

# An NT constitution: a nationally significant document for reconciliation

Introduction by Patrick McIntyre, President,  
NT Reconciliation Council

On Saturday evening 14 September 2002 Patrick Dodson; the nation's 'father of reconciliation' delivered this address; at a public forum hosted by the NT Reconciliation Council at Darwin's Entertainment Centre. In so doing he launched, what the NT Reconciliation Council hopes will be a series of community conversations to promote a rich and broad dialogue toward exciting constitutional change.

Marion Scrymgour (on behalf of the Chief Minister) opened the public forum and a panel of commentators responded with some of their own reflections on the content of Patrick's address.

The panel was comprised of the following:-

- ATSIC Commissioner Kim Hill who belongs to the Ngarlingman nation. He has worked with the Northern Land Council, ATSIC and the Family Court. He was Chairperson of ATSIC's Yilli Rreung Regional Council.
- Pat Anderson an Alyawarr person of Stolen Generations heritage who has served on nation committees on Aboriginal education; worked at International Labour Organisation in Geneva; was the CEO of Danila Dilba Health Service and is now chairperson of National Aboriginal Community Controlled Health Organisations
- Michael Denigan a well known Territorian, delegate to Centenary of Federation National People's Conference and founding member of Northern Territorians for Statehood Association
- Michael O'Donnell a barrister practicing in Native Title and Constitutional law. He was the Legal Advisor to the National Indigenous Working Group during the period of the Wik Amendments and is currently Legal Advisor to the WA Aboriginal Native Title Working Group

- Graham Nicholson a barrister, Adjunct Professor of Law, Constitutional Advisor to the NT Standing Committee on Legal and Constitutional Affairs, former Crown Solicitor and Senior Crown Counsel for NT
- Beryl Mulder the then President of the Multicultural Council of the NT and a social scientist specialising in the fields of multiculturalism, advocacy, access and equity; and works extensively with immigrants and refugees.

There followed an energetic and thought provoking facilitated conference of questions and comments from the floor.

It would be fair to say that by the end of the evening two characteristics could be identified among the participants:

1. a common aspiration that any constitution, be a genuine document of reconciliation and articulate something of the spirituality and values of our people.
2. the tension between those (predominately Non-Indigenous) saying 'Tell us what you want so that we can negotiate; we accept that we'll both have to compromise.' and those (predominantly Indigenous) saying 'We don't see ethics in your decision-making, nor good faith in your talking. How can we negotiate?'

There is an ethic (common to both groups) articulated in the first; plainly not yet an experiential reality in the relationships between them. Yet the articulation itself becomes an

*The following is an edited version of Patrick Dodson's speech to the NT Reconciliation Council.*

*(Mr Dodson began his speech recognising the traditional people of Darwin, the Larrakia, and acknowledging those who want to achieve common ground between Aboriginal and Western society in a new Territory constitution.*

There is a Vision for the Territory and this is for it to become a new state.

What kind of state will it be? That is the real challenge. Do you want to buy or off the shelf as it were or do you want to create your own unique reality? What do Territorians want their new state to represent about themselves?

How might it be distinguishable by inculcating the cross cultural values that have been neglected in the other constitutions of Australian states.

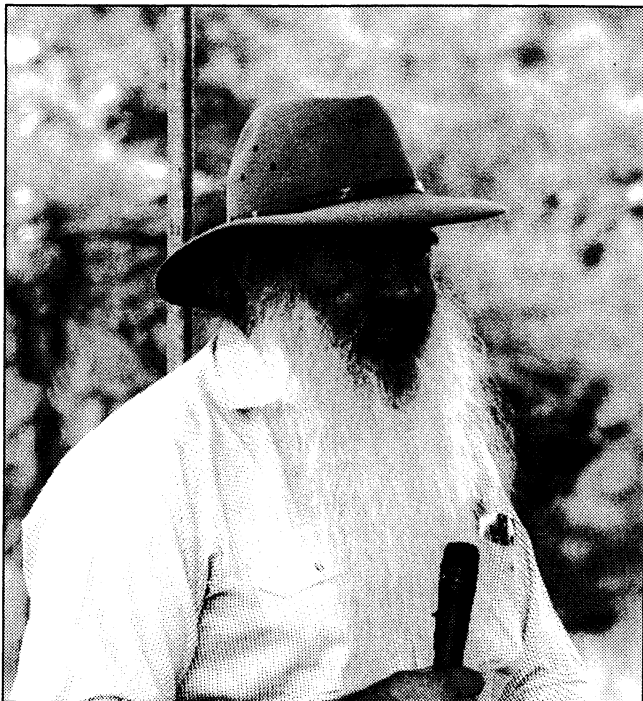
These are just a few of the interesting propositions to grapple with in the search for a constitutional document.

