ANTaR NSW Coalition

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Newsheet

SEPTEMBER/OCTOBER 2002

ANTaR (Australians for Native Title and Reconciliation) Coalition Incorporated in NSW with limited Liability ARBN 082 991 179

ANTaR CELEBRATES!- over two and a half million hands planted

SATURDAY 2 NOVEMBER 2002
Redfern Park, Redfern
12.00 – 2.30 pm
hosted by **Deborah Mailman**
Performance by **The Stiff Gins**
Speakers; Her Excellency, **Professor Marie Bashir**, **Patrick Dodson**, Gregory Phillips, and from ReconciliACTION, Sylvie Ellsmore.

This year ANTaR celebrates the 5th Anniversary of the ***Sea of Hands***. Since its first appearance in front of Parliament House in Canberra on October 12, 1997, over two and a half million hands have been planted in hundreds of locations around Australia. Large puddles have also travelled to London and around South Africa - and a puddle is now on its way to Ireland! Thousands of volunteers have been involved in organising and setting up these ***Sea of Hands*** installations, and many hundreds of thousands more have enjoyed and marvelled at the spectacle.

ANTaR and ReconciliACTION (Youth Reconciliation Network) are celebrating with a large **Sea of Hands** in Redfern Park. Please join us in remembering the past and exploring new paths forward.

The event will focus on **The way forward for Reconciliation; forging a new identity!**

This year is a significant year for the Indigenous rights movement. It has been ten years since Paul Keating's famous Redfern Speech, where he expressed disbelief that we would continue to deny Indigenous people a place in "the modern Australian nation", and confidence that given the swell of support at that time "we (would) succeed in (the coming) decade". It has been 5 years since the *Bringing Them Home Report* was released by Dr Mick Dodson, and Sir Ronald Wilson, who stressed that the implementation of its recommendations was "essential to the future unity, justice and peace of our nation," **Volunteers Needed!! Ring the office on 9555 6138 and talk to Kathleen.**

We hope you will come and celebrate this remarkable event with us.

NSW ANTaR NEWS

ANTaR NSW ANNUAL GENERAL MEETING.

The ANTaR NSW AGM was held on 24 August 2002, with a good attendance from Sydney members and representatives of some local groups.

Apart from the usual AGM business - election of a new Committee, receipt of accounts, and so on - the main aim of the day was to consider some constitutional amendments. For technical reasons, these were dealt with in a Special General meeting immediately before the AGM and with all the same people attending.

Official Minutes of the two meetings will be sent to all members soon, but this is an unofficial report to be going on with.

Constitutional changes

Most of the constitutional changes, which were all approved, are to provide for **a new category of "organisational" membership** of ANTaR NSW. That is, organisations can now affiliate directly to our organisation. Previously we had a category only of individual membership. Hopefully this change will open the door to a new period of growth for ANTaR, and better connections with the many local groups active around reconciliation and Indigenous support in suburbs and towns throughout the State. Other organisations - unions, church groups, anybody concerned with these issues and supportive of ANTaR's work and goals - are also eligible to apply for membership. So please contact ANTaR NSW if your organisation is interested in affiliating with ANTaR, or, of course, if you want to join up as an individual member.

The other constitutional amendment was **a change to the official "Objects of the Association"**. The previous Objects had been drafted with an eye to obtaining charitable status, and referred mainly to educational activities. Under current charities legislation we appear unlikely to qualify, and those old Objects did not in any case reflect the full range of activity in which ANTaR is involved.

The new Objects for our State-level organisation are the same as those adopted a couple of years ago by the National ANTaR organisation, with the support of ANTaR NSW (but with minor adjustments to reflect our primarily State focus). They are worth quoting in full.

Special Resolution No 6 (Carried):

The Objects of ANTaR NSW Inc. are:

1. *To build up and maintain a NSW-based people's movement which stands in solidarity with Indigenous Australians and works in close and continuing consultation with Indigenous leaderships.*
2. *To assist Indigenous Australians to achieve their key policy objectives, including their rights to land, to self-determination and to the maintenance and development of their diverse cultures.*
3. *To promote reconciliation and coexistence between Indigenous and non-Indigenous Australians as an essential element of creating a just and fair society for all Australians.*
4. *To educate and raise awareness amongst non-Indigenous Australians in NSW about the injustices being perpetrated against Indigenous Australians and about Indigenous rights and to promote an attitude which values social justice for Indigenous peoples.*
5. *To perform, in consultation with National and State/Territory ANTaRs, the following functions at a NSW level:*

- *Linking and coordination with peak State/Territory ANTaR/Defenders groups;*
- *Liaison with Indigenous people and leaderships;*
- *Conducting educational activities about native title, Indigenous rights and reconciliation issues;*
- *Campaigning on relevant issues and assisting with national campaigning;*
- *Raising the NSW profile of ANTaR;*
- *Facilitating the Sea of Hands in NSW; and*
- *Coordinating research, writing and publishing for education and law reform.*
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6. *To do all things incidental to the attainment of the above objects."*

New Committee

The AGM elected a new Committee for ANTaR NSW:

President: Claire Colyer
Vice President: Margaret Brennan
Treasurer: Frennie Beytagh
Secretary: Bob Makinson
General members of the Committee: Gae Pincus, Ted Nettle, Khani Hawthorne.

