

# Australian Institute of International Affairs speech

Mr Darren Godwell. Tuesday 14<sup>th</sup> February 2023.

“Who comes first? Centring First Nations within Australian foreign policy”

-Check against delivery-

## **ACKNOWLEDGEMENTS**

I wish to acknowledge and honour all Aboriginal and Torres Strait Islanders in the audience, either in-person or online. Much respect to you, your families, ancestors and the spirits upon the lands and waters of your people.

To each person in the audience, thank you for honouring me with your time and attention.

Again, I’m humbled by the invitation of the Institute to share some thoughts on this topic.

The Institute provides an important space for ideas to be circulated, tested and improved. I hope that tonight’s speech might add to that process. I’m a big believer in the value of debate and the place of critical thought in liberal democracy.

To all the lovers in the audience, thanks for choosing to spend the next few minutes here - on this special day - and not with your loved ones as the case may be.

The circumstances surrounding Australia’s national interests are changing.

Change in our geopolitics. Australia finds itself at the centre of the geopolitical stage. The return of the US into our region is significant and will have many implications. And will create opportunities.

Change in indigenous affairs. A national debate on constitutional change is currently underway. There are national agreements in effect and substantial new architecture being proposed.

Change within the global investment community. Matters of risk, inflation, ESG and social licence are dominating investment considerations. Many of these changes are, in fact, being driven by changing demands of investors.

Change within our economy. The impacts on our supply chains through the last three years have brought sharp spikes in costs, that have driven inflation and subsequently dragged interest rates higher.

It is within this context of change that I make today's comments. In tonight's speech I've structured my comments into three objectives, as follows:

- An outline of the colonial context and First Nations pretext. Does it matter that sovereignty was never ceded?
- Second, revisit the task set by the new federal government in its foreign policy. What are the public policy objectives of centring First Nations in Australian foreign policy? And,
- I'll also canvass some of the opportunities that may come as a result of this evolution in policy outlook and the new policy settings.

## **1. Colonial Context**

There is certainly plenty happening in Indigenous affairs.

Much of it yet to happen. Most of it contested – it seems.

So where do we begin?

How about we begin with Lt James Cook setting forth from Great Britain on a great journey. On board his ship Cook held two sets of orders. One set of orders talked of the solar eclipse and charting new lands. The second set, a secret set, issued from the English Admiralty cover matters of international affairs and matters of state.

A direct quote from over two hundred and fifty years ago:

*“You are also with the Consent of the Natives to take Possession of Convenient Situations in the Country in the Name of the King of Great Britain”*

The orders, set the grounds and means for entering into relations with other sovereign peoples that may be encountered in the journeys just begun.

I use that word, sovereign, advisedly.

It matters. And I will expound on its importance shortly.

This standard of ‘consent’ and from whom the consent must be sought and given is pretty clear.

Also of note are the boundaries and limits of acquisition – I draw your attention to the words used - “convenient situations”.

This is a narrow circumstance limited to place of conveniences.

It’s not a blanket charter to grab as much as you find, or claim. Certainly not an entire continent; arbitrarily acquired through abstract declarations made upon a small island in the far north – as happened on Possession Island in Zenadth Kes (otherwise known as the Torres Straits).

In supplementary materials sent from the 14<sup>th</sup> Earl of Morton, Lord James Douglas - yet to be honoured with the naming in “Queensland” of Moreton Bay and Cape Moreton - spoke specifically of any encounters with other peoples and civilisations<sup>i</sup> :

*“They are the natural, and in the strictest sense of the word, the legal possessors of the several Regions they inhabit. No European nation has a right to occupy any part of their country or settle among them without their voluntary consent.”*

In concert these documents present as lawful orders and a guidance note as to the intent and spirit of those orders.

The hinge in both documents is the concept of “consent”.

In international law at the time in question, ‘consent’ wasn’t the only means to annexation. Other means included war and conquest and occupation<sup>ii</sup>.

Even today, discussion continues in this country regarding matters of law and conquest, colonisation and the requirements for ‘consent by’ ‘the legal possessors of the several Regions they inhabit.’

To date, no First Nation in Australia has entered into a Treaty or an agreement between parties that would meet any definition of ‘consent’. As Australia has yet to arrive at a settlement, in accordance with those standards of international law, other accommodations have been sought. Australian made-law, that is statutes of parliaments, have many volumes seeking to address Indigenous interests in the colonial project that is the federation of former colonies into the Commonwealth of Australia.

