider one very important element:-

*While the person or group with whom/which you wish to deal comes from another culture, it does not mean that they have a reduced capability to engage with you. To the contrary, where information is provided in a culturally and contextually appropriate manner, they are keen, able to understand and will respond to all issues in an intellectual fashion.*

I have found that the most crucial aspects of a relationship that people have sought from me are Respect and Recognition:-

- respect for who they are and their unique culture;
- recognition of their history – that is, where they have come from and what they have endured; and
- recognition that they too have knowledge to bring to the table.

In seeking to communicate with people, bear in mind that communication encompasses both speaking *AND* listening. Listening, and in particular *hearing* what the other party has to say, demonstrates great respect for their position. While it may take some time, in the long run it may prove to be crucial.

Commence with the intent to build a genuine relationship. Crucially, be direct, or as people say to me, “talk straight”. Take the time to explain how you will operate and what your expectations are, and ask questions regarding matters which are of concern to you. Provide ample opportunity for comment, for people to have discussions amongst themselves, in language and privately if necessary. *Hear* what is being said in return. If unsure, seek clarification. Show the people respect by acknowledging their capacity, with the right information, to make the necessary decisions which also fit within their social structures.

Relationships do take time, so invest that time. Keep coming back to people and follow through on any commitments made, no matter how small. Demonstrate that you will be in the venture with them for the long haul, that you will see it through by their side.

### 3. *From the People, For the People*

While you may be looking to do business in particular areas with Indigenous peoples, the opposite should not come as a surprise – Indigenous peoples are looking to do business also, with wonderful ideas coming from their experiences. Some have thought about these for many, many years, but as yet had not received the support appropriate to fulfill their dreams. To see them come to fruition, they will, more than likely, need your help. However, as noted above, the comment is often made that “we don’t know what we don’t know”. An integral element of your role may be to explore options with them, while allowing them to share equally in the driving and direction of the process. This has been described as “participatory” learning<sup>5</sup>.

With respect to the Project, two important learning tours were embarked upon: firstly, with a range of clan groups, a trip was made into Darwin, the capital of the Northern Territory and the location of the largest commercial crocodile farm in Australia. This visit demonstrated how the farming of crocodiles could be combined with captive breeding, the sale of skins and tourism. Secondly, Mr. Narjic visited the smaller crocodile farm of the proposed joint venturer. This provided the opportunity to view a farm of a size that Mr. Narjic could hope to construct in the short- to mid-term, gain an insight into how it commenced, what it took to run and the income generated by it.

Through these first hand, interactive visits, Mr. Narjic in particular began to learn some of what he “didn’t know”. He gained a sense of “knowing what he didn’t know” and thus more of the elements that he needed to find answers to in order that his ideas become reality. Hands-on visits can also yield truly interactive moments:-



(L-R) Aloysius Narjic, Mick Burns (Darwin Crocodile Farm) and Robert Dumoo, with some live – and lively! – specimens. (Photo: - *Dominic McCormack*)

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<sup>5</sup> “*Planning for Country – Cross Cultural Approaches to Decision-making on Aboriginal Lands*”, edited by Fiona Walsh and Paul Mitchell, IAD Press, 2002;

Whether one is intending to be an Indigenous group's business partner through a joint venture or, perhaps more particularly, is an advisor / support person working with an Indigenous group to assist them achieve their aims, a number of points are noteworthy in ensuring that the arrangements are "from the people, for the people":-

- a. What is desired by each party must be clear. In particular, the Indigenous people concerned must be aware of precisely what it is they are becoming involved in. The more you are able to assist in ensuring that all matters are clear, the greater the future success of the venture is likely to be. There is no point an agreement being struck to agist cattle if the Indigenous partner believes that it is commencing its own cattle enterprise.
- b. It must be identified where the Indigenous personnel are currently at with respect to their proposed enterprise. For a number of years now, the Traditional Aboriginal Owners working on the current Project have engaged with their proposed joint venture partner in the collecting of crocodile eggs. From the "knowledge gap" perspective, this is the starting point – they need to move on an intellectual level from egg collecting to constructing, owning and operating a successful crocodile farm.
- c. The immediate consideration then is:- "What 'extra steps' need to be considered by you to ensure that informed decisions are being made by the Indigenous party?" This brings into question your role.

#### ***4. The Role of Each Party***

The question of your role is an interesting one. If working as an advisor / support person, then you are clearly present to assist the Indigenous person/group come to grips with the reality of their idea and what is required to bring it to fruition. However, as a prospective business partner, how should you see yourself and your business? How do you see yourself and the role you have to play? While an important question, it really is one that only you can decide in the circumstances. Perhaps the best question to ask of yourself and your business is:-

"What do my business and I need to do to ensure that this opportunity is an equal success for both ourselves and our business partners?"

The potential joint venture partner for the Project has clearly done this, demonstrated by a number of steps, including the following:-

- Engaged in constant dialogue with all of the clan groups that may be involved, not just the particular Traditional Aboriginal Owners concerned with the Project;
- Opened up his own operations for viewing by Mr. Narjic and his advisors;

- Agreed to co-manage the Project with Mr. Narjic for a set period;
- Agreed to train members of the Yek Dirrangara clan, including Mr. Narjic, to ensure they have the capacity over time to operate the Project; and
- Requested arrangements be legally formalised in order that all matters, including egg collecting, be open and transparent between the parties.