The AGM recorded the thanks of the whole organisation to those who served on the previous Committee but did not stand again this time: Sue Cunningham, Sylvie Ellsmore, Cath Haswell, Mary Kinney, Bill McGilchrist, Susan Grimes McPhee, Gig Moon, Peter O'Brien, and Janet Raddatz.

ANTaR Lowe Action Group

ANTaR Lowe Action Group together with the youth group ReconciliACTION Network will have a stall and a puddle of hands at the Ashfield Carnival of Cultures, Ashfield Park on **Sunday 13 October 2002 from 10.00am – 4.00pm.** For more information, please ring Margaret Brennan on 9719 8773.

Aboriginal Support Group – Manly Warringah Pittwater

(Lizzie Landers reporting)

The Aboriginal Support Group – Manly Warringah Pittwater was initially formed in 1979 by seven people as a Treaty Group. It then moved beyond the sole focus on treaty in acknowledgement that broader social, economic, justice and cultural issues underpin the very idea of a treaty.

Over the years the Group has grown to 178 members with a further 79 individuals and organisations receiving the quarterly newsletter – ***Elimatta*** . Having some members who have been in the Group for twenty or so years gives a depth of experience, knowledge and contacts. We have "credibility" with most Indigenous organisations because of these lengthy relationships.

Planning meetings are held each January, focussing on activities for the year ahead. Members volunteer to undertake roles within the Group. Throughout the year committees are formed to arrange specific events. In 2002 , the two main events were: ***Journey of Healing*** and the launch of the book ***A Story to Tell… On the Road toward Reconciliation.*** This is an account of the first 21 years of the Life & Work of the Aboriginal Support Group –

Manly Warringah Pittwater – 1979 – 2000. Members of the Group wrote, edited and designed the layout of the manuscript in a voluntary capacity.

"This is an important book for all Australians. It is a grass-roots story of how non-Indigenous people can make a real stand in the fight against racism and for justice." Kevin Cook, General Secretary (CEO) 1981-1997, Tranby Aboriginal Cooperative College.

The Book can be obtained from Sue Osborn on - Tel: (02) 9982 2431

email: osborns@ozemail.com.au.

Cost: $25.00 plus P&H $7.00

Business meetings are held on the third Monday of each month and Information Nights (videos, guest speakers and discussions) on the first Monday.

An effective means of communication between members is via the 'telephone tree'; a regular calendar of events; programs about Aboriginal issues are produced for Radio Northern Beaches; a quarterly newsletter "Elimatta" and a recently created website: www.asgmwp.net is about to become active.

The Group works extensively with local, state and national organisations.

To name a few: The Aboriginal Education Consultative Group, Biala Aboriginal Girls' Hostel at Allambie Heights, Tranby Aboriginal Co-operative College, Manly Warringah Community College (Reconciliation Study Circles), Guringai Festival, Sorry Day Committee and Link-Up, Aboriginal Deaths in Custody Unit, Coastal Environment Centre Narrabeen, ANTaR, NSW Reconciliation Council, Heritage Committees and Aboriginal History & Heritage Council.

Treaty Workshop

Visitors to the ANTaR website would know that earlier this year ANTaR National launched a Treaty Community Seminar Kit.

The Treaty Community Seminar Program has been designed as a do-it-yourself learning kit for use by reconciliation groups, schools and other community groups interested in exploring the issues involved in a treaty process between Indigenous and non-Indigenous Australians.

This program is based on one developed by ATSIC for use in Indigenous communities. The ATSIC seminar program has been adapted by ANTaR for use in the wider Australian community.

ANTaR NSW decided to pilot its use of the kit by holding a Train the Trainer workshop in Sydney on 28 July this year. About 40 people from schools, trade unions and local ANTaR and reconciliation groups travelled from Wollongong, Bathurst, the Central Coast and across Sydney to attend.

The workshop was presented by Sue Cunningham and Sean Brennan, and we were very lucky to have on hand Olga Havnen (former Executive Officer of the National Indigenous Working Group) and Professor Garth Nettheim to offer their perspectives and expertise.

