

Referendum Council on Constitutional Recognition

National Native Title Conference
The Australian Institute of Aboriginal and Torres Strait Islander Studies

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Good afternoon, everyone. Let me acknowledge the First Nations of this city and the Townsville region. I acknowledge all the First Nations from across the country.

I'm just going to talk about where we landed after Uluru, after this extraordinary process of thirteen dialogues - twelve plus the ACT made thirteen. They constituted long weekends that Pat Anderson attended each and every one of. Not only were their three days of the weekend consumed by these dialogues over the last six months but the several days in preparation and in the debriefing afterwards. And Pat and Megan lived these dialogues unpaid. All the members of the referendum council are voluntary. And this extraordinary stamina that Megan and Pat displayed over the six months.... I went to seven of them - seven out of the thirteen - and I'm really exhausted. So, I just don't know how it is that they do it over thirteen.

I want to say where we landed because I want to explain to you that I'm not here to sell it to you. I'm not here to sell you anything. I'm here to tell you about an opportunity that is yours. Where we landed... before I say that, we blackfellas, we love acronyms. It's the one thing I notice about us. If the government gave me the option of being called NDP, I think I'd prefer that to being called Noel. We have this penchant for acronyms. So, instead of calling ourselves First Nations, we call ourselves PBC's. Well, what are these PBC's? The PBC's are First Nations and where we landed out of Uluru was that we want the Constitution amended to enshrine a voice for the First Nations. In other words, the mob you represent. That's where we landed. We want the Australian Constitution amended to enshrine a voice for your First Nations. Of course, personally I think that would be a great thing because my own First Nation - Guugu Yalandji - is one of that number and the Guugu Yimidhirr is one of that number. It will be a good thing for my mob but it will also be a good thing for your mob. So, from today onwards, this whole debate about constitutional reform is about the question of whether you want your First Nations recognised through a voice mandated in the Constitution, not in legislation, not by policy establishment but by mandate of the Constitution. That is where we landed. You know the synthesis that Megan described there... people said, "Yeah, statement of knowledge, not interested in that. Removing Section 25, not interested in that. Yeah, they'd be good things." But there's a central proposition here and that is the Australian Constitution should enshrine a voice for the First Nations. Perhaps in order to get more understanding about it, we should have said the PBC voice to Parliament, but I'm having a joke. At some point soon we're going to stop using the word PBC I hope. Prescribed Body Corporate. Dry government lawyers drafting a creature that had to be established under legislation etc etc.

But what we're about in the whole native title process and the land claims process has been about rebuilding the First Nations - the Wik nation, the Kaantju nation, the Djabugay nation, the Pitjantjara nation, the Umpila nation and so on. The Meriam nation.

So, that's where we landed. It's really your job now to take the argument forward because this is your opportunity. This is about the Yalandji nation having a constitutional presence in this country. It is about the Yimidjirr nation. It is about rebuilding on the foundations of the sovereign footprint of each and every First Nation of the country and ensuring we have a voice in the system, mandated by the constitution and, therefore, appropriately funded by public resources to participate in the political life of the nation. That's where we landed. An extraordinary level of consensus around this issue of having a voice, of establishing a voice no less than in the parliamentary triangle in Canberra. This is in many ways the embodiment of the Tent Embassy decades later, the formalising of a presence in the power structure of the country.

But why should consensus around this be so surprising when we've heard the history of the advocacy for this going back long before I was born. We only stand on the shoulders of the arguments and the progress that those people made. So, this is the nature of the opportunity. The PBC's in this room, at this conference, that meets every year, that does the hard work on stony ground year to year, they are the First Nations and the consensus was that the principal objective of constitutional reform is to enshrine their voice in the Australian Constitution. Reams of legal advice, hours of discussion examine the question about whether establishing such a voice would in any way diminish the pre-existing and ongoing sovereignty of the First Nations and the answer is that it will not. We have a parallel system of sovereignty. The original sovereignty has never been exceeded or extinguished. Indeed, the logic of Mabo is that there is a society, a nation which has a system of law and custom that pertains not just to entitlement to land but in the social arrangements of the nation that possesses that land. These are layers of sovereignty and in the Uluru statement, the statement actually paraphrases that great extract from the Western Sahara case. It's a paraphrasing of the Western Sahara advisory opinion that defines the nature of First Nations' sovereignty. And, of course, Justice Brennan recapitulated that definition in the Mabo case.