The possibilities in the search seem to be:

- To follow the strict colonial and constitutional precepts of the 19th and 20th Century.

experiential mutual learning; a step toward bridging the impasse apparent in the second.

This is reflected in the almost unanimous commitment, at the end of the night, among those present, to place the emphasis on finding agreement about a process of dialogue. This commitment is itself an expression of an ethical choice; a choice for controlled negotiating behavior that, it is hoped, might allow for a creative reconciliation between our dual sources of law and culture; out of which a constitution may emerge. Indeed, an agreement may emerge, in stark contrast to what has been proposed to date; merely a nineteenth century document; onto which may have been tagged some concessions to the minority culture.



Above: Pat Dodson taking his message to the bush. Photo courtesy of the Central Land Council.

- Stick to the colonial imperatives but make some accommodation for Aboriginal interests and systems within the parameters as you might in a preamble to a constitution.
- Rethink "Self Government" on the basis of a truly reconciled state taking account of the two foundational sources of law and tradition you know to exist and try to make something new.

Rethinking self government is where most of my thought is at the moment so my comments are around that theme.

I am conscious there has been a lot of hard work done in the Territory about the constitution and the last draft was not supported by significant sections of Territorians for various reasons.

I do not represent any particular group but have a long and abiding interest in justice for Aboriginal people and to see a reconciled country one day.

It is because I am also aware that opportunities to advance real and lasting reconciliation have been passed over by the Howard Government and that the Northern Territory could distinguish itself in this field if it is not also challenged to do better.

Aboriginal people have never given their consent to the British takeover of their lands or the colonial rollout of powers

and jurisdiction over their domains and ways of living.

Since Federation the application of the various policies aimed at Aboriginal people in the main have been the quaint notions of protection or assimilation.

Protection was mainly at the barrel of a gun. Assimilation has never been the substance of any negotiation or serious discussion with Aboriginal people.

(Mr Dodson outlined his

concerns about the lack of changes since the Royal Commission into Aboriginal Deaths in Custody, the Hawke-Barunga Treaty promise and the "documents of reconciliation". A dream, he said, that "the Howard Government has scuttled".)

During the experience of the reconciliation process we had to face:

- The High Court common law announcement of Native Title,
- The Stolen Generations enquiry that gave a face to some of the darkest deeds of paternalism.
- With Wik we were offered the opportunity to concentrate on co-existence and concurrent rights but instead we had imposed upon us the will of the Howard 10 point plan.

In all of these challenges the deep underbelly of what is ugly about Australia was allowed to flourish by the conservative side of politics for their own gain and not for the nation's good.

Howard's refusal to apologise to the Stolen Generation has more to do with conserving power than compensation claims by Aboriginal people.

His Government's statutory re-craft of the *Native Title Act* has more to do with the inability to accept the lie of terra nullius than what the common law said in Wik.

The Howard 10 Point Plan has delivered bucket loads of extinguishment and the hope of substantive reconciliation has been usurped by the practical reconciliation agenda of public sector programming yet again.

Only this time the ideological add on to the assimilation mantra is the policy approach aimed at shattering the centre pivot of Aboriginal societies by making the individual exclusively dominant. Individuals are important in Aboriginal societies but within the collectivity, which is its essence.

The centre pivot in this context is the realities of Aboriginal customary law, kinship relationships and obligation integrated through a spirituality that is located in land and sea context that guides Aboriginal being and meaning. This requires community and collectivity as central values not individualism acknowledged by the degree of successful acculturation into the western society.

The ANTA Sea of Hands and the notion of a peoples movement kept alive by local bodies like the Darwin Reconciliation Council have got to be our symbols of hope for the time being.

The Territory has the benefit of these experiences as well as its own unique Territory opportunities.

The challenge is to get beyond "the them and us" approach and work at what can be ours.

For Aboriginal peoples there are matters of customary law, self government, sacred sites, Aboriginal self governance according to a cultural and social systems centered on kinship, land, sea, responsibilities and obligations to mention a few matters.

On the other hand the mainstream is centered upon western constitutional notions of power and authority that arise out of Britain and a different tradition arising out of Westminster.

