

# **TREATY COMMUNITY SEMINAR**

# **OVERHEAD SLIDES**

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TREATY COMMUNITY SEMINAR FACILITATOR'S GUIDE**

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# Overview

This is a treaty community seminar designed to promote discussion and debate, and to raise awareness and understanding of treaty.

The treaty community seminars are designed to explore the concepts and benefits of a treaty or treaties between Indigenous peoples and the Commonwealth of Australia, and possible processes to achieve it.

This seminar is being held in parallel with the Aboriginal and Torres Strait Islander Commission's Treaty Information and Awareness Program which is being conducted in Indigenous communities.

# The Treaty Concept: An Introduction

It is important to understand that at this stage the treaty issue is completely open.

Consensus is currently being sought among Indigenous Australians about

- whether a treaty is the most desirable mechanism for achieving just outcomes
- the form a treaty, or treaties, would take
- Indigenous representation in any treaty negotiations.

Many possibilities are open for exploration, for example whether there is

- one treaty
- multiple treaties
- a framework agreement to be accessed over time.

# **Treaty Community Seminar Content**

Part 1: Background and Outcomes

Part 2: Why is a Treaty Needed?

Part 3: What is a Treaty?

Part 4: The Process of Treaty Development

# Treaty Community Seminar

## Learning Outcomes

Learning outcomes from this seminar include:

- understanding the history of the struggle for a treaty by Aboriginal and Torres Strait Islander peoples
- understanding the notion of a treaty and a variety of options in the formulation of treaties and other forms of agreement
- understanding the concept of sovereignty
- examining the reasons why a treaty is being considered at this time
- examining the benefits to Aboriginal and Torres Strait Islander peoples (and all Australians) of the establishment of a treaty
- providing reflections/evaluation.

# Recent Emergence of Discussion about Treaty

During 2000, as outcomes from the Council for Aboriginal Reconciliation's 10-year reconciliation process were being finalised, a number of Indigenous leaders renewed calls for a treaty between Indigenous peoples and the Commonwealth of Australia.

At the end of 2000, the final recommendations of CAR endorsed the need for consideration of a treaty process in Australia.

# **Role of ATSIC in the Treaty Process**

At its June 2000 meeting, the ATSIC Board of Commissioners decided that the treaty concept should be further advanced in consultation with other stakeholders, including ATSIC Regional Councils.

At their October 2000 meeting, the Board endorsed a broad strategy for progressing the treaty concept and approved the establishment of a ten-member committee, to be known as the National Treaty Support Group. A National Treaty Think Tank was also set up to support the NTSG.

# Promotion of a Process

ATSIC is ***promoting a process*** for the possible negotiation of a treaty - not negotiating a treaty itself, or a series of treaties.

ATSIC strongly believes that Aboriginal and Torres Strait Islander peoples should make the decisions about

- who will negotiate on behalf of Indigenous Australians,
- the process for negotiation, and, later,
- the structure and content of any treaty or agreements.



# Sovereignty Ignored

Australia has never formally recognised Aboriginal and Torres Strait Islander peoples by way of a treaty or treaties.

Captain Cook's instructions were '*with the Consent of the Natives to take possession of Convenient Situations in the Country ... or, if you find the country uninhabited take possession of it*'.

Cook's disregard of these instructions was a failure to act in accordance with international law practices of the time, which did afford some recognition of Indigenous peoples' sovereignty. This is evidenced by the many treaties that were entered into by the British in Canada, the United States and New Zealand.

Source: *Treaty Issues*, ATSIC 2001

## ***Terra nullius***

The acquisition of Australia by the British was later justified by reference to the legal doctrine of *terra nullius*, which means 'empty land' and/or 'land without a sovereign'.

It was not just an argument that the land was empty, but also that there was no capacity for self-government if there were people there.

# The Mistake of *Terra nullius*

It has been speculated that, because of *terra nullius*, the British colonial authorities and subsequent Australian governments did not enter into negotiations with Aboriginal and Torres Strait Islander peoples, who, as a result

- did not sign a surrender treaty with Australia or any of the six colonies;
- did not sign a treaty giving away any of their sovereign rights to Australia or any of the six colonies;
- could consider their options in reclaiming sovereign rights.

