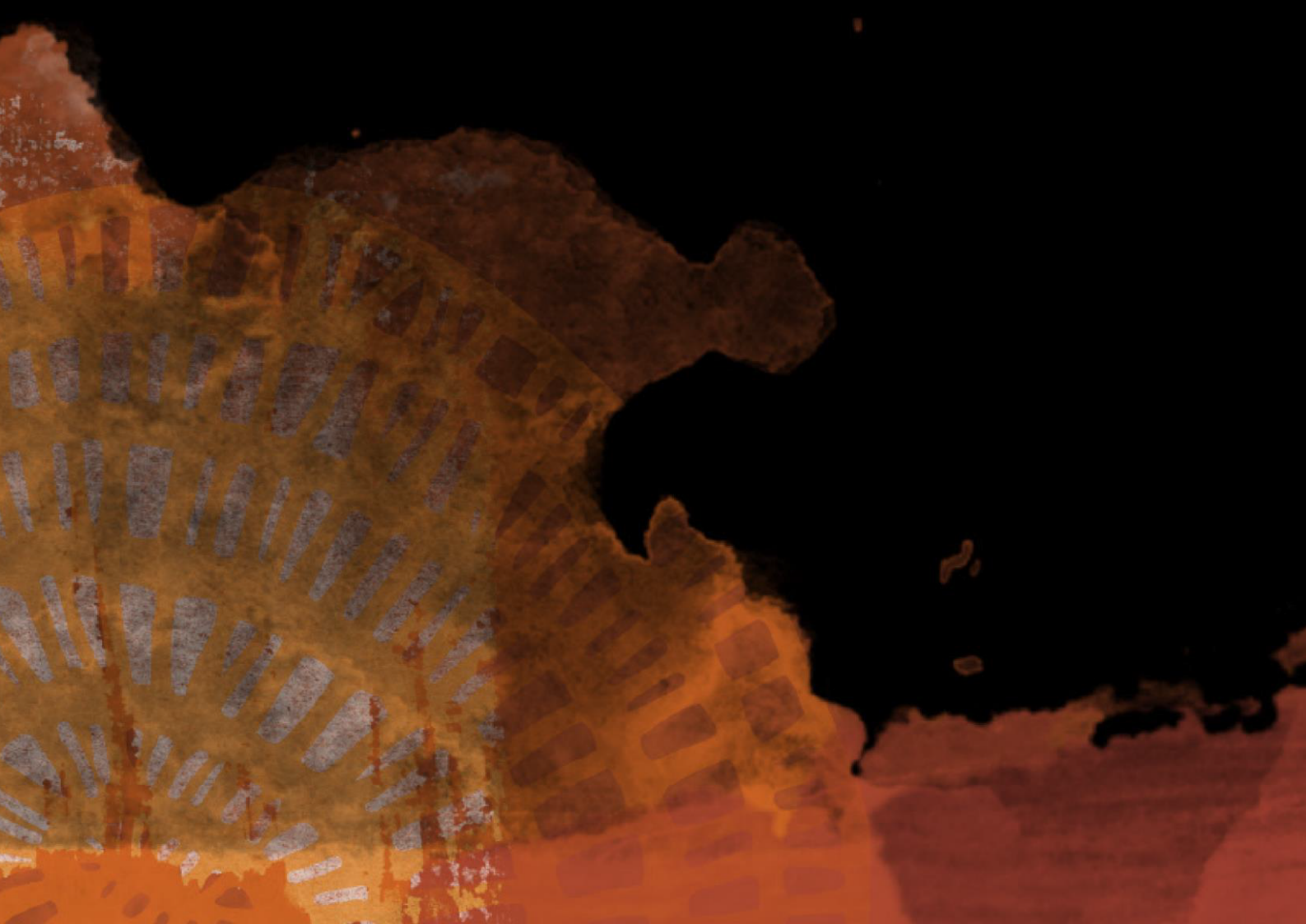




# Constitutional Reform

**Submission to the Joint Select Committee on  
Constitutional Recognition relating to  
Aboriginal and Torres Strait Islander Peoples  
2018**





The Joint Select Committee on Constitutional Recognition  
Relating to Aboriginal and Torres Strait Islander Peoples

Monday, 9 July 2018

**RE: Reconciliation Australia's submission to the Joint Select Committee on Constitutional Recognition Relating to Aboriginal and Torres Strait Islander Peoples 2018**

Dear Co-Chairs,

Thank you for the opportunity to make a submission to the Joint Select Committee on Constitutional Recognition Relating to Aboriginal and Torres Strait Islander Peoples 2018 (the Committee).

We acknowledge the complexity of the work that the Committee has been appointed to undertake and look forward to reading the Committee's interim report.

This submission suggests ways that constitutional reform and complementary measures may be progressed to recognise the unique rights of Aboriginal and Torres Strait Islander peoples, establish a First Nation's Voice to Parliament, and facilitate truth telling and agreement making.

Reconciliation Australia is able to provide further information, either verbally or in writing, regarding our submission should you wish to clarify any of the points raised.