Back to the responsibilities of Lt Cook, and then Arthur Phillip. I think it reasonable, even in the late 1700s, that it was well within the abilities of trained, professional officers of the Crown to negotiate matters of State when establishing new colonies in the name of a King.

I’m not alone in this opinion.

The Crown of England also thought it a reasonable expectation of Lt Cook.

That’s why they issued orders to that effect.

Orders that were lawfully issued and expected to be followed.

These are matters of deep consequence that persist - notwithstanding many efforts to wish them away by ignoring them or by distraction; including assertions of English colonial supremacy.

For the duration of Australian colonial, and modern, history the path to a just and honourable threshold of consent from the Natives has eluded non-Indigenous Australian officers, statesmen, diplomats, Prime Ministers and governments.

Maybe we’re about to witness that change? Some of us may even prove to be supporters and actors in that change.

At last year's United Nations General Assembly Minister Penny Wong outlined to a global audience:

“The new Australian Government is determined to make real progress on the national journey of healing with Indigenous Australians, the First Peoples of our continent. As Foreign Minister, I am determined to see First Nations perspectives at the heart of Australian foreign policy...”

The Australian delegation also included, for the first time ever, an Indigenous Member of Parliament.

Senator Pat Dodson accompanied the Minister and they both spoke passionately through many meetings on that mission of the importance of Indigenous inclusions and development of the architecture to support increased indigenous outcomes.

I think it's fair to accept Minister Wong at her word – when Penny says “the new Australian Government is determined to make real progress”, I believe her. Clarity and purpose are hallmarks of effective leadership. I wonder if this speech was not also a rallying call to officers within DFAT?

A bit of a - 'get on the bus' moment?

Truth be told, sometimes change is hard. Sometimes, life might be pretty good in the status quo. The colonial experience created generational wealth. For some.

For others, the experience of colonisation has been deadly, dispiriting and down-right lethal.

The point being that colonial experiences were not the same for all involved. And that for some Indigenous peoples moving beyond colonisation is not about a lifestyle choice but, in fact, is a matter of life and death.

With that colonial context now let's turn our attentions to the new policy at-hand.

In the absence of First Nations consent, whether that be in agreements or Treaties with each sovereign nation as they stand on their own lands, how is Australian foreign policy to centre Australia's First Nations?

John McCarthy's eulogy for Dick Woolcott described the imminent diplomat's presence in Australia's foreign affairs engagements across the last century. Woolcott presents as the consummate diplomat and professional. I believe what's in front of us will require officers of a similar ilk and calibre.

## **2. Centring First Nations in Australian foreign policy**

In the last days of last year's Federal election campaign the Minister for Foreign Affairs and the Shadow Spokesperson were making their pitches at the National Press Club.

At this event Penny Wong, spoke of First Nations interests, the proposal for a 'Voice' and the possibilities of new government and new policies. A centrepiece of the speech was a commitment to appoint an Ambassador for First Nations.

When launching the recruitment process for the Ambassador last year Minister Penny Wong stated that:

“The Ambassador for First Nations People will lead work to embed Indigenous perspectives, experiences and interests into our foreign policy,

including to help grow First Nations' trade and investment.”

“The Ambassador will also lead Australia's engagement to progress First Nations rights globally.

In the practice of identifying and pursuing the national interest in our foreign policy I doubt we've ever encountered a policy of this persuasion.

Lets unpack what's being asked of the Secretary of DFAT, officers of the department and, in turn, to the Ambassador for First Nations:

1. Embedding Indigenous perspectives, experiences and interests into our foreign policy.
2. Growing First Nations' trade and investment, and
3. Leading Australia's engagements to progress First Nations rights globally.

I'll take each at first glance.

**Embedding perspectives and experiences** may be a straightforward expansion of existing policies for Indigenous employment, cultural diplomacy and indigenous engagement. I would contend that the task of embedding Indigenous “interests into our foreign policy” is going to require a step change. Keep in mind that the 2017 White Paper had only one mention of Indigenous interests and that was in relation to international human rights. So to go from one passing mention to being ‘centred’ in foreign policy is no mean feat in just six years.

It may require a far greater level of consultation with many more Indigenous interests in any number of portfolios. It will especially mean direct engagement with indigenous interests outside of the public sector.

