



INDEPENDENT EDUCATION UNION OF
AUSTRALIA

**SUBMISSION TO THE
COUNCIL FOR ABORIGINAL RECONCILIATION ON
ITS DISCUSSION PAPER:**

***“Reconciliation Implementation and Framework
Agreements Legislation”***

September 2000

1. INTRODUCTION

- 1.1 The Independent Education Union appreciates the opportunity to put its views to the Council for Aboriginal Reconciliation on its discussion paper “Reconciliation Implementation and Framework Agreement Legislation”.
- 1.2 The IEU is the federally registered organisation which represents the industrial and professional interests of teachers, trainers and support staff in all non-government education interests across Australia. This includes early childhood centres, schools and post secondary private training and ELICOS institutions. It has a current membership of approximately 46,000 members nationally.
- 1.3 The Independent Education Union of Australia (IEU) acknowledges the struggle by indigenous Australians over two centuries to achieve justice and self determination and is strongly committed to the process of National Reconciliation through education as part of a comprehensive strategy to redress the profound legal, political, social and economic disadvantages experienced by Aboriginal and Torres Strait Islander peoples.
- 1.4 In 1997, in the context of a rising race debate within the Australian community, the IEU developed a national statement for publication, which in part stated ***“The IEU rejects the recurrent pronouncements by state and federal politicians of all political persuasions which deny or falsely minimise the history of conflict, dispossession and resistance in the relations between the indigenous peoples of Australia and the peoples which progressively arrived from 1788 onwards. The law of Australia as set out in the High Court’s Mabo decision recognises this history. Political suppression of this history from school syllabuses is rejected by the union”***.
- 1.5 The IEU is strongly committed to taking a leadership role in educating its members through its policy development and publications regarding the truth of the history of indigenous Australians and their long struggle to achieve land rights and self determination. The IEU wishes to work cooperatively with Aboriginal and Torres Strait Islander peoples and their representative organisations to overcome the legacy of their history, most particularly within educational and trade union contexts.
- 1.6 The union believes that it is our collective responsibility to engender true reconciliation based on understanding and respect and to making reconciliation a reality for both indigenous and non indigenous Australians.

2. PRINCIPLES ENDORSED BY THE IEU

- 2.1 In 1997, the IEU made a submission to the Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund for its Inquiry into the Native Title Amendment Bill 1997.

In that submission, the IEU set out the principles it endorsed in relation to coexistence – negotiation and certainty. The IEU believes these remain universal and relevant for the ongoing work to achieve national reconciliation. These are:

- 2.1.1 Indigenous people must have the right to negotiate changes which affect their fundamental rights.
- 2.1.2 Native title holders have a right to negotiate changes over development on native title land and acquisition of native title rights and interests.
- 2.1.3 Recognition that native title is a unique interest in property and respect for its cultural and spiritual basis.
- 2.1.4 Compensation cannot adequately replace native title rights.
- 2.1.5 Respect for property rights of all title holders on a non-discriminatory basis and in the spirit of coexistence.
- 2.1.6 The principles of non-discrimination, as set out in the Racial Discrimination Act 1975, must be respected.
- 2.1.7 Continuing protection of native title under the existing Native Title Act is fundamental.
- 2.1.8 Native title holders should always have the choice of pursuing their rights in the Commonwealth system, (without a national interest clause) and not be confined to State-Territory processes.
- 2.1.9 Processes for the recognition of native title should accommodate indigenous laws, customs and culture to the greatest possible extent.
- 2.1.10 Native title on coexisting tenures should be able to be enjoyed to the maximum extent possible.
- 2.1.11 No de facto extinguishment of native title by:
 - *“confirming” the extinguishment of native title;*
 - *minimising native title rights through codification;*
 - *expanding the range of activities carried out on pastoral and other leases to coincide with the primary production definition and allowing those activities to be carried out on off-farm land;*
 - *applying ‘physical’ connection tests*
 - *imposing an unreasonable threshold test for the acceptance of native title applications*
 - *precluding towns, cities and water and air from the right to negotiate of other procedural process*

- *removing or impairing the right to negotiate and other procedural rights from many categories of government activity where native title coexists with other tenures*
- *imposing a sunset clause on applications lodged under the Native Title Act*

2.2 The union believes that these principles are consistent with those endorsed and advocated by many within the Australian community who wanted to see the integrity of the Native Title Act 1993 (and subsequent legal determination, such as the High Courts Wik decision) protected. These decisions and the principles outlined above recognise the status of Australia's Aboriginal and Torres Strait Islanders as the original land owners. The subsequent Native Title Amendment Act 1998 (NTAA) entirely drafted without consultation and participation by indigenous communities, not only resulted in significant negative outcomes for indigenous Australians in terms of achieving justice and equality relating to land rights but represented a disempowerment and diminution of their status as equal partners in the process. Indigenous Australians lost their right to negotiate and certainty in relation to land rights. It nullified the concept of coexistence.

