

ATSIC's Role in the Treaty Process

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First of all let me commence this presentation by acknowledging the traditional owners of the land upon which this seminar is being held, the Ngunnawal People. I would also like to thank the Institute for conducting this seminar series about the treaty, and for inviting me to present this, the third seminar in this series.

I would like to talk to you today about ATSIC's role in the current treaty process. Following on from the reconciliation convention in May last year where I raised the issue of the treaty, a meeting of Aboriginal leaders was held in Melbourne to discuss how we should progress consideration of the treaty concept.

In June last year the ATSIC Board decided that the Treaty Concept should be progressed in consultation with other stake holders including regional councils; determined that a think tank be established to further develop the Treaty Concept and promote wider discussion of the issues; and allocated an amount of money for the treaty activity.

At the October Board meeting, an initial strategy was adopted in terms of progressing the treaty issue.

For those of you who may be wondering what ATSIC is doing involving itself in this issue instead of providing much needed services to Aboriginal and Torres Strait Islander communities, I provide two simple answers.

Firstly, ATSIC has a responsibility to advocate on behalf of Aboriginal Peoples and Torres Strait Islander Peoples. And this means, in my view, advocating for the structural reforms required to empower Aboriginal peoples and Torres Strait Islander peoples.

Secondly, under my stewardship, ATSIC will take every available opportunity to advance the inherent rights of Indigenous peoples. It will not limit itself merely to providing programs such as housing and CDEP. These are importance matters and so is Indigenous rights advocacy – they are not mutually exclusive.

ATSIC's strategy is basically one aimed at informing the Aboriginal and Torres Strait Islander community about the treaty concept and seeking their support for progressing the matter through a plebiscite or some similar mechanism.

There are two key messages which I need to emphasise at this point.

The first message is that ATSIC is not negotiating a treaty. ATSIC is facilitating a process for consulting with, and providing information about a Treaty to Aboriginal and Torres Strait Islander people.

The second message which I need to emphasise is that ATSIC sees this process as being an inclusive process. That is, it is not restricted to ATSIC Commissioners and the Regional Councillors

but includes all Aboriginal and Torres Strait Islander people who wish to be involved.

To this end ATSIC has established a section 13 advisory committee which is called the National Treaty Support Group. This committee is chaired by myself, and includes five other Commissioners and four community representatives.

Further ATSIC has established a Think-Tank whose role is to stimulate debate and discussion particularly about the more technical aspects of a treaty or treaties and to network with regional and state/territory think tanks to encourage discussion about, identify and resolve local, regional and state/territory issues relating to treaty.

I don't need to remind you that calls for a treaty are not new. In 1979 the Aboriginal Treaty Committee launched a campaign for a treaty by taking out an ad in one of the major newspapers at the time which was signed by many prominent people. This campaign was picked up by the National Aboriginal Conference and in the early 1980's the concept of a Makarrata or Compact was being talked about. Apparently these terms Makarrata and Compact were used because the word treaty was considered to be something non-Indigenous Australians were afraid of.

More recently, the final report of the Council for Aboriginal Reconciliation recommended that each government:

- 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.

The CAR report also recommended:

That the Commonwealth Parliament enact legislation 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.

The ATSIC board has recognised that there is a need for broad Aboriginal support and endorsement for the treaty before formal negotiations can occur. Without this there is no mandate to pursue the treaty agenda. Therefore the initial phase of the treaty campaign will culminate in 2002 with a plebiscite - or something similar - of Aboriginal and Torres Strait Islander people where their views about a treaty will be sought.

Leading up to that plebiscite ATSIC has endorsed 3 broad strategies:

- the first one is an information and awareness strategy,
- the second is a political strategy, and
- the third is a treaty framework development strategy.

In terms of the information and awareness strategy, ATSIC believes that there are two distinct target groups: firstly, the Aboriginal and Torres Strait Islander people and secondly, the general public.

In terms of the Aboriginal and Torres Strait Islander people, our aim is to promote awareness of and support for the Treaty concept. In respect of the general public our aim is to promote understanding and acceptance of the need for a treaty.