The workshop tackled some of the basic questions in the treaty debate and walked participants through some of the materials in the kit. The feedback, which was generally very positive, will help ANTaR to refine the kit and update the resources on our website (www.antar.org.au).

Keep your eye out in 2003 as ANTaR NSW plans to take workshops based on the kit to a location near you.

Report from the ANTaR National Office

(David Cooper, National Co-ordinator reporting)

The National Office has been busy over the past few months. Our **Annual Appeal** went out in June on the theme "Practical Reconciliation? Let's not repeat the past!". The Appeal produced an excellent response and, as usual, has required a large effort in processing and responding to the returns.

The **National Treaty Conference** was held in Canberra on 27-29 August (see separate article in this issue). With ANTaR being a joint organiser, a lot of input has been required from the National Office. We were particularly pleased that over 50 out of 280 people attending the Conference were ANTaR members. Check the National ANTaR website for details of papers from the Conference

On the ***Sea of Hands*** front, our **Hands Across the Sea** project has moved forward with the collection of 7000 hands moving on to Ireland where an event is planned for next month.

Lots of other things have been happening, aided by our dedicated and able volunteers. For more information contact us on 02 9555 6138

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RECONCILIACTION NETWORK

(Report by Yatu Widders)

On 24 August 2002, the NSW ReconciliACTION Network had its second gathering, which was held at the University of Technology, Sydney between 10am-4pm. The Network is an organisation of young people between the ages of 15 and 29. The attendees represented a wide cross section of political, social, community and individual interest groups as well as representing metropolitan, regional and rural NSW. Attendees from the ACT, Queensland and Victoria were also present.

The first part of the day, was spent enjoying presentations from Linda Burney, Rick Farley and participating in a Reconciliation workshop co-ordinated by Mark Yettica-Paulson. The morning session evoked some great discussion surrounding the notion of Indigenous sovereignty, and the Reconciliation movement in a political context, and aimed to define some of the elements of Reconciliation, as understood by the Network.

It also gave us a great opportunity to engage in discussion with prominent political and community leaders, which was valuable in developing broader understandings of the implications and ideals attached to Reconciliation, both as a term and as a social movement.

The afternoon session was spent discussing and making decisions concerning the expansion and activities of the Network. After much deliberation, the Network decided to function on a collective basis, and consist of four separate groups: The Communications group, the Resource Kit Group, the Gathering group and the Fundraising group. These groups are responsible for promoting the Network, compiling and implementing an educational resource, organising the next statewide conference and actively seeking funds and maintaining responsibility for their allocation. This is done in the hope that the Network will be able to work more effectively through a number of different spheres and ensure that the members are involved in areas which suit their interests and expertise.

The Network also made some important decisions surrounding the initiatives it wants to become involved with. Currently we are working on the production of an educational resource kit, which can be used by members of the group, as well as being appropriate for wider distribution. We are also excited about becoming involved in the upcoming ***Sea of Hands*** celebration in early November. The Network is currently co-ordinating the Writing and Graphics competition in NSW high schools

and is negotiating with the creators of 'Green Rock' an organising initiative which promotes youth based community events. We plan to hold a gathering in the near future, which will hopefully give us another opportunity to further our projects and extend our Network.

We remain committed to forging and maintaining meaningful relationships with Indigenous and non-Indigenous communities and organisations, in order to broaden our own perspectives as well as being able to better represent the diverse ideologies surrounding this important issue of Reconciliation. We are committed, throughout our development, to advocate for the issues of Reconciliation and Indigenous Affairs to be put back onto the political and public agenda.

NATIVE TITLE

Native title promises a significant say over use of traditional lands to a fortunate few. But for many claimants, fighting their way through the courts to obtain a native title determination may involve a lot effort for little reward: no legal recognition at all of their connection to land, or perhaps a weak set of legal rights with limited usefulness for contemporary Indigenous communities.

For non-Indigenous parties too, native title law gets ever more complex and confounding.

In strict legal terms, that's the bad news from the High Court's recent landmark decisions on native title. But the law is only part of a much bigger picture. The Mabo decision has unleashed a process with unstoppable momentum and there are undeniably positive things which continue to emerge from the native title era – more on that later.

The High Court Decisions

On 8 August 2002 the High Court delivered its judgment in two native title test cases. The *Ward* case concerned a claim for recognition of native title over a large area of land in the East Kimberley by the Miriuwung and Gajerrong peoples. The case of *Wilson v Anderson* posed the question whether perpetual grazing leases in the western half of NSW known as the Western Division completely extinguished all native title.