# History of Indigenous Assertions of Rights

In spite of the lack of recognition of Indigenous sovereignty, Indigenous people have made numerous assertions of rights and calls for negotiated agreements (including a treaty) with non-Indigenous interests. These have included:

1938	Day of Mourning & Protest
1963	Yirrkala Bark Petitions
1972	Larrakia Petition
1979-82	Makarrata ('Treaty')
1988	Barunga Statement
1993	Eva Valley Statement
1998	Kalkaringi Statement

Slide 2.5

# No Strangers to Treaties

*“What has been conspicuously lacking in the assessment of Aboriginal history is an appreciation that the Aboriginal tribes were, in effect, small nations which had long traditions of complex 'international' relations. They made war and peace, negotiated treaties, settled conflicts, arranged marriages and organized access to resources and right of way across territories.”* (Henry Reynolds)

These were the characteristics of sovereignty exercised by the Indigenous peoples of Australia prior to European settlement.

Slide 2.6

# **Sovereignty and the End of *Terra nullius***

*“The Mabo decision in 1992 threw out the notion of terra nullius. But the issue of Aboriginal Sovereignty is still open and in my view can only be resolved in some form of agreement between Aboriginal peoples and Torres Strait Islander peoples on one hand, and the Government of Australia representing the peoples of Australia on the other hand.”*

(Geoff Clark, April 2000)

Slide 2.7

## **Is the Issue of a Treaty and Indigenous Sovereignty always Divisive and Unhelpful?**

People will argue that treaties are divisive, but:

- Divisions already exist within Australian society. The reconciliation process has been a recognition of the need to heal these divisions.
- There are arrangements with Indigenous peoples in other democracies based on the concept of 'nations' or even 'First Nations'.
- These arrangements demonstrate there is compatibility between a people's (or nation's) sovereignty and a State's sovereignty.
- A treaty could actually enhance peace and harmony in relationships between Indigenous peoples and the whole of society of which they form an essential part.
- There are already 'layers' of co-existing sovereignty within Australia's system of government (federal, state or territory & local).

# Why We Could Have a Treaty: Summary

The occupation, colonisation and federation of Australia, and the subsequent dislocation of Aboriginal and Torres Strait Islander peoples occurred without their consent.

A modern treaty could provide Aboriginal and Torres Strait Islander peoples with

- an opportunity to affirm and protect Indigenous rights
- recognition of and redress for past injustices
- an opportunity to formalise the relationship between Indigenous and non-Indigenous Australians, including a way of settling 'unfinished business'
- the necessary tools for self-determination and self-government.

A treaty would give non-Indigenous Australians

- an historic opportunity to rectify the questionable founding of Australia in 1788, and to redress past discriminatory policies and practices
- certainty over land and resource use.



# Six Outcomes of a Treaty Process

ANTaR (Australians for Native Title and Reconciliation) proposes the following outcomes from a treaty process.

- Treaty agreements reduce or put an end to conflict over lands and resources. If economic and community development is to take place, people need to know who owns a piece of land, who has the right to the resources on it and who has law-making authority over it.
- If disputes do arise, treaties provide agreed-upon processes for resolving them.
- Because treaties are developed, and agreed to, by the parties affected, they are made to last.
- Treaties [could] entrench the rights of Indigenous peoples in a form that cannot be wiped out by the next hostile government with a temporary majority in Parliament.
- A treaty process provides an opportunity for a comprehensive, negotiated and forward-looking strategy to overcome Indigenous disadvantage.
- Treaties can even gain the support of those who do not believe in Indigenous rights, because of the opportunity they offer for 'closure'.

# Will a Treaty 'Solve' Matters?

**No!**

We shall still have to work hard to make real the opportunities that a treaty or treaties can give us all.

What a treaty can provide is a more solid and a legally-enforceable platform for all Australians to live the kinds of lives our communities desire.

We can also use the treaty negotiation process to advance 'unfinished business' such as stolen generations, land rights, self-determination and self-government. It offers a real chance to turn around Indigenous disadvantage because strategies will be developed, implemented and controlled by Indigenous people.

# A Platform for Real Self-Determination

Aboriginal and Torres Strait Islander people are increasingly challenging negative perceptions of themselves.