2.3 At its meeting in Brisbane in July 2000, the IEU Executive unanimously resolved the following:

“(i) *The IEU believes that it has an important role to play in the reconciliation process and to that end endorses the two reconciliation documents put forward by the Council for Aboriginal Reconciliation – these are “Corroboree 2000 – Towards Reconciliation” and “The Roadmap for Reconciliation”*

(ii) *In particular the IEU supports:*

- *the establishment of a Foundation Reconciliation Australia, at the end of 2000 when the work of the Council for Reconciliation comes to an end. Such a foundation would provide ongoing leadership; develop and coordinate support within the community for national reconciliation; and raise funds to resource the reconciliation movement. The union will advise the Council for Reconciliation and Federal and State governments of its support for the Foundation.*
- *The development and implementation of strategies around Education for Reconciliation. The IEU will continue to promote the use of resources, school organisation, employment practices and teaching strategies which are culturally appropriate and inclusive of indigenous perspectives with a view to improving student attendance, retention rates, academic achievement and career pathways.*
- *A Treaty with the Aboriginal and Torre Strait Island nations of Australia as the first peoples of this country, which recognises their indigenous rights, their custodial*

relationship with the land and sea, and their rights to self determination.

- *The actions outlined to improve access for indigenous people to jobs and resources. IEU branches will continue to campaign with Catholic employers for improved employment opportunities and industrial conditions for Aboriginal Education Workers and Teachers.”*

3. THE INTERNATIONAL VIEW

- 3.1 The Native Title Act, as amended, has been judged by the United Nations as breaching Australia’s international obligation made under the Convention on the Elimination of All Forms of Racial Discrimination (CERD) to act in a way that can achieve substantive equality.
- 3.2 In 1999, the ACTU submitted that the Native Title Act, as amended, breached a raft of international laws, including the International Covenant of Civil and Political Rights (Article 2(1); Article 27) and the Biological Diversity Convention (Article 10).
- 3.3 The failure by the present government to respond in any constructive way to the concerns of the U.N. Committee, and its subsequent abandonment of the policy of self determination (to one of “self-empowerment” as articulated by the Minister) represents a particularly bleak turn of events in terms of national reconciliation. Hand in hand with the policy of ‘self empowerment’ is a focus by the government on measures to redress disadvantage suffered by Indigenous Australians in the areas of health, education, housing and employment etc. What are matters of basic human rights rightly expected by all in the Australian community have become the basis for a defacto policy on national reconciliation by the government.
- 3.4 The union believes that current government policy and actions are incompatible with Australia’s obligations under CERD. CERD recognises the need for ‘special measures’ being required to address discrimination, inequality and the ultimate advancement of a disadvantaged group. Such measures can justify an act which would otherwise be unjustified. It is the view of the IEU that measures to assist Indigenous Australians to achieve substantive as opposed to mere formal equality require measures to be taken by the Australian government which treat such groups differently.

4. COUNCIL’S DISCUSSION PAPER

- 4.1 The IEU welcomes the Council’s discussion paper on what might be an appropriate and broadly acceptable process to deal with the “unfinished business” of reconciliation. An articulation of what constitutes “unfinished business” is vitally important as the Council’s work comes to an end on January 1, 2001.