So, the process going forward is that this is an ambitious proposal. It is, in a way, profoundly modest but in constitutional reform terms extremely ambitious, because any reform like this requires a majority of voters in a majority of the states. Once upon a time, the Australian people voted 65% once to change the Constitution and it never changed because they didn't round up the majority of voters in a majority of the states. This is a steep challenge. We have got to have a bipartisan across the board. We need regional conservatives. We need rural people. We need inner-city urban dwellers and the great suburbs to join us in this quest. 3% have got to help round up 97%. And the people who have the most stake in this challenge are the people in this room, the people who attend this annual conference. Today is the day when, really, the baton gets handed over to you. If you want recognition of the First Nations, if you want to build and rebuild the First Nations, then you can't just sit passively backwards and let other people run your argument. It's going to require a great deal of unity and we're not very good at unity. We are not very good at unity. I spent a lot of time talking to old man Rachel's father in the twilight of his days as our leader and he shared with me a lot of reflections about campaigns of the past, not the least, the campaign for national land rights in the 80's. And he was always humorous. One time he said 'we black fellas are like a mob wandering around the Gibson Desert with a couple of horses between us and we start swearing at each other and we start arguing and we start accusing one another and we end up shooting the horses. And then we're bugged.' To succeed in constitutional reform will require an extraordinary need for unity on our part. If the 3% don't get their act together, there's no chance rounding up the 97%.

So, that is all I wanted to say this afternoon. I wanted to pay tribute. These ladies have put any other leadership I've seen in the shade. Extraordinary intellectual leadership by Megan. Extraordinary

intellectual leadership. And Pat's moral courage through a very difficult process but at times richly rewarding. And you know we've been so assisted by our great champions who have been carrying the struggle up on the DVD there over the recent decades, people from all corners of the country who have assisted this outcome. We've got to move with some sprightly haste. I think the constitutional window is open. We have our work cut out politically but I see my job as joining other people in prosecuting the political argument with the 97% but I'm not here to sell it to the 3%. The job of prosecuting the political argument with the 97% is as daunting as hell and you can't expect that we can be too consumed with trying to persuade ourselves of the nature of the opportunity. A working group was selected out of Uluru comprising representatives from each of the dialogues. Twenty-nine members. It will be up to them to engage with the parliamentary parties in the process going forward in relation to the precise wording of any constitutional reform proposal. And the referendum council will report at the end of this month and our function as members of the Referendum Council will then cease and it will be up to the working group to continue to engage politically with the parliamentary parties to ensure the agenda that we are seeking out of Uluru is pushed forward through the parliamentary process.

So, thank you to AIATSIS for providing me the opportunity and my colleagues to present to you on the outcomes of Uluru. I just want to say that the only way that we have any chance of getting this through is if we all pick up the baton. The responsibility falls upon all of us to pick up the baton. We can't be spectators. We've got too many people to convince. We've got to go about the business of shepherding the Australian people through the constitutional reform door and, of course, what Uluru said is that once we have the voice, we're then in a position to advocate for an agreement, a Makarrata in the architecture for comprehensive agreement-making between First Nations and governments. If Uluru was to represent just a slice, native title determinations and Uluru was to represent just a slice of the kind of agreement making that is needed, well then we have before us a pathway for comprehensive agreement-making at the First Nation level. But the first stage, the first door we must go through is the constitutional reform door. And as I say, the principal proposal is to enshrine a voice for the First Nations of Australia.

Thank you.