They are no longer prepared to accept the 'welfare' stereotype, reinforced by programs such as CDEP (Community Development Employment Program).

A treaty process would give Indigenous people an opportunity to spell out where they want to be in the future, culturally, economically, and socially; and what their communities need to get there and sustain themselves.

These needs would include:

- their own checklist of initiatives
- reforms
- programs and resources governments will deliver
- arrangements with partner organisations.

# Partnership

## Economic Partnership, not Exclusion

The Western Cape Communities Coexistence Agreement on Western Cape York Peninsula (discussed below) is one local example of how all parties can achieve mutual economic and social benefits through formal, legal agreements.

A treaty could provide the recognition and rights platform that ALL communities can use to negotiate their own agreements with international and domestic companies investing in resource, business and infrastructure projects.

# The Story So Far

Aboriginal and Torres Strait Islander peoples

- are not recognised in the Australian Constitution
- did not agree to the Federation\* creating Australia
- were not allowed to vote in the Federation Referendum
- have no protection of rights under the Constitution. For example, the *Native Title Act 1993*, and more particularly, the amendments to the Act of 1998, resulted in a loss of rights under the Australian legal system.

\*Federation was a nation-building process for the Australian colonists, but Aboriginal and Torres Strait Islander peoples were excluded from that process.

# Matters for Consideration in Treaty Negotiations

- formalisation of the relationship between Indigenous and non-Indigenous Australians, including a way of settling 'unfinished business'
- affirmation and protection of Indigenous rights
- recognition of and redress for past injustices
- redressing Indigenous disadvantage
- enabling self-determination and self-government
- providing certainty over land and resource use
- protection of existing and future agreements
- establishing processes for the review of agreements

# What Could be Included in a Treaty

- prohibition of racial discrimination
- recognition of the rights of equality
- access to education, training and employment
- recognition of distinct Indigenous identities
- protection of Indigenous laws, cultures and languages
- law and justice issues
- resolution for the stolen generations
- control, ownership and management of land, waters and resources
- economic and social development
- reparation and compensation
- self-determination
- self-government
- constitutional recognition
- any other matter that the negotiating parties believe is relevant for inclusion

# Possible Kinds of Treaties

If Aboriginal and Torres Strait Islander peoples of the Australian continent agree that they want a treaty or treaties, then there are many styles of agreement available to them.

Common forms include

- an agreement recognised under international law
- an agreement supported by the Australian Constitution
- an agreement supported by legislation
- an agreement between parties – a contract.

Source: *Treaty Issues*, ATSIC



# International Law Treaties

A treaty, in international law, is a written agreement concluded by two or more sovereign nation states or by a sovereign state and an international organisation, such as the European Union.

# **An Agreement under International Law: Points to Consider**

The difficulty with this approach is that Australian Governments have argued that Aboriginal and Torres Strait Islander peoples are not legally able to enter into such an agreement.

According to this view, Australia cannot make a treaty with Aboriginal and Torres Strait Islander peoples because Indigenous peoples are not considered to be separate nations.

There is a competing view that treaties made with Indigenous peoples and nations are proper matters of international law. Also, many Indigenous people do not believe that they have ever ceded original sovereignty, and see themselves as nations.

Source: *Treaty Issues*, ATSIC

# An Agreement under International Law - United Nations View

The United Nations' *Study on Treaties, Agreements and Other Constructive Arrangements between States and Indigenous Populations* supports the view that treaties with Indigenous peoples can be entered into at the international level.

It concluded that where Indigenous peoples had not entered into treaties under international law with colonising countries, they should be treated as nations and assumed to have the ability to enter into such treaties until it is proven otherwise.

*Human Rights of Indigenous Peoples*, United Nations Commission on Human Rights, Miguel Alfonso Martinez, Special Rapporteur, June 1999 (Available at [www.treatynow.org](http://www.treatynow.org))

Source: *Treaty Issues*, ATSIC

# **Example of an International Treaty**

## **The Torres Strait Treaty**

The Torres Strait Treaty is an agreement between Australia and Papua New Guinea which describes the boundaries between the two countries and how the sea area may be used.

It was signed in December 1978 after long discussions between Australia and Papua New Guinea. Talks were also held between the Australian Government, the Queensland Government and Torres Strait Islander representatives.