In *Ward* the claimants lodged their application more than 8 years ago and they have spent well over a hundred days in court, on trial and then appeal in the Federal Court as well as in the High Court. But the case is still far from over. The High Court has, for the first time, clarified some major questions of native title law (some in favour of Indigenous parties and several important ones against). But to work out how those principles apply to the specific facts in *Ward* the case has been sent back to the Federal Court for further hearing. (For more details see Dr Lisa Strelein's paper at

http.//www.aiatsis.gov.au/rsrch/ntru/ntpapers/lPv2n17.pdf).

In *Wilson v Anderson* the High Court has cut short a number of native title claims in NSW by declaring that the Western Division pastoral lease completely extinguishes native title. In other words, no matter how much evidence a group puts in front of a judge to demonstrate their continuing connection to country, the technical rules of extinguishment prevent any legal recognition of that connection.

The High Road, the Low Road

Many people, Indigenous and non-Indigenous, had hoped for better from the law, and rightly so. The High Court showed courage and common sense in 1992 when it got rid of *terra nullius* – the legal fiction that Australia was an empty land available for British colonists to take as their own.

In doing so Mabo posed a challenge: to accommodate two cultures, two laws in one system. The decision also carried the seeds for a bold and creative response to that challenge. Native title could express in European law the connection of Indigenous people to land, long denied by the legal system. But more than that,

it could lay the platform for coexistence and justice for all Australians. And, if it leaned towards the approach of the Canadian Supreme Court it could enable Indigenous people to use their land in ways which respect not only traditional culture but contemporary social and economic needs.

Unfortunately in Australia mostly we have chosen a lesser path: one more technical, miserly and confined. Instead of recognising traditional ownership as akin to ownership under white law, as some of our Parliaments have managed to do with statutory land rights schemes, the courts and Federal Parliament have reduced native title to a so-called 'bundle of rights', which incrementally can be whittled away even to nothing.

Over ten years we have seen the Federal Government's deliberate attack on native title with the Ten Point Plan, combined with some questionable choices by our judges in key test cases. The end result is that some Indigenous groups stand a reasonable chance of achieving recognition of their rights in a strong legal form. But many will be left with a pale shadow of the rights they had over country they still consider theirs, or possibly nothing at all.

What Does It Mean?

The law on native title is still quite new – many test cases remain to be run. Courts can go through bold phases and eras of consolidation and even retreat. Parliament can always step in and change the common law for better or worse. The Constitution may yet have an impact on native title law which has only so far been glimpsed.

In short, it's too early for final pronouncements about native title law and what it can deliver for Indigenous people and for the broader Australian community. We can say that Australian property law now recognises who owned the land first, but that some of the highest hopes for what the law might achieve seem to have been dashed in these most recent decisions of the High Court.

But the law is only part of the picture. On the bigger canvas, Mabo has re-written the terms on which Australian society operates. It rubbed out the great fiction in Australian legal history of terra nullius. It replaced that discredited idea with a recognition of historical fact: that systems of law and custom existed here already when the British arrived, and that those systems have frequently survived into the present day.

In this sense the logic of the Mabo decision has only just begun to work itself out. Already dozens of Indigenous groups around the country have been taking the opportunities for recognition offered in the native title era. These opportunities do not always arise in a native title context, but it is hard to imagine them happening so frequently without the Mabo decision back in 1992.

And there is no coincidence that the hopes and disappointments of the native title era have, within 10 years, also given renewed life to the idea of a negotiated settlement-a treaty or treaties. A decade of native title law has shown that Indigenous people now have a place at the table and the beginnings of some proper recognition in Australian law.

But partly because our legal system lacked boldness and imagination, native title law has also become horrendously technical and complex. No one – government or industry, farmer or claimant - can be certain of how the law affects them in a given native title situation. And whittling down native title to a narrow legal concept doesn't help address the contemporary reality of Indigenous communities.

So native title creates strong incentives for the parties to get round a table. But once there, the agenda is far wider than anything native title law can address in its current form.

The need for a comprehensive approach to negotiating outcomes in Indigenous affairs has never been more apparent. The most recent High Court decisions in native title have just given us another good reason to push the Treaty debate along.

Sean Brennan, Director Treaty Project, Gilbert & Tobin Centre for Public Law, Faculty of Law, University of New South Wales, Sydney.

WA's MARTU PEOPLE ACHIEVE NATIVE TITLE RECOGNITION IN WESTERN DESERT

(Extracts from Media Releases – National Native Title Tribunal and ATSIC 27/9/02)

The Martu People of Western Australia will today (27/9/02) be recognised as the native title holders of a 136,000 square kilometre area of the Western Desert – the largest native title determination to be made in Australia to date.

Today at Parnngurra Community, approximately 1000 km north-east of Perth at the base of Rudall River National Park, Justice Robert French of the Federal Court of Australia is scheduled to make orders determining that native title exists in favour of the Martu People over areas of unallocated Crown land. The determination will also acknowledge the native title of the Ngurrara People who share interest with the Martu over a 5,652 sq km area around the Percival Lakes region.