- 4.2 The IEU believes that how this is understood lies at the heart of the widening gulf between some sections of the Australian community, and in particular between the present federal government and many within the leadership of Indigenous Australia.
- 4.3 The IEU concurs with the Council's discussion paper in its identifying some of the key issues which represent "unfinished business", which include: substantial improvements in health, education and employment statistics; reductions in Aboriginal and Torres Strait Islander deaths in custody; the place of traditional law; a national apology in respect of the Stolen Generations; and the recognition of Indigenous rights. (p.1 of discussion paper)
- 4.4 However, as evident from what we have outlined above, the IEU believes that the fundamental struggle of reconciliation and the most important "unfinished business" concerns that of the status of the relationship between indigenous and non-indigenous Australians. The continuing failure by the present government (supported by many within the Australian community) to recognise Aboriginal and Torres Strait Islanders as Australia's original traditional land owners, and the rights which go with this, and to recognise their unique status as the First Nations in Australia and their right to self determination, means that there is a continuing lack of mutuality in the relationship between Indigenous and non Indigenous Australians. While this is the case, the issues listed above will remain contentious, difficult to settle and an impediment to true reconciliation.
- 4.5 The IEU believes that fundamental to genuine reconciliation is that Indigenous and non-Indigenous must come to the reconciliation table as equal parties, as part of a formal process of negotiation. In so doing, Indigenous Australia is demonstrating its right to negotiate what it sees as its unfinished business and the rights it derives from being the original nations of this country.
- 4.6 The IEU supports the following principles to underpin the process of addressing national reconciliation which should provide the basis for a formal **Statement of Intent** by Indigenous and non Indigenous negotiations, and should inform the Council's report to the government.
- 4.6.1 Reassertion of the right of Australia's Indigenous to negotiate directly as an equal party in the process, the issues which remain unresolved in the National Reconciliation agenda.
- 4.6.2 The right of Australia's Indigenous to determine for themselves what constitutes their remaining issues of 'unfinished business'.
- 4.6.3 Access to appropriate levels of resourcing for a process through which Indigenous people can identify and rank in priority the items of unfinished reconciliation business. Such a process could include a Convention, as proposed in the Council's discussion

paper. From such a process, the outcomes can be the basis for negotiation with the government.

4.6.4 From such a Statement of Intent should evolve the negotiation of a **Treaty or binding Framework Agreements** between Indigenous and non Indigenous parties, including governments and ATSIC, at local, territory, state and federal levels. Such a Treaty or Agreements would address the range of issues outlined by the Council's discussion paper.

4.6.5 **The Treaty or Agreements should form part of legislation** – within such a Treaty, many of the issues targeted as 'unfinished business' by the Council would be addressed as should be the issues outlined in 2.1 above. The actual process of negotiation itself redresses the wrongs as the union sees them in 4.4 and 4.5 above.

4.6.6 The IEU is strongly supportive of appropriate legislative regimes being in place to ensure that fundamental human rights are ensured for all Australian citizens. Legislation gives the stamp of authority from the people through representative government.

Over the past 25 years, a raft of anti discrimination legislation has been put in place by Federal, State and Territory governments to make it illegal to discriminate on the basis of race, sex, age, religion, sexuality, social origin and a range of other areas. At the time some of this legislation was being formulated and debated, there was strong argument from sections of the community that it was not possible to change attitudes and behaviour through legislation. It has to be said that these arguments resonated with many across the political spectrum.

However, the Union believes that the anti discrimination legislation (and the education process which is part of its implementation) has been a powerful change agent in achieving a more open, tolerant and plural society. Moreover, such legislative frameworks are a signal to the international community that the Australian government is proactive in its determination to ensure that it complies with its human rights obligations.

4.6.7 The **process** for arriving at such a Treaty or Agreements is as important as the outcomes being sought from the process.

There must be:

- a bonafide intent to negotiate in good faith
- a respect for the rights of all the parties
- the means to negotiate with authority and a mandate from respective constituencies

- a process for ongoing engagement and report back to constituencies to ensure ongoing constructive public debate and support

The role of the federal government in this process is vitally important. It must demonstrate national leadership on the issue of national reconciliation by committing to developing a resolution based on coexistence, full rights to negotiate, supported by fully resourced structures for negotiated agreements.

CONCLUSION

In 1997, the Council's Reconciliation Convention provided an opportunity to learn from the experience of leaders of the Indigenous nations of other countries, such as Canada, Hawaii, New Zealand and the United States. There was a similar experience to that of Australia's Indigenous, with governments unwilling over a long period to acknowledge and attend to the justice of Indigenous claims.

The Union believes that the process of their journeys provides much to be learned from for the Australian government and community. The IEU welcomes the comments made recently by former Prime Minister Malcolm Fraser when he urged the government to consider the Canadian experience and believes that the Australian community generally would benefit from a better understanding of the processes and outcomes from these struggles. Too often, such experience is dismissed as irrelevant with derogatory comment or misinformation by those in government.

The union urges the Council to give significant weight to the process and to the establishment of a mutual formal relationships in negotiations with relevant parties at national, state and local level.