# The Protected Zone

The Protected Zone is an area of the Torres Strait recognised by Australia and Papua New Guinea in the Torres Strait Treaty as needing special attention.

The main reason for the Protected Zone is so that Torres Strait Islanders and the coastal people of Papua New Guinea can carry on their traditional way of life.

The formation of the Protected Zone has also helped to preserve and protect the land, sea and air of the Torres Strait, including the native plant and animal life.

# Special Reference to Indigenous Peoples

A special part of the Treaty allows free movement (without passports or visas) between Australia and Papua New Guinea for traditional activities in the Protected Zone and nearby areas.

This is only for Torres Strait Islanders and for coastal people from Papua New Guinea who live in and keep the traditions of the region.

Traditional activities under the Treaty include activities on land (such as gardening, food collection and hunting), activities on water (such as fishing for food), ceremonies or social gatherings (such as marriages) and traditional trade.

Business dealings and employment for money are not allowed as traditional activities under the Treaty.

# Australian Law Treaties

Treaties under Australian law may take the following forms:

- agreements supported by the Australian Constitution
- agreements supported by legislation
- contracts.

# **An Agreement Supported by the Constitution**

There are two main ways in which a treaty could be supported by the Constitution.

1. The entire text (or a portion) of a treaty could be inserted within the Constitution itself.
2. The Constitution could be amended to give the Commonwealth the power to negotiate a treaty with Aboriginal and Torres Strait Islander peoples. This would provide strong legal protection to Aboriginal and Torres Strait Islander peoples in the negotiation of such treaties.

We need to recognise that, just because the power to negotiate is there, it doesn't necessarily mean that the Commonwealth must negotiate a treaty. It presupposes, however, that if the government agrees to have a referendum to give itself this power, it is willing to make a treaty.



# **An Agreement Supported by Legislation**

A treaty may take the form of legislation.

# **Example of a Treaty Supported by Legislation**

## **Commonwealth-State Housing Agreement 1999–2003**

### **Bilateral Agreement with Queensland**

The CSHA is a treaty between the Australian Government and its states/territories based on the *Housing Assistance Act 1996*.

The Bilateral Agreement with Queensland focuses on key areas of strategic significance to both parties.

The Bilateral Agreement sets out the responsibilities of the parties and the terms and conditions for Australian Government financial support to the states and territories for public housing.

# **Another Agreement Supported by Legislation**

## **Uluru Ownership Handback: October 1985**

The agreement to hand back ownership of the area around Uluru and Kata Tjuta (Ayers Rock - Mt Olga) National Park to its traditional owners was made by the (Hawke) Commonwealth Government.

The Northern Territory Government had wanted title transferred from the Commonwealth to the Northern Territory Government. This would have given some reduced form of title to the traditional owners with Aboriginal people involved in park management, but not in control.

# A Contract

A treaty could take the form of a contract.

Negotiated between the Federal Government and Indigenous peoples, a contract could deal with issues identified by the parties. It would not require a parliamentary process to be implemented, just the political will of the elected government.

A contract could create legally-enforceable rights and obligations.

The provisions of the agreement and the consequences of any breach would be interpreted by the judiciary, just as they are for any contract between parties.

# Example of Contract Agreement

## Cape York Land Council-Comalco Agreement

This agreement was based on the Native Title rights of traditional owners of Western Cape York Peninsula.

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### A Way Forward Together

*An historic agreement recognising and respecting the inherent Native Title rights of Traditional Owners and allowing for consultation over future development of mining operations on Western Cape York Peninsula was signed in Weipa today by Comalco, Cape York Land Council, Traditional Owners, community representatives and the Queensland Government.*

# Cape York Land Council-Comalco Agreement



## A Way Forward Together

The Western Cape Communities Co-existence Agreement has been under discussion for the past five years and is founded on mutual recognition and support of Native Title and mining interests.

Key aspects include;

- Annual payments commencing at \$4 million per year to a Trust managed by Traditional Owner and community representatives to fund development initiatives;
- The annual payment includes a State Government contribution of \$1.5 million ;
- Additional \$500,000 for Aboriginal employment and training;
- Recognition and support for Traditional Owner Groups and their claims for Native Title;
- Relinquishment of parts of the Comalco lease no longer required for mining; and
- Cultural heritage protection and cultural awareness training for all Comalco staff and principal contractors in Weipa..