It is how the power and authority is to be exercised for the good society that agreement needs to be reached.

A society that is just and fair is one where one section does not act out of its largess or its superiority to permit the ancient

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*Patrick Dodson on reconciliation, from previous page*

ways of another section to be tolerated but not influential in the exercise of ultimate authority.

Consensus and mutual respect must permit participation of the traditions to meet in a sharing of their richness.

What the Territory people put together as their constitution will be uniquely theirs.

It is not everyday that a people have the opportunity to write a constitution. This is a privilege and an obligation.

Why not work at what could be unique and innovative for a modern democratic state? Imagine if the functions of the governor were replaced by a collective of senior Territorians or the president.

What if governor in council meant a group like this and the leader of the party in power! Territorians have never been big into crowns so why get saddled up to a possible obsolete anachronism.

Ernestine Hill in the book *The Territory* quoted Mark Twain as saying :

*Australian history is always picturesque. Indeed it is so curious and strange that it is itself the chief novelty the country has to offer, and so it pushes the other novelties into second or third place. It does not read like history, but like the most beautiful lie, and all of a fresh new sought, not the moldy old stale ones. It is full of surprises and adventures and incongruities and contradictions and incredibilities and they are all true*

Indeed the lie of terra nullius has been exposed since those words were written so there is no limit to the imagination for a new constitution except imagination itself.

Novelty is in your hands.

The potential to continue giving life to the lies is enormous but must be resisted.

In my view a partnership needs to be established now between the Northern Territory Government and the Aboriginal representatives so that the work can

start on a collaborative basis and not the usual adversarial one.

There needs to be agreement on a process that enables the search for the 'common ground' upon which to build the constitution.

Reconciliation is not about getting Aborigines to accommodate themselves to the structures and institutions that underpin mainstream Territory society.

Reconciliation in the Northern Territory context is about change and remodeling on all sides but in the knowledge that you control your own destiny at this time.

There is nothing to stop Aboriginal and non-Aboriginal Territorians from seeking agreements on matters of substance and enshrining them as principles and powers for a new state constitution around reconciled understandings.

This is no easy task but a worthwhile one.

It will help to think what a reconciled state of the Northern Territory could look like in fifty or a hundred year's time. You will not get away from Canberra's dominance in the Federation but you could be radically different to it.

Some of the positives that might be possible could be :

- Ways to sustain family and community values and practices. Aboriginal systems if part of the structure could enhance existing methods.
- An enhanced intelligence of the spiritualities that underpin the geographical domains of the new state. Aboriginal caring for country practices and methods as well as the use of the resources and the respect required of nature for everyone's survival.
- Social cohesion and unity out of the formal recognition of difference and diversity among the citizens and their notions of governance.
- Prestige and status amongst the older states. Showing how to get difficult and complex challenges over race, culture, and colonial legacies resolves in a respectful and just manner.

You can make you own list of possibilities!

The Territory is uniquely poised to show

the leadership that is so lacking elsewhere in the Federation.

Other jurisdictions have made noises about agreements and reconciliation with Aboriginal peoples but not picked up the fundamentals of how to heal the spiritual and practical matters that still cause us division and discord as a Nation.

Most of them are trapped in their own histories that are founded upon lies and denials of the presences of the Aboriginal people that live within their boundaries and authorities.

That is not the scenario for the Territory. You can construct your own constitution to rebut the lies of the past and celebrate the reconciliation that will give you pride and integrity by developing your own unique governance and entities for your self government in a new state.

Those who want to work for Reconciliation in the Northern Territory have to:

- Work on helping the vision of a reconciled Northern Territory constitution to be a document that adopts in substantive form what Aboriginal people want.
- Not acquiesce to what it is that mainstream community or the Governments says is permissible.
- Be responsible in a novel way.
- Work to ensure that the resources are there for Aboriginal people to work through these issues in a manner that is in keeping with their own protocols and practices. There should be no rush to meet government deadlines.
- Make sure that negotiations are fair and that Aborigines are resourced.
- Help other Territorians understand the elements of privilege and opportunity and that if its done right no-one loses but everyone is enriched.
- Work for a collaborative approach that allows the arguments to be raised and negotiated.

The rounding persons for a new state of the Northern Territory have got to be Aboriginal and Non Aboriginal people going forward in the words of the great Gurindji Leader, Vincent Lingiari: as mates and friends together. ①