
STATEMENT PRESENTED BY ABORIGINAL AND TORRES STRAIT ISLANDER ATTENDEES AT A MEETING HELD WITH THE PRIME MINISTER AND OPPOSITION LEADER ON CONSTITUTIONAL RECOGNITION

6 July 2015
HC Coombs Centre, Kirribilli, Sydney

We welcome the willingness of the Prime Minister and Opposition Leader to meet with Aboriginal and Torres Strait Islander people to discuss next steps towards recognition of Aboriginal and Torres Strait Islander peoples in the Australian Constitution.

We encourage the Government and the Parliament to identify a strong, multi-partisan consensus on the timing, content and wording of a referendum proposal and acknowledge the stated commitment of all parties to this end.

We acknowledge the work to date by the Expert Panel (2012), Joint Select Committees on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples (2013-15) and, prior to these, the Council for Aboriginal Reconciliation (1991-2000) in identifying options for recognition.

We note the guiding principles laid out by the Expert Panel that constitutional recognition must:

- contribute to a more unified and reconciled nation
- be of benefit to and accord with the wishes of Aboriginal and Torres Strait Islander peoples
- be capable of being supported by an overwhelming majority of Australians from across the political and social spectrum
- be technically and legally sound.

Further, we agree with the Joint Select Committee (Interim Report, July 2014) that a successful referendum proposal must:

- recognise Aboriginal and Torres Strait Islander peoples as the first peoples of Australia
- preserve the Commonwealth's power to make laws with respect to Aboriginal and Torres Strait Islander peoples
- in making laws under such a power, prevent the Commonwealth from discriminating against Aboriginal and Torres Strait Islander peoples.

ON THIS BASIS, THE MEETING PARTICIPANTS:

- Emphasise the importance of leadership from the Prime Minister and Opposition Leader to ensure that constitutional

recognition is progressed in a non-partisan manner and that the debate shifts to discussion of concrete proposals for reform to avoid the process stalling.

- Request that the Government and the Opposition identify the parameters of what they will support in relation to constitutional recognition, based on the issues identified by the various review processes to date, as well as their willingness to consider further measures to address the specific circumstances faced by Aboriginal and Torres Strait Islander peoples.

PROCESS ISSUES

Call for the following process moving forward:

- a) An ongoing dialogue between Aboriginal and Torres Strait Islander people (via a referendum council, steering committee or other mechanism) and the Government and Parliament, based on the significant work already completed, to negotiate on the content of the question to be put to referendum.
- b) Development of accessible and useful information for the Aboriginal and Torres Strait Islander community about the key issues to enable informed decision-making.
- c) Engagement over the coming months with Aboriginal and Torres Strait Islander peoples about the acceptability of the proposed question for constitutional recognition.
- d) Continuation of a parliamentary process to oversight the work towards a successful referendum.

We note the Joint Select Committee's final report recommendations on engagement processes moving forward, including the role of National Congress, the ongoing public awareness and education role of 'Recognise' and the need to reform the referendum process.

There is a need for ongoing resources to be allocated for these processes.

SUBSTANTIVE ISSUES

Any reform must involve substantive changes to the Australian Constitution. It must lay the foundation for the fair treatment of Aboriginal and Torres Strait Islander peoples into the future.

A minimalist approach that provides preambular recognition, removes section 25 and moderates the races power (section 51(xvii)) does not go far enough and would not be acceptable to Aboriginal and Torres Strait Islander peoples.

The recommendations of the Joint Select Committee were endorsed, noting that further engagement with Aboriginal and Torres Strait Islander peoples is required in relation to Recommendation 5 and in relation to a proposed Aboriginal and Torres Strait Islander advisory body and proposed Declaration.

To progress these matters, clarity from the Government and Opposition of their positions on two key issues is critical: prevention of racially discriminatory laws and the proposed advisory body.

There was significant concern expressed that the Constitution as it stands enables current and future parliaments to enact

discriminatory measures against Aboriginal and Torres Strait Islander peoples. Any reform option must address this concern.

At this stage there are several proposals on the table that are aimed at addressing this issue. These range from a stand-alone prohibition of racial discrimination (proposed new section 116A) to a new contained power to make laws for Aboriginal and Torres Strait Islander peoples that does not extend to making adverse discriminatory laws, or a role for a new advisory body established under the Constitution.

It is recognised that constitutional recognition is only part of the solution to ensuring that Aboriginal and Torres Strait Islander peoples are treated equally in Australia and that it must be accompanied by other measures to address the historic and ongoing disadvantage that has resulted from our past mistreatment.

Amala Groom
Yindyamarra Roll, 2014
Acrylic on wood
1250mm x 1520mm x 40mm
Image by Liz Warning