The Agreement was signed by representatives of 11 Traditional Owner Groups associated with land covering the Comalco lease, four indigenous community councils (Aurukun, Napranum, Mapoon and New Mapoon), the Cape York Land Council, and Comalco. The Queensland Government is also a signatory and will provide financial benefits when the Agreement is registered as an Indigenous Land Use Agreement under the Native Title Act.

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## ***What's in the Nisga'a Final Agreement***

**The Nisga'a Final Agreement is the full and final settlement of Nisga'a aboriginal rights and title. It exhaustively sets out the Nisga'a rights which will be covered by Section 35 of the Constitution Act.**

### **THE TREATY PROVIDES:**

- 1,992 square kilometres of land in fee simple including existing Indian Reserves\*
- all forest resources on Nisga'a land, and agreement in principle to purchase a forest tenure elsewhere
- an annual salmon allocation of roughly 26% of the Canadian Nass River total allowable catch
- a wildlife hunting allocation for domestic purposes
- subsurface resources on Nisga'a land
- \$190 million in direct cash payments, spread over 15 years
- \$10 million to a fisheries conservation trust
- \$11.5 million to purchase commercial fishing vessels and licences
- \$40.4 million for transition and implementation activities

\* not included are existing fee simple lands, or lands subject to agricultural leases and wood lot licences

**British  
Columbia  
Treaty  
Commission**

Suite 203  
1155 West Pender  
Street  
Vancouver, B.C.  
V6E 2B4

Slide 3.17

(604) 482-9200  
phone  
(604) 482-9222 fax

Brian Mitchell  
Communications  
Manager  
(604) 482-9200

[info@bctreaty.net](mailto:info@bctreaty.net)

The Nisga'a will adopt a Constitution that will define their terms of governance. Non-Nisga'a residents on Nisga'a lands must be consulted about decisions that significantly and directly affect them (eg. delivery of health and education services), and may participate in elected bodies that directly and significantly affect them.

The Nisga'a government may make laws required to carry out its responsibilities, and in fields such as Nisga'a citizenship, language and culture, Nisga'a property in Nisga'a lands, public order, peace and safety, employment, traffic and transportation, solemnization of marriages, child and family, social and health services, child custody, adoption, and education. Federal and provincial laws of general application and the Criminal Code) continue to apply to Nisga'a citizens and Nisga'a lands, as will the Charter of Rights & Freedoms.

The Nisga'a government may provide policing, correctional, and court services on Nisga'a lands. The parties have negotiated fiscal agreements to allow the Nisga'a government to deliver programs and services at levels reasonably comparable to those generally available in northwest British Columbia.

The Nisga'a government may tax Nisga'a citizens on Nisga'a lands, but there is no treaty right to tax non-Nisga'a residents on Nisga'a lands. The Indian Act tax exemption will be eliminated over eight years for sales taxes and 12 years for income taxes.

Source: <http://www.bctreaty.net/updates/oct98nisgaa.html>



# Parameters for Discussion on Four Possible Kinds of Treaties

- entitlement to rights
- durability
- enforceability
- achieving government agreement
- achieving agreement with the Australian people
- closure
- recognition of sovereignty
- impact on reconciliation

# How Many Treaties?

A discussion about a treaty will allow us to look at the different forms a treaty may take.

It might be that there is

- one national treaty
- a national agreement of principles that allows for treaties to be signed at the regional level
- a network of regional or local treaties.

Another issue that will need to be decided is whether there should be one treaty between Aboriginal peoples and the Federal Government and another between Torres Strait Islander peoples and the Federal Government.

Source: *Treaty FAQs*, ATSIC

# Considerations in Treaty-Making

- How many treaties?
- Should there be one national treaty?
- Should there be a national agreement of principles that allows for treaties to be signed at the regional level?
- Should there be a network of regional or local treaties?
- Should there be one treaty between Aboriginal peoples and the Federal Government and another treaty between Torres Strait Islander peoples and the Federal Government?
- Who should act as a party to the treaty(s)?
- Who has the mandate to act for Aboriginal and Torres Strait Islander peoples?
- Who has the mandate to act for the Government of Australia?
- Who should administer the treaty(s) and what would its membership look like?

