

Mindaribba Statement (2001) Position Paper

The direction was formulated by the NSW Aboriginal Land Council Focus Group delegates attending the Mindaribba LALC Workshop on Treaty Process Options for NSW, 20th and 21st March 2001.

One of the objectives of the forum was that this statement can be accessed by future generations to use as a source document for research or the formulation of negotiation strategies.

Mindaribba Statement (2001)

It is important that position papers such as the Mindaribba Statement (2001) are able to be accessed by future generations to use as source document for research or the formulation of negotiation strategies. The direction was formulated by the NSW Aboriginal Land Council Focus Group delegates attending the Mindaribba LALC Workshop on Treaty Process Options for NSW, 20th and 21st March 2001.

During 2000 and 2001 Rod Williams was contracted through the National Indigenous Development Alliance (NIDA) to facilitate a number of workshops for the NSW Aboriginal Land Network in relation to developing a strategy document that sets out the NSWALC network position on the issues of the “Reconciliation process” and or “Treaty process” in NSW. The first stage was to develop a draft position from a representative focus group workshop held at the Mindaribba Local Aboriginal Land Council NSW.

The two-day workshop invited the State Councillors and 2 delegates from the 13 Land Council regions who were selected by the State Councillors to form part of the NSW Aboriginal Land Council Focus Group on Treaty Process Options for NSW.

FOCUS GROUP MEMBERS IN ATTENDANCE

Lois Towney – Central Region
Robert Barnes – Central Region
Wayne Griffiths – Northern Region
Peter Allan – Northern Region
Ron Green – Northern Region
Manuel Ritchie – Central Coast Region
Larry Kelly – Central Coast
Colin Campbell – Central Coast
Ossie Cruse – South East Coast
Ben J Cruse -- South East Coast Region
Matilda House – South East Coast Region
Tombo Winters – North West Region

Pat Mundy – North West Region
Roy Ah-See – Western Metropolitan
Lindsay Hardy – Western Metropolitan
Sonny Simms – South Coast Region
Robin Heath – Northern Tablelands
Murray Butcher – Western Region
Gloria King – Western Region
David Clark – Murray River Region
Rick Griffiths – Sydney/Newcastle
Jenni McEwen – Sydney/Newcastle Region
Dave Brown – Far North Coast Region
David Daley – Far North Coast region

FOCUS GROUP RECOMMENDATIONS – MINDARIBBA STATEMENT

A unanimous decision from the focus group is that NSWALC State Councilors commit appropriate resources and develop a budget to implement the following recommendations made at Mindaribba LALC Workshop on Treaty Process options for NSW on the 20th & 21st March 2001.

1. That the Consultants produce an Options Paper (Broad Points) that can given to the RALCs and LALCs for further discussion.
2. That NSWALC set up an audit system to monitor
 - I. Date the RALC and the LALC received the Options paper.
 - II. Date that extraordinary meetings were held to discuss the Focus Group Options paper and who attended.
 - III. That State Councilors be responsible for distributing the information throughout their region.
 - IV. That other Aboriginal organisation is invited to participate in the discussion of the Focus Group Options Paper.
3. Focus group members should call an LALC meeting about treaty options as soon as possible.
4. That Member of the Focus Group is given the support to attend LALC meetings to discuss the Focus Group Options paper prior to the NSWALC State Conference.
5. Those Six Regional workshops are held prior to the NSWALC State Conference to discuss the Focus Group Options Paper. Members of the Focus Group would be present and facilitate the Regional Workshop.
6. That NSWALC support and resource the following four key directions
 - i. Legal**

That NSWALC contract external Legal expertise to advice on the legal options for NSWALC to continue working towards the consultation of Treaty Process options for Aboriginal people in NSW.
 - ii. Research**

That the NSWALC Research Unit further develops and implements a research strategy to continue working towards the consultation of Treaty Process options for NSW. Ben Cruse should be contacted in relation to accessing other funding sources.
 - iii. Culture and Heritage**

That the NSWALC and the Culture & Heritage/ Land Rights Unit in NSWALC further develop and implement culture and heritage strategies and continue working towards the consultation of Treaty Process options for NSW.
 - iv. Economic**

That NSWALC contract NIDA to advice on the Economic options for NSWALC to continue working towards the consultation of Treaty Process options for NSW.

TREATY PROCESS OPTIONS

1. Treaty
 2. Recognition of Aboriginal Sovereign Rights
 3. Change the Australian Constitution by Referendum
 4. Bill of Rights
 5. Deed of Agreement
 6. Continue the Reconciliation process.
6. Letter to LALCs from Geoff Clark ATSIC concerning a treaty.