As I have previously indicated the Commission has established a section 13 committee with a membership drawn from both the ATSIC board and the broader Aboriginal community. The

responsibilities of the advisory committee which is now called the National Treaty Support Group is to provide advice to myself (as chairman), to relevant portfolio Commissioners and to the Commission on treaty matters. In particular the National Treaty Support Group will advise on:

- the development on the Treaty Concept;
- the progress of the treaty strategy endorsed by the Commission;
- the establishment of a foundation to pursue philanthropic support for the Treaty and related matters;
- the convening and co-ordination of a national conference to develop further the treaty concept;
- the allocation of tasks for the think tanks;
- the allocation of funds for treaty related matters;
- the information of awareness campaign; and
- the plebiscite.

So it is the role of the National treaty Support Group to advise ATSIC on all of these matters.

I have referred earlier to the primary role of the national think tank. Another function is to provide technical support and advice to both the National Treaty Support Group and the Commission. Membership of this think tank include people like Professor Marcia Langton, Michael Mansell, Bob Weatherall, Gary Foley, Dr Mick Dodson, Professor Larissa Behrent, Robin Quiggin, Patrick Dodson and Lester Rigney.

The National Treaty Support Group and the National Think-Tank first met in November and have had 3 meetings. Some of the key outcomes of those meetings have been:

- A) the conduct of a litmus-test survey amongst three Aboriginal and Torres Strait Communities,
- B) agreement to develop strategic alliances and partnerships with other think tanks and support groups, and
- C) the development of a pamphlet, a treaty website (<http://www.treatynow.org/>), a research strategy, a frequently asked questions document and discussion papers which are aimed primarily at providing information to Aboriginal and Torres Strait Islander people but will also be used for providing useful information to other people.

Another initiative has been an Indigenous youth workshop to consider and provide advice about a strategy for the participation by Indigenous youth in the Treaty process.

Returning to the sample survey of three Aboriginal communities conducted earlier this year, the key finding was that there is a significant level of actual and potential support for a treaty. At the same time, most people surveyed indicated that they wanted more information about the treaty and they wanted this information primarily through face-to-face community meetings.

The results of the survey have confirmed that the approach ATSIC is taking is the correct one. We must do all that we can to ensure that Aboriginal and Torres Strait Islander people are given the information necessary for them to make informed decisions.

The key challenge for us is that, while the Commission would like to see the treaty concept aired, discussed and talked about by Aboriginal and Torres Strait Islander people and the general community, the current government unfortunately has a policy where the Treaty shouldn't be discussed at all.

It is my view that a national treaty framework is essential. I know that many people believe that treaties must be negotiated at the level of the Aboriginal language group or Aboriginal Nations however there must be a national framework within which the other treaties can be developed.

I believe that a binding, properly negotiated Treaty between Aboriginal and Torres Strait Islander peoples as the Indigenous peoples of Australia and the Australian Government will, (and this list is not exhaustive):

- establish a framework for settling relationships between Indigenous peoples and governments at local, regional, state, territory and federal levels;
- provide legal and constitutional recognition that Aboriginal peoples and Torres Strait Islander peoples have inherent rights;
- recognise and protect the unique cultures and heritage of Aboriginal peoples and Torres Strait Islander peoples;
- ensure that the Aboriginal peoples and Torres Strait Islander peoples have control over their lands, seas and resources.

I have written to all Regional Council Chairpersons and all Regional Councillors personally informing them of the Board's decisions in respect of the Treaty issue and requesting them to facilitate getting information to all Aboriginal and Torres Strait Islander people around the country.

I believe that the time is right to press ahead with the Treaty agenda and I believe this for a number of reasons.

Firstly, this year is the Centenary year of Federation of Australia. At the time of federation, Aboriginal people were excluded from the process of nation building. We did not give our informed consent. We were not even asked. In this the Centenary year, now is an opportune time for the non-Indigenous peoples to put this matter right. Secondly, 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.

Finally, I believe that the electorate is becoming increasingly frustrated with those who say they support reconciliation but refuse outright to consider the possibility of a treaty as a way forward; as the means of putting right the relationship between the Indigenous and non-Indigenous peoples. It is my view that the electorate will respond positively to a platform aimed at righting the wrongs of the past and developing a process intended to provide a treaty or settlement which guarantees inherent Indigenous rights.