Keep in mind, that there is a burgeoning and exciting indigenous private sector. If matters of trade and investment are about Australia’s national interests in business then dealing directly with those indigenous industry peak bodies, indigenous company owners, and indigenous chambers of commerce is a high priority. These indigenous interests all exist outside of government agencies.

Supporting industry engagement is something DFAT does well in other spaces so there’s no reason why the same level of attention and financial support couldn’t go into ensuring that the Indigenous architecture is fit-for-purpose.

There is a trapdoor though – senior officers of DFAT will have to address any lingering ‘assimilationist’ tendencies that may undermine new policies of indigenous inclusion.

The leaders of DFAT have a responsibility to be vigilant. There is always a threat of old theologies being left unaddressed.

On another aspect, to date, the DFAT relationship with the National Indigenous Australian Agency, within the Department of Prime Minister and Cabinet is presenting as awkward. Who is in charge? Who has effective operational responsibility for Australian foreign policy? There’s a danger that a bifurcated approach may present as indecisiveness and create confusion.

At a technical level, I get the DFAT response to the higher-ranking PM&C. DFAT's inter-departmental arrangements are internal matters and shouldn't blur roles and responsibilities. I hope those inter-departmental arrangements assist policy objectives and responsibilities. The manner in which the lead Department expresses its portfolio responsibilities is a ultimately matter for DFAT. I'm sure this aspect could be resolved by DFAT. I've no doubt it's a minor matter – but it does need to be addressed.

The third dimension of Minister's Wong charge presents a greater challenge – “embedding Indigenous...interests into our foreign policy”.

There are legitimate questions, yet unanswered questions, about “whose” interests is DFAT representing, compromising or dismissing in the name of the national interest? Whose Indigenous interests? What are the means by which to test and arrive at these Indigenous interests?

Thankfully, Indigenous Australia offers an abiding principle to help guide our choices.

The principle of Indigenous sovereignty means that – “only Traditional Owners can speak for their country.” This is an immutable law. Sacrosanct.

Let me illustrate this point by using the name of our brothers and sisters in the Wiradjuri nation.

Only Wiradjuri speak for matters on Wiradjuri land.

Only the Wiradjuri speak for matters pertaining to the interests of the Wiradjuri nation.

Within that nation the Lore and Laws of the Wiradjuri are maintained and practiced as per the leadership of Wiradjuri. Senior Lore Men and Lore Women, knowledge holders, control, decision-making and responsibilities are all the domain of the Wiradjuri.

No other people have any rights to interfere.

No nominee of any other Indigenous nation has any authority over Wiradjuri, or their lands, waters, spirits and responsibilities.

Upholding this principle of Lore is central in indigenous interests.

I suspect that this indigenous principle, it's practice and preservation is why western-styled, representative democracy doesn't function so effectively in Indigenous interests, as it has been applied to date.

Western style representative democracy is clunky for Indigenous purposes.

And this poor functionality has left much to be desired. It's the square peg and round hole of civil society.

To illustrate, if, for arguments sake, a bunch of Navi peoples (yes, from Avatar) show up to an Aboriginal community meeting in Dubbo. As Indigenous peoples the Navi have a right to attend a meeting of Indigenous peoples.

At the meeting there's a vote and because of the greater number of Navi in attendance, the meeting elects a Navi person to represent the Aboriginal peoples of the region in future deliberations.

That sounds all legitimate.

Maybe it was even legal.

However, that election doesn't confer any authority for that 'duly-elected' Navi person to speak for matters on Wiradjuri land.

It may be legal, but it isn't consistent with Indigenous Lore or Laws. It fails the test that 'only traditional owners can speak for their country'.

Indigenous sovereignty is not divisible nor transferrable beyond the scope of the Lore of those peoples.

The import of this principle is that government and proponents of development will need to quickly identify and engage with the sovereign nation upon whose country they are proposing to work.

This indigenous principle has also found expression in the international development context and now into international investment and trade matters. This is the basis for the international standard of free, prior, informed consent – FPIC.

There's that word consent again.

The social licence of FPIC has emerged as the standard for the investment community in international finance. Its practice is growing in importance and implications.

As it centres First Nations into foreign policy, DFAT has to reconcile this deep indigenous governance and cultural and legal practice with the Australian national interest.

Thankfully, Indigenous nations of this continent aren't going anywhere.

We've been here for tens of thousands of years already. And our people don't have any plans to pack up any time soon. So, we've got time to address it.