# The Importance of Process

The process of treaty development is as important as any final agreement reached. Process considerations include:

- the need for discussion
- a uniquely Australian approach
- timing
- integrity
- equality of negotiations
- representative participation

# The Need for Discussion

What a treaty would do, the legal form it would take, and its content are all matters that need to be talked about and decided upon by Aboriginal and Torres Strait Islander peoples.

Source: *Treaty Issues*, ATSIC

# **A Uniquely Australian Approach**

Australia has to find its own way forward. It is not possible to pick up a document that has worked elsewhere and simply adopt it for Australia.

Source: ANTaR

# Timing

The process cannot be rushed.

Adequate time must be given to permit discussion and negotiation, to obtain advice, to explore positions, to consider, consult and reconsider, free from undue pressure or constraints, and to enable mutual understanding to be generated and legitimacy of outcomes to be achieved.

Source: ANTaR

# Integrity

The integrity of the process is important.

Legitimacy and workability flow from the way things are done as much as from the words ultimately written on the document.

Source: ANTaR



# Equality of Negotiations

Respect must be accorded to Indigenous preferences as to how the process should go ahead.

No so-called solutions can be imported or imposed. Resolution of outstanding issues can be achieved only through negotiation between equals.

Source: ANTaR

# Representative Participation

Indigenous participation in the reconciliation and resolution processes must be representative.

While organisation of this will be complex, negotiations are unlikely to be able to proceed until there is a broad consensus about Indigenous representation.

Indigenous people must decide on an approach to concepts of individual and community representation which is culturally appropriate.

## Which Parties Would Sign a Treaty?

A national treaty would be signed on the one part by the Australian Government, and on the other by the chosen representatives of the Aboriginal peoples and the Torres Strait Islander peoples.

Who those chosen representatives would be is a matter for the Aboriginal and Torres Strait Islander peoples to discuss, debate and decide upon.

The same principles would apply to regional and local treaties.

Source: *Treaty FAQs*, ATSIC

# Possibly an Indigenous Convention?

One possible approach for addressing issues of Indigenous representation and negotiation is a Convention, constituted as a formal assembly of delegates from recognised 'constituencies'.

The Convention may

- nominate an empowered negotiating team and terms
- review progress reports from the negotiating team
- exercise final decision-making over terms and whether to agree.

# Issue of a 'Framework Treaty'

Aboriginal and Torres Strait Islander communities and organisations could be invited to discuss the merits of negotiating first a national or 'framework' treaty with the Australian Government.

Such a treaty could be used as a platform for negotiating follow-on regional agreements and local agreements.

An alternative might be to negotiate treaties on a state and territory basis. Is this a practical alternative?

# Stages in Treaty Negotiation

Treaty negotiations in Canadian British Columbia pass through six stages:

1. Statement of Intent
2. Preparation for negotiations
3. Negotiation of a Framework Agreement
4. Negotiation of an Agreement in Principle
5. Negotiation to finalise a treaty
6. Treaty implementation

# **The Council for Aboriginal Reconciliation and the Aboriginal and Torres Strait Islander Social Justice Commissioner**

In the early 1990s, two bodies were established which have subsequently defined the relationship between treaty and the reconciliation process.

- In 1991 the Council for Aboriginal Reconciliation (CAR) was set up in lieu of the treaty process promised by Prime Minister Bob Hawke in 1988. CAR was established under legislation which set a 10-year formal process for achieving reconciliation.
- In 1993 the Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner was established by the Federal Government in response to issues of discrimination and disadvantage highlighted by the Royal Commission into Aboriginal Deaths in Custody and HREOC's National Inquiry into Racist Violence.

# Social Justice Report 2000

The Aboriginal and Torres Strait Islander Social Justice Commissioner's *Social Justice Report 2000* focuses on reconciliation and human rights.

It expresses concern about the current lack of progress on reconciliation, and identifies a range of commitments to be made at the national level before meaningful reconciliation can be achieved.

The report calls for a commitment to overcoming Indigenous disadvantage as an urgent national priority, and makes fourteen recommendations, including

- negotiation of a national framework agreement (or treaty);
- an entrenched guarantee against racial discrimination;
- better accountability and transparency of governments;
- processes to ensure more effective participation of Indigenous people in the decision-making process.