Geoff Clark, Chair of ATSIC has sent a letter outlining ATSIC's position in developing a treaty between the Australian Government and Aboriginal and Torres Strait Islander peoples. A National Treaty Support Group (NTSG) has been set up by ATSIC to assist the ATSIC Board. A copy of the letter is in Appendix 1.

The Chairman of NSWALC attends the ATSIC treaty meetings. He should state at each meeting that NSWALC abstains until the NSWALC position is finalised.

The Focus Group determined that it should meet with the NTSG after discussions with the LALCs and community had been held. The NSWALC position can then be given to the NTSG.

SUMMARY OF DISCUSSIONS/WOKSHOPS

HISTORICAL PERSPECTIVE

To summarise the political direction that Aboriginal and Torres Strait Islander people has been the following.

- A. Pre-1967 was a civil rights focus;
- B. 1970s Land Rights focus;
- C. 1990 onwards Self Determination and Self Sufficiency is the focus of the future.

TREATY OPTIONS

1. Treaty

During the 19th Century colonising powers had the policy of making treaties with Aboriginal peoples in countries they colonised. They recognised that the Aboriginal peoples had rights to the land and clarified some fundamental issues in relationship to the colony and Aboriginal peoples. These treaties were broken and the Aboriginal peoples had no access to the coloniser's legal system to assert their treaty rights.

Today Indigenous peoples in countries such as Canada, the United States and New Zealand are negotiating new treaties with the respective Governments of their country and/or claiming compensation for breaches of earlier treaties.

Aboriginal peoples now may have greater access to national and international legal forums to argue their treaty or native title rights.

A treaty would be between Aboriginal people and the government of the day.

2. Recognition of Aboriginal Sovereign Rights

Sovereignty is independence as separate peoples. The current position of the Australian High Court on sovereignty is that it will not question the validity of the State's actions and that the Australian Government has sovereignty within Australia. This is a policy decision of the High Court. The court has not recognised competing sovereignty claims within the Australia. In the Mabo case the high court stated that British acquisition of sovereignty at law was not questioned.

3. Change the Australian Constitution by Referendum

To change the Australian Constitution requires a referendum put to the Australian people. For the change to be successful the referendum issue must be passed by a majority of the people in a majority (i.e. 4 out of 6) States. So even though a majority of the people may vote for an issue, if 3 States don't have a majority then the referendum is lost. No referendum since federation has passed without the support of both the Labor and Coalition parties.

A major factor in going down the path of changing the Constitution is that **all** Australians entitled to vote have a say on Indigenous rights, not just Indigenous peoples. Issues relating to public education and (mis)information must to be dealt with.

4. Bill of Rights

A future government can, theoretically amend any Bill of Rights that is passed as an Act of Parliament, and rights can be added or diminished by any future Parliament. For a Bill of Rights to be part of our Constitution it needs to be passed by a referendum. The Hawke Government had a referendum to put basic human rights into the Constitution. This initially had Coalition support but by the time the election was held this support was withdrawn and the referendum lost.

However the Race Discrimination Act is an ordinary Commonwealth Act that has been elevated by successive High Court decisions to something stronger. If legislation to restrict it was passed by Parliament, the High Court may strike down the legislation.

The High Court may consider an Act of the Commonwealth outlining Indigenous rights in a similar way to the Race Discrimination Act.

5. Deed of Agreement

This is a term to describe an agreement negotiated between the Government of the day and the Aboriginal people of NSW. It could be between the NSW State Government and NSWALC.

Governments may not wish to acknowledge Aboriginal sovereignty openly, but their actions can redress some of the loss to Aboriginal people and by their conduct the Government can acknowledge Aboriginal sovereignty.

Therefore this agreement would be negotiated on the basis of Aboriginal sovereignty in NSW.

6. Continue the Reconciliation

The final report from the Council for Aboriginal Reconciliation (CAR) has been released and a draft Reconciliation Bill has been recommended. A 3 yearly national conference to further reconciliation and resolve outstanding issues is proposed. The Federal Government has replaced the CAR with a new foundation with 10 members half Indigenous and half non-Indigenous members.