As the first native title determination since the High Court handed down its judgment in *Western Australia v Ward* on 8 August 2002, several sections of the claimed area including the Rudall River National Park, unvested reserves and some mining leases and general purpose leases have been excluded to take account of the Court's decision.

The High Court found that native title is extinguished by the vesting of Crown reserves under s.33 of the *Land Act 1933 (WA)* and this may apply to the Rudall River National Park.

..ATSIC Chairman, Geoff Clark on behalf of ATSIC congratulated 'the Martu People for their successful native title claim and the Aboriginal communities involved for overcoming their differences and achieving this reward for their efforts..

'It has been a long (over 20 years) and hard battle to win this recognition for their rights and status – beginning with the Pilbara Aboriginal Workers strike of 1946.'

'Indigenous People everywhere can take comfort from today's determination and be inspired in their own efforts.'

Martu Native Title Determination – Backgrounder

Today's determination is the result of the Martu People's quarter century struggle to gain recognition of their traditional rights to their country. Their native title application sought acknowledgement of their rights and interest over 152,975 sq kms in the Western Desert region of Western Australia 1000 km north-east of Perth. This application included Rudall River National Park and part of the Canning Stock Route.

Partial determination

Following the High Court's judgment in *Western Australia v Ward* (2002) HCA 28, which was handed down on 8 August 2002, the parties reached agreement about the areas over which the Martu People have the right to exclusive possession (among other rights). Part of the determination area is recognised as being country where the Martu and Ngurrara Peoples have joint native title. The remaining part of the claim area over which no determination is presently made includes areas which are affected by pre-1 January 1994 granted mining leases and general purpose leases, certain current unvested reserves and Rudall River National Park, among others. Most of this remaining area will be the subject of further negotiations. A small part of the claim area that overlaps with the Ngalia application will be dealt with in other Federal Court proceedings at a later date. Due to the postponement of negotiations over these areas, the area covered by today's determination is 136,000 sq km.

Division resolved through native title process

..The communities in the Western Desert resisted the fragmentation and displacement that began with white settlement. This culminated in the Pilbara Aboriginal Workers Strike, which began in 1946 when approximately 500 people walked off pastoral stations across the Pilbara, protesting against the conditions and treatment they were forced to endure in the pastoral industry. Not all of the Martu People were involved in the strike. Some remained on pastoral stations and became part of a group known as "McLeod's Mob' led by prospector/miner, Don McLeod. This division amongst the Martu People continued in the decades to follow. Since 1976, when a conservation reserve was proposed near culturally significant Durba Hills, they have fought for their title to their country. Inevitably, some groups had competing claims to land in the broad Martu claim area. After the Native Title Act commenced in January 1994, eight native title applications were lodged over the area. Seven were later withdrawn following mediation between the claimant groups conducted by the Deputy President Fred Chaney. Late in 1998, the groups signed an agreement to work as a united group.

Mediation between Martu and interested parties

Late in 1996, the Tribunal notified people with an interest in the Martu claim area. Initially, there were 24 parties to the claim. Negotiations between the State Government and the applicants spanned many years and led to an agreement between the State and the applicants, represented by the Ngaanyatjarra Land Council, to work towards a consent determination. In October 2001, the Tribunal began mediating between the interested parties: The State of Western Australia, Newcrest Mining Ltd, Burgess Mining NL, Straits Resources Limited, Rio Tinto Exploration Pty Limited, Shire of Wiluna, Telstra Corporation Ltd and the Ngurrara claimants, represented by the Kimberley Land Council Aboriginal Corporation. The mediation resulted in the identification of the area to be covered by the determination made today. Included in the determination is recognition of an area of shared country that will be held jointly by Martu and Ngurrara native title holders. This covers approximately 5,600 sq km around the Percival Lakes region.

NATIONAL TREATY CONFERENCE PAPERS AND REPORTS

Highlights from the National Treaty Conference, 27-29 August 2002

This conference was jointly convened by ANTaR, ATSIC and AIATSIS to, in summary, discuss a formal settlement to the unresolved relationships between Indigenous and non-Indigenous Australians.

Speeches at the conference covered both the theoretical questions of Aboriginal sovereignty and rights; and the practical matters of Aboriginal health, education, employment etc. There was a general consensus amongst the speakers (except for **Minister Ruddock**) that any treaty needs to cover both areas.

A central theme of the conference was the nature of sovereignty and the relationships between 'Aboriginal sovereignty' and 'state sovereignty'. Several speakers argued that as sovereignty is not justiciable in the courts, sovereignty is a political claim or assertion rather than a legal right.