A word of caution though. I'm not sure that patience and goodwill is in never-ending supply?

I don't think many Indigenous peoples can stomach another Royal Commission or another twenty-years of wasting tens of billions in our names to not Close Gaps.

I would contend that it's in Australia's national interest and our standing on the international stage that we get effective on this front as quickly as possible.

Every day delayed is a day closer to an invitation to radicalism born out exasperation. Let's not tempt that fate.

Best to get to work and get effective as soon as we can.

Turning to the second objective: **“Growing First Nations’ trade and investment”**

What a brilliant step.

This is policy that will change the game for Indigenous interests and Australia’s economic future.

In my humble opinion, if the power of the market can lift hundreds of millions of peoples out of poverty in countries such as Indonesia, Thailand, Vietnam and China then it’s about time that we deployed that power for less than a million Aborigines here in Australia.

This new policy setting also opens up some of the greatest opportunities for Indigenous and non-indigenous interests. It is the source for much of my professional optimism and, at the same time, the source of my greatest anxieties.

Australia is an island.

Our security engagements have largely played-out in theatres beyond our shoreline.

Our economy is export orientated.

Our growth has developed in concert with international interests – as investors, new markets and business partners.

We require and actively seek out foreign direct investment to fuel our economy.

Our commitment and advocacy for a rules-based international order goes directly to our national interest as a relatively small, middle-ranking, island economy, interlinked with larger trading blocs in our region and across the globe.

Our defence and security is rightly framed within these parameters because the safety and stability of our nation is the umbrella under which we sustain peace and prosperity.

These are the types of opportunities that now present themselves:

1. I would contend that for Australia to be more effective in our indigenous policies we should adopt a more balanced approach.

In our public policy stance we should give equal weighting, attention and resources to both social policy and economic policy. If the colonial experience for Indigenous interests has taught us anything surely its taught us that economic exclusion and exploitation creates poverty, alienation and monumental social and economic costs that far out-weigh the benefits of economic inclusion. To get there Australia will have to chart a commitment to Indigenous economic policy development equal in magnitude to that of social policy. If Treasurer Jim Chalmers sees opportunity in a new approach to capitalism then surely there's opportunity for more indigenous inclusions?

2. It's in Australia's national interest to develop and deploy every policy lever that makes Australia's trade more inclusive of indigenous interests.

I believe there is real merit to support the opportunity to pursue an Australian trade-led strategy for Indigenous economic development.

A trade-led strategy provides the means to secure commerce and business outcomes for Indigenous interests.

A trade-led strategy will deliver on improved commercial outcomes for indigenous interests in trade, business and increased investment measurable in contract value, GDP and export dollars. Trade strategies yield commercial outcomes.

For the purpose of clarity I want to expand on this idea little.

There is a difference here between a trade strategy and other strategies - such as legal strategies or scientific strategies or academic strategies.

For example, a legal strategy will yield legal outcomes - such as legal status, legal standing or legal rights, or avenues for legal remedies in the event that those ascribed legal rights are perceived to be impaired or breached. Claims for patents and trademarks are legal rights that afford the holders to legal recourse.

As important as these legal outcomes are to, let's say lawyers, legal outcomes are not commercial outcomes.

If its commercial outcomes that we seek then the best path is to chart a trade-led strategy.

If we desire to have the opportunities of market-based economies creating economic opportunities for Indigenous interests and lifting peoples out of poverty then we'd better chart our trade strategy to those business outcomes.

If we wish to advance the Australian national interest in matters of trade and export markets then I'd contend that we'd best have an Indigenous-led and focussed trade strategy designed to create commercial outcomes for indigenous owned companies and businesses.

There are many export markets worth hundreds of millions of dollars – in currently forfeited export earnings. These are key market opportunities for Australian regional and rural economies. Many of those economic and commercial opportunities derive from Indigenous plants, botanicals and knowledges.

If we wish to shift the dial on indigenous poverty and disadvantage then a more balanced policy approach that gives equal weighting and resources to economic policy should be enacted.

Now to the third dimension chartered by Minister Wong.

### **3. “Progress First Nations rights globally”**

I was once in a discussion with a preeminent indigenous lawyer unpacking the elements of treaties, sovereignty and the options for modern Australia – as you do. The discussion got to an impasse. Notwithstanding the reasoned legal basis for modern Treaties there was consternation about the trigger for such a process. And whilst we could develop a logic or a framework or process we were left with an uncomfortable truth.