STRATEGIES

- ⇒ NSW has to be proactive in presenting a NSW position in relation to the Treaty debate and not make the mistake of allowing the other States to drive the agenda.
- ⇒ ATSIC has stated there is a need to engage Government in the Treaty Debate. NSWALC is focused on engaging the NSW Aboriginal community in the debate.
- ⇒ Get the Government to commit on the World Stage (United Nations) to Treaty/ Bill of Rights/ Deed of Rights.
- ⇒ It is important that the Aboriginal people form similar goals and utilise the ATSIC, Native Title and NSW Aboriginal Land Council legislation to our benefit.
- ⇒ Central to the negotiations is having quality research on the current status of Aboriginal people in NSW.
- ⇒ The Economic package should not be a tax or funding based.
- ⇒ The Treaty negotiations should not create a settlement where selected groups become very wealthy and their neighbours are very poor. Fair distribution of benefits.

QUESTIONS

1. Who will represent NSWALC in the negotiations;
2. Not all Aboriginal people in NSW are members of LALCs.

CORE DIRECTIONS DEVELOPED BY THE FOCUS GROUP

The focus group developed four core directions as follows.

1. RESEARCH

Aboriginal people are the subject of a lot of research in a variety of areas. There is no coordinated approach in relation to this research.

Access to research

- ⇒ Currently research done is held everywhere and access to it is difficult. It is hard to find out what has been done and where the results are kept. Valuable research can sit on a shelf and no-one knows about it.
- ⇒ A centralised facility should be developed within NSWALC where research material is lodged.
- ⇒ Develop a database that catalogues the material. This database should be able to be accessed throughout the NSWALC network and copies of the materials made available on request.

Community protocols for researchers

- ⇒ Guidelines need to be set out on how people wishing to conduct research on Aboriginal communities or within organisations need to follow before starting their research.
- ⇒ Guidelines should alleviate the situation where an Aboriginal person working in a Government position is obliged by his/her supervisor to give answers on behalf of their community to people conducting research, when this person may not be in a position to give an opinion or have the knowledge about the subject.

Ethics committee

- ⇒ An ethics committee to oversee access to research in the community should be established.
- ⇒ This committee should be the first point of contact for people wanting to undertake research on Aboriginal communities or organisations.
- ⇒ The committee can refer the request to back to the community who can then refer proposals to the person who is appropriate to discuss the topic.

2. ECONOMIC

Economic Options

The Economic packages that were discussed

- i. Option One – Percentage of National Gross Product
- ii. Option Two – Percentage of all Imports and Exports
- iii. Option Three – Percentage of Tourism Income.

Corporate Entity

What is the Body that should receive the \$\$\$?

It should be made up of representatives of the Three Main Funding Bodies and placed in an Investment Account. NSW Aboriginal land Council, ATSIC and Native Title.

Wealth Creation

There are three levels of Wealth Creation

- I. Individual/ Family Group
 - i. General Employment
 - ii. Housing/ Ownership
 - iii. Small Business
 - iv. Investments and Savings.
- II. Community Owned Resources
 - i. Land Assets
 - ii. Labour (Human Resources/ Skilled Labour)
 - iii. Capital (Buildings, Equipment, Investments, Housing, etc)
- III. Business/ Corporate Wealth
 - i. Major Business
 - ii. Small Business
 - iii. Housing

Points highlighted

- ⇒ The right to sell mortgage and buy land.
- ⇒ Individual must own something
- ⇒ “Rent” is a dirty word.
- ⇒ Aboriginal people are not utilising their assets.
- ⇒ The Big Picture is to collectively utilise our assets to negotiate/ tender for better prices or the employment of our people or utilise our own tradespeople.
- ⇒ Be realistic of what is achievable

Stop thinking Welfare

Stop thinking Welfare – Providing things to Aboriginal people for nothing. For example increasing the rentals on properties allowed some people to receive Government rental subsidies that were paid to the LALC.

3. LEGAL POSITION

- ⇒ Sovereign rights have not been relinquished by Aboriginal people so they still exist.
- ⇒ Enter into negotiations with the State government on behalf of Aboriginal people in NSW.
- ⇒ Negotiate a deed of agreement with the government where a percentage of the State's income is given to Aboriginal people in perpetuity.
- ⇒ No sunset clause on income in any agreement.
- ⇒ Expert advice needs to be sought in respect to where the income stream would come from.
- ⇒ A settlement with the NSW Government would be a once and for all settlement.
- ⇒ Inherent sovereignty as Aboriginal people remains.
- ⇒ Citizen rights would remain.
- ⇒ Ongoing income from settlement would allow for the purchase and development of land and business.
- ⇒ Areas such as health and education for Aboriginal people to be overseen to ensure culturally appropriate services were being delivered. Oversee socio-economic issues for Aboriginal people in NSW. Money to cover this cost could come from the income stream.
- ⇒ Monitor services going to Aboriginal people and get Government departments/agencies to report on where their funds designated for Aboriginal people were spent.