Dr. Mick Dodson noted that since the rejection of the 'doctrine of terra nullius' via the Mabo judgement, the Commonwealth of Australia no longer knows what the basis of its sovereignty is. A treaty could provide such a basis.

Similarly, **Dr Bill Jonas**, ATSI Social Justice Commissioner, argued that Aboriginal sovereignty is not the same as 'state sovereignty' and that the two can co-exist. Indeed, "the recognition of Aboriginal sovereignty can fulfil and enhance the legitimacy of Australia's sovereign status".

The treaty process is about recognising Aboriginal sovereignty and its relationship to Australian sovereignty. Read Dr. Jonas' full speech at http://www.humanrights.gov.au/speeches/socialjustice/recognising_sovereignty.html

On the other hand, **Michael Mansell** of the National Treaty Think-Tank argued that Aboriginal sovereignty is in competition with Australian sovereignty, and a treaty should recognise the competing claims over Australia.

Statements of support for some form of treaty or agreement between Indigenous and non-Indigenous Australians were made at the Conference by ACOSS, AMA, ACTU, ALP, Democrats, Greens, Australian Local Government Association, Australian Vice-Chancellors Committee, Independent Education Union Australia and the National Council of Churches.

An interesting external viewpoint was provided by **David Ervine,** former Northern Ireland paramilitarist, now peace-maker. He stressed the need for a united front in treaty negotiations, as the Howard Government will try to exploit any internal conflicts.

A transformation in racial attitudes in the NSW town of Moree was outlined by leading local cotton grower **Dick Estens.** The change in community attitudes was spearheaded by an Aboriginal employment program that Dick sponsored in the Moree district.

Prof. Jon Altman drew a distinction between Aboriginal land rights and resource rights, and the need to facilitate the conversion of customary resource rights to commercial assets.

Unfinished Business: Strategies and Lessons for Reform

Summary of Paper by Prof George Williams*

Delivered to *National Treaty Conference – on 27 August 2002, Canberra*

The idea of a Treaty between Indigenous people and the wider Australian community has been put back on the political agenda, by ATSIC Chair, Geoff Clark, the Council for Aboriginal Reconciliation, and others. But if the campaign for a Treaty is to succeed, it will need to learn from the failures of the Republic and Bill of Rights campaigns. A Treaty could be the lynchpin of the next stage in the reconciliation process. It might open up the Australian political and legal system, which, since Federation, has largely excluded Indigenous peoples. In many other nations, a Treaty is the accepted way of achieving an appropriate settlement on governance and other issues between the settler and Indigenous inhabitants. In fact, Australia is the only Commonwealth nation that does not have a Treaty with its Indigenous peoples.

The development of a clear political or legal strategy for achieving a Treaty should be an immediate goal. We could draw some salient lessons for this strategy from two other long-standing reform debates - those over a Bill of Rights and an Australian Republic. The attempt to achieve structural change to Australia's public law system in these two areas suggests the following:

- **Focus on the long and not the short term** - a longer-term approach is needed that extends beyond any one political cycle.
- **Not just politicians** - people other than our elected representatives must be involved in the reform process.
- **Incremental, not immediate change** - the lack of community understanding of complex public law reform issues requires a gradual approach.
- **Reject minimalism** - minimalism rightly failed as a strategy at the 1999 referendum.
- **Community ownership and involvement** - any major structural reform ought to have a strong grassroots base from an early stage.
- **Community education** - Australians possess an appalling lack of knowledge about their system of government. It will be near

impossible to gain support for major change unless it is underpinned by adequate community education.

- **Draft a model that can be understood in the community** - reform should be able to be communicated simply and effectively to a community audience.
- **Develop support Australia-wide** - to be successful a referendum needs to gain support in all Australian states.
- **Seek bi-partisan support** - major constitutional reforms are almost never achieved without bipartisan support.
- **Tackle the reform process along with the reform** - even with strong community support, structural legal change can be difficult to achieve. Community support will not translate into outcomes unless the process by which such change is addressed is also effective.

Debate over a Treaty must be conducted in a way that takes account of the long-term prospects of reform. Deep and complex issues raised by this debate, such as sovereignty and reform of the existing constitutional structure, must be tackled along with any consultative process. In the shorter term, an appropriate outcome is a heightened awareness among Australians about the relevant issues and about the range of possible models. Australians should also be made aware of why a Treaty would be appropriate for the reconciliation process, and why it might be seen as a matter of unfinished business.

In the medium term, there should be significant public debate over the types of models that are proposed, and formal community consultation should be undertaken through conventions and plebiscites.

In the long term, the Treaty process should lead to the drafting of an instrument that would represent the first significant legal outcome in an ongoing Treaty process. It would be a mistake to think that any initial instrument, or even a referendum, could satisfy all of the aspirations of any of the parties. The process must be a generational one.