Matters of state are ultimately about people.

And it's people in all their over-confidence and anxieties that drive these processes.

Perceived and actual threats. Ambitions. Constraints.

The ideas, issues and priorities of people are expressed through our political economy. And diplomacy and international affairs are essential to its practice.

It is for this reason that there is a nexus between our conduct on the global stage and our domestic policies.

How we as people treat each other is important. It matters.

The moral weight of our arguments on the global stage are measured against how we resolve issues with us – the First Nations peoples at home. How and who we align with. The power we have or seek through association.

Our abilities to influence and shape affairs in accordance with our national interest is measured in the outcomes we secure.

At the heart of these elements is the art of diplomacy – in the soft power sense.

Dick Woolcott's philosophy comes to mind: "you deal with countries as they are, not as you wish them to be."<sup>iii</sup>

The world sees Australia 'as we are' – including with our unresolved affairs with Australia's First Nations.

For Australia to continue its contributions to the global community our nation will be well-served to address the challenges of Indigenous peoples unresolved interests including on matters of sovereignty. This is an opportunity for Australia.

The means for redress are through diplomacy and negotiation.

Arriving at honourable agreements between individual sovereign First Nations and the modern state of Australia.

Substantive elements of such a process have been spelled out in the current proposition for Voice, Treaty and Truth.

This Government has also committed to this set of policies.

Minister Linda Burney has already countenanced the cross-over between the two sets of policies, here is what she said last year:

“Appointing an Ambassador for First Nations People is an opportunity to ensure the unique perspectives of Aboriginal and Torres Strait Islander peoples are included in our international engagements.

“An Ambassador for First Nations people will be supported to engage with likeminded countries to share our commitment to the Uluru Statement from the Heart and experiences of treaty and truth telling processes”.

To achieve against this policy objective “to progress First Nations rights globally” Australia’s foreign affairs professionals will do well to support both domestic policy in this space and to pay attention to the policy shifts in Indigenous affairs.

Just as the domestic landscape of Indigenous affairs is shifting so too the same is happening at the international level. Indigenous peoples are becoming more active in matters of investment, trade and commerce. Indigenous peoples are rapidly resuming their economic interests.

Indigenous peoples are becoming proponents of their own development interests. The shifts in the economic landscape towards a low-carbon economy is opening up all manner of economic opportunities on the lands and seas of Indigenous peoples.

In the same vein, greater Indigenous inclusions is also cause for Australian interests. Again, Indigenous peoples are not going anywhere – literally. If Indigenous Australia’s are boosting their wealth and prosperity then rural, regional and remote economies across Australia are being presented with an opportunity to boost their resilience and growth in ways that are sustainable and sustaining. This is an opportunity for Australia.

### **In summary**

This was a considered not a conclusive set of comments on, what I perceive to be an exciting chapter of Australian foreign policy.

Australian Government policy development and leadership is tasked with the broader challenge of relevance for the times in front of us rather than the comfort of last century's agenda.

The contemporary circumstances are fluid. And matters are developing fast, some say faster than ever before.

To recap:

I believe Australia will advance and shape our national interest when we advance First Nations interests in concert. That is both our opportunity and challenge.

I sincerely believe that Australia is better placed to boost our contributions to international deliberations on First Nations rights after we've delivered on the current set of policies.

This means meeting indigenous sovereignty in ways that upholds the place of individual sovereign First Nations yet allows mutual and honourable agreements between us.

This includes taking a balanced approach to our national Indigenous affairs platform – a balance that gives equal weighting to economic policy and social policy.

Including, adopting a trade-led strategy to secure Indigenous commercial and business outcomes.

This includes delivering Indigenous inclusions in matters of trade and investment. Actual clauses and chapters within trade arrangements.

I hope that I've struck the right balance and tone tonight.

Again, I thank the Institute for the opportunity to speak tonight. And thank you for your time.

**CLOSE**

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<sup>i</sup> <https://www.theguardian.com/australia-news/postcolonial-blog/2018/jul/23/when-celebrating-captain-cook-lets-remember-the-advice-he-ignored>

<sup>ii</sup> <https://www.smh.com.au/national/what-s-indigenous-sovereignty-and-can-a-voice-extinguish-it-20230113-p5ccdk.html>

<sup>iii</sup> <https://johnmenadue.com/vale-richard-woolcott-one-of-the-last-great-australian-diplomats/>