4. HERITAGE AND CULTURE

Culture and heritage issues were discussed and the focus group found that support by NSWALC was required for the following.

- ❑ Hunting and gathering rights
- ❑ Sacred sites
 - Need protection under NSWALC legislation.
 - Amend National Parks and Wildlife Service (NPWS) legislation. Where there is permission to destroy sacred sites in certain circumstances to permission to protect.
- ❑ Language
 - NSWALC must take a leadership role in protecting and maintaining language.
 - Funds are to be quarantined by NSWALC for a language maintenance program.
- ❑ Publicity program

ATSIC have publicity material for NAIDOC week with an annual competition for Aboriginal designs which feature on it. NSWALC should conduct an annual design competition and use winners to feature on its own material.

□ Customary Law

Work towards its recognition

- ⇒ Ceremonies
 - ⇒ Protection of Art
 - ⇒ Tool making skills – maintain and teach
 - ⇒ Art – all kinds
 - ⇒ Bush tucker – Teaching, protection of intellectual property
 - ⇒ Traditional medicine – Teaching, protection of intellectual property
 - ⇒ Seeds/plants – Teaching, developing industry, protection of intellectual property
- Tribal boundaries – respect for traditions
- Burial sites/repatriation of remains
- Water rights/sea rights
- Recognition of Elders as keystones in the community
- Greater inclusion of Elders and Youth

FURTHER POINTS FROM FOCUS GROUP TO BE FOLLOWED UP AND DETERMINED

1. Youth involvement

More involvement by youth in this process is needed. Delegates were to involve a young person in the community discussions.

2. Media spokesperson

Once it is known that NSWALC is researching treaty options a person needs to be nominated to be the spokesperson for NSWALC so that a consistent message is given to the media.

3. Continue the process

Continue to take forward steps with the process.

- Agreement to continue
- Clarify the economic position
- Need advice on where to get funding
- Solid base required for self sufficiency
- Send a package to Canberra on the NSW position re treaty

4. Intellectual property

The ownership of the intellectual property of the material generated by the focus group is the property of NSWALC. However the material in Economics below has been developed over time by Rod Williams and the intellectual property is owned by Indigenous Business Network Pty Ltd.

5. Research

Research should be carried out into how much Federal and State funds are spent on behalf of Aboriginal and Torres Strait Islander people. Find out the cost that is allocated against Aboriginal funding by each department or agency.

6. Aboriginal seats in Parliament

Research has already been carried out by NSWALC on this issue and the material can be used as a basis for further work on the issue.

DELEGATES' COMMENTS

At the conclusion of the workshop the delegates were asked their opinion of how the workshop went and the following is a summary of their comments.

- ⇒ This was the most proactive NSWALC has been during the last 15 years and the State should be commended for their action
- ⇒ A great learning experience to sit with people who have so much knowledge
- ⇒ Learnt a lot about treaty issues and can go back to the community and tell people about treaty and that we will be running this
- ⇒ We need to research what other Indigenous people have done overseas and learn from their experience. Use what works and discard what doesn't and go from there
- ⇒ This workshop will raise the NSWALC profile
- ⇒ A lot of things came out of the groups that can be taken back to the community
- ⇒ Treaty process needs to be looked at by Aboriginal people. There needs to be a general consensus throughout the State and we need to listen to what the people want
- ⇒ This was a very positive meeting and a lot was learnt in two days
- ⇒ Aboriginal culture is the oldest living culture in the world. We need to be careful not jump into a treaty too quickly and risk losing our culture and heritage
- ⇒ This is a step in the right direction. It is time to take a stand and recognise Aboriginal people in NSW
- ⇒ The focus group is the most positive step I've seen in NSW
- ⇒ A positive step going in the right direction
- ⇒ A good opportunity for Aboriginal people to have outstanding issues addressed. Can create certainty and security for the future
- ⇒ Treaty seems a dirty word and it will be hard to explain to the community but we will try
- ⇒ As a young person I remember the land rights struggle. This is the first time I realised what our sovereign rights are I didn't know what to call them before
- ⇒ Treaty is a dangerous thing and we need to get it right and not go backwards on our base position
- ⇒ I count it a privilege to be here. I learned a lot. We need to think about the younger generation and keep focused
- ⇒ Successful treaties are based on friendship not war. Need to work together as a whole group not fragmented. And involve the community
- ⇒ Must get the State to recognise this group and keep things moving. The future can only be sustained by economic progress