**5. *What structure, if any, is available / being utilized by the Indigenous party***

While not a matter of concern for an intended business partner, this is most certainly an issue which must be considered by advisors and support personnel. Some questions which arise include:-

- Is business already being conducted by the clan group or families within it?
- What structures are currently being utilized?
- What structure is appropriate given that business is being conducted by a clan group consisting of a number of different families?
- How is the traditional leadership structure and decision-making model to be encompassed in current corporate constitutional models?
- How are the business, and the land upon which it is to be based, best protected?

In exploring these, the use of a good whiteboard and engaging style is essential!

**6. *Other Matters***

Aside from the above, there will be a range of other matters which must be addressed no matter what one's role is. While dealing with these as part of the venture, ensure that you do not omit the matter of money.

Before any money changes hands, it is wise for the proposed business partner, the Indigenous group, plus any advisors and support personnel, to be very clear as to when, how, in what amounts and to whom (or what i.e. the corporate entity) money is to be paid and/or distributed to.

As with many cultures, money is often the last topic people wish to discuss. Ensure that it is not forgotten. Many Indigenous groups have been and are still operating in survival mode, therefore if the topic of money and its appropriate future use has not been discussed and clearly agreed to, the results can and have been devastating. Deal with it.

## **A Successful Outcome**

As in any business venture, doing “all the right things” does not guarantee a successful and profitable business outcome. However, in the world of linking up with Indigenous peoples to create strategic partnerships, the risks can be minimized and the chances of success maximized by ensuring that the following are acknowledged:-<sup>6</sup>

### **1. The dynamic on the ground**

a. The *Bi-cultural Context*, specifically:-

- i. The clan group;
- ii. Land ownership;
- iii. Meetings; and
- iv. Leadership structure & decision-making;

b. What is the *political dynamic* of the area;

c. What is the *law* applying to the land;

d. What is the Indigenous groups' level of *dominant culture education*;

**2. The Power of Established Relationships**, the most important elements of which are Respect and Recognition;

**3. From the People, For the People** allows them to share equally in the driving and direction of the process through “discovery” or “participatory” education or learning;

**4. The Role of Each Party** which must be clear;

**5. What structure, if any, is available / being utilized by the Indigenous party**

**6. Other Matters** – deal with them all, but never omit money.

By using these steps as a guide it is my sincere belief that you will, at worst, demonstrate the utmost good faith, respect and recognition to your Indigenous business partners. At best, however, you will have succeeded in achieving those elements and gone on to do business with Indigenous peoples through a relationship derived from a solid foundation based primarily upon cooperative strategies. That is, a successful strategic partnership.

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<sup>6</sup> See the complete summary at “Annexure” below.



Aloysius Narjic at the Darwin Crocodile Farm holding the Project's subject in his hands.  
(Photo:- *Dominic McCormack*).

# **ANNEXURE**

# *“Doing Business with Indigenous Peoples - A Summary”*

**By Dominic McCormack, MARLUK Link-Up**

## **1. The dynamic on the ground**

a. Where am I? The Bi-cultural Context.

i. The clan group

This particular culture operates in a “communal” as opposed to an “individual” framework. The separateness of their clan structure in fact becomes an “interdependent separateness”. In order to acquaint yourself with the new culture, take the positive step of attending a Cross-cultural Course.

ii. Land ownership

The land is described as their ‘mother’ – that is, they are from the land, rather than being owners of it. People have rights to both their father’s and mother’s country, with the rights to father’s country being the strongest. Further, men have a higher responsibility and authority regarding land than do women. When on his father’s country, a senior man is considered as a traditional owner with authority over that land, over his family and over the various opportunities to be derived from the land.

iii. Meetings

Meetings must be conducted with the leadership group of a clan. They are most effective if conducted on the land belonging to that particular clan as it is here that they feel strong and know that they are free to discuss their business openly and with authority. Allow enough time for transfer of information and formal / informal discussion within the clan group to take place.

iv. Leadership structure & decision-making

Clearly identify with whom one is doing business and what authority they have, and who in fact are the decision-makers.

b. What is the political dynamic of the area;

c. What is the law applying to the land;

d. What is the Indigenous groups’ level of dominant culture education.

## **2. The Power of Established Relationships**

Always bear in mind the following key points:-

- Respect and Recognition. That is:-
  - respect for who they are and their unique culture;
  - recognition of their history – where they have come from and what they have endured; and
  - recognition that they have knowledge to bring to the table;
- Commence with the intent to build a genuine relationship;
- Invest the time required;
- Listen to and hear what the other party has to say;
- Talk straight;
- Ask questions regarding matters of concern;
- Provide ample opportunity for people to have discussions amongst themselves, in language and privately if necessary;
- Acknowledge their capacity, with the right information, to make the necessary decisions which also fit within their social structures;
- Follow through on commitments made; and
- Demonstrate that you will see the venture through by their side.

## **3. From the People, For the People**

Your role may be to explore options with them. Ensure that:-

- You allow them to share equally in the driving and direction of the process through “discovery” or “participatory” education or learning;
- What is desired by each party is clear;
- Where the Indigenous personnel are currently at with respect to their proposed enterprise is identified;
- The “knowledge gap” is addressed; and
- You identify any ‘extra steps’ that may need to be considered.

#### **4. The Role of Each Party**

If working as an advisor / support person, then you are clearly present to assist the Indigenous person/group come to grips with the reality of their idea and what is required to bring it to fruition.

As a prospective business partner, ask yourself and your business this question:-

“What do my business and I need to do to ensure that this opportunity is an equal success for both ourselves and our business partners?”

#### **5. What structure, if any, is available / being utilized by the Indigenous party**

#### **6. Other Matters**

While there may be a range of additional matters, always ensure that you deal with the matter of money and its payment and/or distribution very clearly.