

Victorian Bar 2021 Pro Bono Awards – Uncle Jim Berg Award

By Ron Merkel QC

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This evening, in a very unintended way, the Victorian Bar has brought together the spirits of three people who Uncle Jim Berg has for a very long time called the three Moogjis, which is a Gunditjmara word meaning “special friend”.

The spirits of the three people, being Uncle Jim, myself and Ron Castan QC (who was Senior Counsel in the Mabo case and sadly died in October 1999) take us back some 50 years when in the early 1970s Ron Castan, myself and other founders of the Victorian Aboriginal Legal Service appointed a then very much younger Jim as the first field officer of the Service.

Jim, with Ron and my support as the Service’s legal advisers, built up a record of achievement in creating access to justice for the Koori people in Victoria and in protecting their cultural heritage.

Within three or four years Jim suggested to the founders that the legal service should be controlled by a Koori Board which was readily agreed to. The service quickly became, and has remained, one of the most effective and reputable Aboriginal legal services in Australia.

Uncle Jim’s use of the law to protect Aboriginal heritage started in the early 1980s when he prevented the 13,000-year-old Kow Swamp skeletal remain from being sent by the Victorian Museum to an exhibition in New York. Not long after that Jim was appointed as an inspector under the *Archaeological and Aboriginal Relics Preservation Act 1972* (Vic).

His first act as inspector was to seize a collection of Aboriginal relics proposed to be publicly auctioned by Joel’s. That was followed by Uncle Jim giving notice to the Vice Chancellor of the University of Melbourne of his seizure of the Murray Black collection of skeletal remains, which had been held for research purposes by the University for at least 50-60 years. He obtained an injunction against the University, which delivered the remains into the custody of the Museum of Victoria. Uncle Jim then organised the all-important reburial of the skeletal remains of his ancestors.

Jim’s fight with the University was the subject of a full-page article in *The New York Times* about the tension in Australia between scientific and anthropological research and indigenous custom and heritage. Uncle Jim’s short answer to that tension, which went largely unnoticed in Australia, was that the University had 60 years or more for its research and it was now time for our ancestors to be returned to the earth from whence they came.

Finally, Jim obtained orders against the Museum of Victoria itself, in a case that was reported in the *Victorian Reports*. The orders required the Museum to act in accordance with its custodian and trustee duties, which it had failed to do in respect of the Aboriginal relics and skeletal remains in its possession.

Uncle Jim’s journey led him to found the Koori Heritage Trust on the principle that the Koori people must take charge of, and be responsible for, the protection of their own heritage.

Needless to say, that Trust has become one of Australia's leading self-managed Indigenous cultural heritage organisations.

A brief survey of what I've said shows why tonight's award in the area of access to justice for First Nations people is being awarded in Uncle Jim's name.

But it is what has driven Uncle Jim, and his relationship with his two Moogjis united once again tonight by the three awards in their respective names, that is important.

In Uncle Jim's words he has been driven in everything he has done by the principles taught by his elders. He has written about those principles but from my observations over 50 years, Uncle Jim's basic principle has always been that the ends do not justify the means.

It's a special privilege for me to be able to say these words tonight about a unique First Nations person who is the first non-lawyer to have a Victorian Bar Pro Bono Award named after him.

Congratulations to Uncle Jim for his extraordinary achievements and to the Victorian Bar for tonight recognising them.