# Social Justice Report 2000

## Recommendations

### *Negotiating with Indigenous Peoples*

11. That the federal government introduce framework legislation providing legislative support for the negotiation of agreements with Indigenous peoples at the national, regional and local levels. The Council for Aboriginal Reconciliation's proposed *Reconciliation Bill 2000* is an appropriate legislative model.

12. That the federal government and COAG (Council of Australian Governments) adopt the *Principles for Indigenous social justice and the development of relations between the Commonwealth government and Aboriginal and Torres Strait Islander Peoples* as proposed by ATSIC in *Recognition, Rights and Reform*, as forming the framework for negotiations about service delivery arrangements, regional governance and unfinished business.

# Documents of Reconciliation

After years of public consultation, the Council for Aboriginal Reconciliation presented its Documents for Reconciliation to national leaders and the people of Australia at Corroboree 2000 in Sydney on 27 May 2000.

The documents comprise the *Australian Declaration Towards Reconciliation* and the *Roadmap for Reconciliation*.

# Documents of Reconciliation

The *Australian Declaration Towards Reconciliation* is an aspirational statement that the Council hopes all Australians will embrace.

The *Roadmap* sets out four national strategies identifying ways governments, community groups, organisations and individuals can implement the principles of the *Declaration* to help improve the lives of Aboriginal and Torres Strait Islander people and achieve reconciliation.

# **Recommendations of the Council for Aboriginal Reconciliation Final Report**

The final report contains six recommendations and proposed reconciliation legislation.

# CAR Recommendations

1. COAG agree to implement and monitor a national framework to overcome Aboriginal and Torres Strait Islander peoples' disadvantage.
2. All parliaments and local governments pass formal motions of support.
3. The Commonwealth Parliament prepare legislation for a referendum to:
  - recognise Aboriginal and Torres Strait Islander peoples as the first peoples of Australia in a new preamble to the Constitution; and
  - remove section 25 of the Constitution and introduce a new section making it unlawful to adversely discriminate against any people on the grounds of race.

# CAR Recommendations

4. All levels of government, non-government, business, peak bodies, communities and individuals commit themselves to continuing and sustaining the process of reconciliation.
5. Each government and parliament:
  - recognise that this land and its waters were settled as colonies without treaty or consent and that to advance reconciliation it would be most desirable if there were agreements or treaties; and
  - negotiate a process through which this might be achieved that protects the political, legal, cultural and economic position of Aboriginal and Torres Strait Islander peoples.
6. The Commonwealth Parliament enact legislation (for which the Council has provided a draft in this report) to put in place a process which will unite all Australians by way of an agreement, or treaty, through which unresolved issues of reconciliation can be resolved.

# Proposed Reconciliation Legislation

The proposed legislation begins with a Preamble, followed by a preliminary section and four substantive sections.

Part 1: Preliminary (setting out the Council's intention and aims in recommending the legislation, and guidance for its interpretation)

Part 2: Recognition of the Unique Status of Aboriginal and Torres Strait Islander Peoples

Part 3: A Process to Identify and Resolve Issues for Reconciliation

Part 4: A Negotiation and Agreement Process to Resolve Reconciliation Issues between Aboriginal and Torres Strait Islander Peoples and the Government

Part 5: A Process for Reporting on Reconciliation

# Current State of Play

The Commonwealth Government has not yet formally responded to CAR's final recommendations.

However, the Prime Minister, John Howard, has publicly ruled out consideration of a treaty process in Australia on the basis that it would be inappropriate and divisive.

Meanwhile, ATSIC's Treaty Information and Awareness Program in Indigenous communities is continuing, and is anticipated to culminate in an Indigenous plebiscite on the issue.



## Non-Indigenous Players

The involvement of the broader non-Indigenous community is critical to progressing the opportunities of a treaty process. Reconciliation organisations will continue to provide a vital avenue for community action. The major national and state organisations are:

- **Reconciliation Australia** - the independent, non-profit body which replaced the Council for Aboriginal Reconciliation in 2001
- **State Reconciliation Councils**
- **ANTaR** (Australians for Native Title and Reconciliation)

To become involved at a local level, contact ANTaR for the reconciliation group nearest you. (See handout)