Prof George Williams , Anthony Mason Professor, Director Gilbert & Tobin Centre of Public Law, Faculty of Law, University of New South Wales, Sydney.

The 1967 Referendum: Lessons from a Moment of Constitutional Change

Extracts from Paper by Prof Larissa Behrendt*

Delivered to *National Treaty Conference, Canberra on 27 August 2002*

(Full version will be published in Balayi)

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What might be in a Settlement

In order to ensure an effective campaign for change, the end goal must be clearly articulated. In this way, the issue of a treaty and whether we should have one becomes an important dialogue. It is in this dialogue that the content of the claims by Indigenous peoples against the state can be articulated. If we ask the question: "What do you want in a treaty?" the broad and varied answers would assist in mapping out the parameters of Indigenous understandings of their inherent rights and our claims to self-determination.

The rights enmeshed in the concept of "self-determination" have been mapped out in various reports and documents. Through those reports we can see that the right to self-determination includes everything from the right not to be discriminated against, the rights to enjoy language, culture and heritage, our rights to land, seas, waters and natural resources, the right to be educated and to work, the right to be economic self sufficient, the right to be involved in decision-making processes that impact upon our lives and the right to govern and manage our own affairs and our own communities…….

The challenge of improving rights protections needs to be approached by broader strategies than piecemeal court wins and band-aid welfare

measures. Finding a better approach to the protection of Indigenous rights is a multifaceted process that must include the following:

- There must be acknowledgement of past wrongs committed against Indigenous people. This includes a recognition of the failure to recognize Indigenous sovereignty.
- There needs to be a better understanding of how inequalities have become institutionalized, allowing 'formal equality' to become a tool that maintains an unequal *status quo* and perpetuates injustice.
- There needs to be a thorough understanding of what Indigenous political aspirations are and an exploration of how those aspirations can be accommodated within Australia's institutions. This means understanding what Indigenous people mean when we say we want our sovereignty recognized and we want to be self-determining.
- Legal victories need to be coupled with attempts to change public (mis)perceptions about Indigenous Australians. These changes need to be coupled with changes to Australia's institutions.
- There must be entrenched legal protection of our rights through both binding agreements/treaties and in our constitution.

We must take a holistic approach to the socio-economic disparity and social issues that affect Indigenous communities. Aspirations contained in the concept of "self-determination" or in the content of a treaty provide a starting point for those discussions in terms of long-term strategies. This needs to be complemented with short-term targeted policy that addresses immediate concerns and works with and towards larger institutional and systemic change.

…….By way of conclusion, to those who think that the giving of rights to one section of the society means necessarily being worse off, I would ask them to rethink the way of measuring the success of our institutions – our laws, government and constitution. Rather than believing that the system works because of the protection of the middle class, the well educated and those who belong to the dominant culture, the measure should be the extent to which those institutions work for the poor, the dispossessed, the historically marginalized and the culturally distinct……

Our marginalisation, dispossession and lack of rights protection is Australia's shame In this way, it can be argued that a treaty process that frankly and fairly promotes an Indigenous political agenda is in the best interests of non-Indigenous Australians. They cannot gain legitimacy unless we grant it. We need to remember how much power we have if we enter into a treaty process. We should not give it away easily or for little.

Prof Larissa Behrendt is the Director of the Professor of Law and Indigenous Studies and the Jumbunna Indigenous House of Learning at the University of Technology, Sydney and the Director of Ngiya, the Australian Institute of Indigenous Law, Policy and Practice.

The Winds of Change

Extracts from Speaking Notes of Gregory Phillips (NIYMA)

Delivered to the ***National Treaty Conference Canberra, 29 August 2002***

The National Indigenous Youth Movement of Australia (NIYMA) and I would like to talk with you today about story, about dreams, about love, about hope, and mostly about vision. We believe these things underpin everything we do in life, and we in the Movement use these cultural tools as a way to look back and pay respects, of seeing and feeling the world now, and as ways to move forward.

Briefly, NIYMA was set up by five young Black people because we didn't have the support we needed when we were growing and

developing. There was no space where we could voice our opinions and not have our dreams and hopes dashed as soon as the conference or meeting was over. We're sick of being advisory members to government, and we strongly believe we have to do it for ourselves, on our own terms, in our own way. In this way, we are sovereign.

We work with respected Elders and men and women who can support and respect our place in the cycle of life. They teach us about their times, and we share with them our knowledge of these times. In this way, we choose to move forward and believe in a better day for our mob.

NIYMA does not have all the answers, it does not purport to represent all young Indigenous peoples, nor does it require or need government funding.

What we do have is vision, dreams, hopes, story, love and most importantly and refreshingly, respect for each other.

In that vein, I also acknowledge and respect the contributions here of all the young blackfellas at this conference – isn't it good to have among us young women and men of such talent and style?

……. We are here with you for two simple reasons:

- Two-thirds of Aboriginal and Torres Strait Island People in this country are under 25 – if we do not engage with these young people today, we run the risk of another lost generation to drugs and alcohol, suicide, and most disastrously, loss of dreams, vision and love.
- We will be the ones who implement and perhaps finally negotiate any treaty. We have a serious stake here, and thus, we in NIYMA take our responsibility equally as seriously to engage and include Indigenous young peoples.

….As Aunty Mary Graham says in her paper on the *Application of the Oslo Model for Relations between States and Indigenous People* – "a sovereign people do not plead their cause. They affirm it and they live by it."

Other speakers have said:

- Vincent Lingiari said we can wait.
- Larissa (Behrendt) and George (Williams) said don't compromise too soon for too little and that gradual change was sensible; George also said the Process was important.
- Kev Carmody said there was power and change in the wind.
- Bill Jonas said it doesn't have to be our sovereignty vs state sovereignty – why not dual sovereignty?
- Michael Mansell said we should not cede sovereignty in a treaty and we agree.
- Darren Bloomfield said a treaty must come from the grassroots people, which is all of us here.
- David Ervine said we are engaged in a process of looking into a mirror when we engage with our seeming enemies.
- Dick Estens reminded us things can change when working together.
- Jon Altman said a treaty must be flexible to allow for intergenerational equity/change.
- Kerryn Phelps told us where treaties are in place, Indigenous health flourishes.
- Lester Irabinna-Rigney reminded us about the power of language.
- Michael Horsburgh confirmed for us that at the heart of the matter is white Australia's insecure and untenable grasp on sovereignty.

The point I am making is we have what we need to proceed now. Let's go.

NIYMA believes instead of starting at a Treaty, we must first ask what have we already got, and what do we really need.

Lester Irabinna-Rigney mentioned this morning we should acknowledge and pay tribute to how far we have already come, and we agree. Thank you to all our People who have struggled this far to bring us here.

Young Indigenous peoples have amazing talent, energy, humour and truth inside of themselves. Just bring a group of young people together and scratch the surface of their spirit, and an amazing thing happens: that explosion is creativity, passion, and an unstoppable passion for justice and freedom. This is the energy we must harness. That is NIYMA's work: to engage young people and harness those energies for good.

……There are a few things in our way of course;

What we don't have enough of is Indigenous leaders willing to support us and bring us through with them rather than stifling our voices. We are not here to usurp or ignore your positions or place – but we have had enough of people saying they support young people and doing nothing about it.

We are also sick of victimhood. We want to focus on what we've got and build from there. As has already been noted, we need a new language – we need a language based on respect for each other's opinions and experiences. We are heartened that at this conference, young people have been somewhat included, and that there is a genuine desire among all participants to believe in what we are trying to do, regardless of whether you believe in a treaty or not. It is great that people simply do not attack each other, but begin to listen.

……

Brothers and Sisters,

- Ghandi has reminded us about non-violence
- Martin Luther King Jr has reminded us about unconditional love
- Malcolm X has reminded us about truth
- Muhammed Ali has reminded us about courage in the face of fear
- Nelson Mandela has reminded us about patience
- The Kalkadoons and Pemulwuy have reminded us about being warriors
- Vincent Lingiari has reminded us about patience
- Uncle Joe McGinness, Aunty Faith Bandler, Aunty Evelyn Scott and those in FCAATSI have reminded us about dignity and resolve

The leaders and fighters of the 60s, 70s and 80s have reminded us about guts

All of our mob have reminded us about truth, feeling, love and honesty.

And all of us here are poised to truly create a new chapter in world history.

We must prepare to govern, Black People!

We must prepare for freedom if we want it.

We must be sovereign now if we truly believe in it.

Black Australia, it is you and me who make the difference, along with our good friends and supporters.

We are emerging, we are here, we are free.

Gregory received a standing ovation after his speech

OBITUARY

(*By Margaret Beavis and Jean Brian)*

Bunny Oldmeadow died in Woy Woy on 21 August 2002. Bunny worked as a nurse with experience in community and psychiatric nursing and had some time in an Ashram in India.

In supporting justice for Aboriginal Reconciliation she took part in the ***Sea of Hands*** bus trip through the west of Australia.

She was a keen bush regenerator at Bankstown and an activist on many local environmental issues including the fight to stop an airport in Heathcote bushland. For many years she worked as a volunteer at the Australian Museum where she identified species of sea worms.

Many people are grateful for her friendship and her commitment to justice and the environment.