Yours sincerely,



Karen Mundine  
Chief Executive Officer  
Reconciliation Australia

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## 1. About Reconciliation Australia

Reconciliation Australia is the national organisation promoting reconciliation between the broader Australian community and Aboriginal and Torres Strait Islander peoples. Our vision is to build an Australia that is reconciled, just, and equitable for all. To do so, we are dedicated to building relationships, respect and trust between Aboriginal and Torres Strait Islander peoples and other Australians. We believe a reconciled Australia is one where:

- Positive two-way relationships built on trust and respect exist between Aboriginal and Torres Strait Islander and non-Indigenous Australians throughout society.
- Aboriginal and Torres Strait Islander Australians participate equally and equitably in all areas of life, and the distinctive individual and collective rights and cultures of Aboriginal and Torres Strait Islander peoples are universally recognised and respected. That is, we have closed the gaps in life outcomes, and Aboriginal and Torres Strait Islander peoples are self-determining.
- Our political, business and community institutions actively support all dimensions of reconciliation.
- Aboriginal and Torres Strait Islander histories, cultures and rights are valued and recognised as part of a shared national identity and, as a result, there is national unity.
- There is widespread acceptance of our nation's history, and agreement that the wrongs of the past will never be repeated.

## 2. Our work progressing reconciliation

1. Reconciliation Australia was established in 2001 following a national engagement process on reconciliation led by the Council for Aboriginal Reconciliation (CAR).
2. In 2016, the nation celebrated 25 years of formal reconciliation and the work of the Council for Aboriginal Reconciliation. Reconciliation Australia released its State of Reconciliation Report to mark the occasion, and frame the task ahead on the road to reconciliation. As Professor Patrick Dodson said in the Report's foreword:

*At a time when the Australian people are considering changes to incorporate Indigenous people in the nation's Constitution, this Report makes an important contribution to the national conversation about modern Australia's potential to reconcile fundamental and unresolved wounds that diminish Australia's collective sense of nationhood.*

He noted that:

*Reconciliation must transcend Australian political theatre and promote a sense of national unity. All Australians should feel, as a nation, connected to the tens*

*of thousands of years of human occupation of the Australian continent and surrounding islands.<sup>1</sup>*

3. The State of Reconciliation Report frames all of our work at Reconciliation Australia and the work ahead for the nation. It provides a roadmap for our nation's Parliament, corporate organisations, civil society, and the broader community on the path to reconciliation.

4. Reconciliation encompasses a breadth of areas identified for progress in the Report, which noted that:

*In the 25 years since the Council for Aboriginal Reconciliation (CAR) was established, the concept of reconciliation has taken a holistic approach that encompasses rights, as well as so-called symbolic and practical actions. Reconciliation can no longer be seen as a single issue or agenda and the contemporary definition of reconciliation must weave all of these threads together.<sup>2</sup>*

5. Reconciliation Australia has developed five critical dimensions of reconciliation to provide a holistic and comprehensive picture of reconciliation and how we can measure progress:

- Race Relations;
- Equality and Equity;
- Institutional Integrity;
- Historical Acceptance; and
- Unity.

6. The dimensions do not exist in isolation but are interrelated. The Report notes that Australia can only achieve reconciliation if progress is made in all five areas. To illustrate this:

*Greater historical acceptance of the wrongs done to Aboriginal and Torres Strait Islander Australians can lead to improved race relations, which in turn leads to greater equality and equity. The nation's progress towards reconciliation is only as strong as the least advanced dimension.<sup>3</sup>*

7. This is why Reconciliation Australia is engaged across a breadth of issues. We have led engagement on national reform processes, including constitutional reform. We are a member of the Redfern Statement Alliance, the Close the Gap Campaign Steering Committee for Indigenous Health Equality, a member of Change the Record Campaign Steering Committee focused on incarceration and family violence, an active member of the National Anti-Racism Partnership and Strategy, and a supporter of the Family Matters Campaign.

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<sup>1</sup> Reconciliation Australia, *The State of Reconciliation in Australia Report* (2016), accessible at <[https://www.reconciliation.org.au/wp-content/uploads/2017/11/The-State-of-Reconciliation-report\\_FULL\\_WR.pdf](https://www.reconciliation.org.au/wp-content/uploads/2017/11/The-State-of-Reconciliation-report_FULL_WR.pdf)>, pp. 1-2.

<sup>2</sup> Ibid.

<sup>3</sup> Ibid, p. 7.

8. We engage across a range of other policy and research issues, releasing, for example, the Australian Reconciliation Barometer every two years which measures the attitudes and perceptions of the Australian public towards reconciliation.
9. Our Reconciliation Action Plan Program has seen 1100 corporate, government and non-government organisations commit to actions to progress reconciliation, including demonstrating support for constitutional reform. These organisations employ 1,400,000 Australians. 24,000 Aboriginal and Torres Strait Islander people are employed with RAP organisations, and \$265 million in goods and services were procured from Aboriginal and Torres Strait Islander businesses in 2017.
10. Our Narragunnawali Program supports the development of environments that foster a higher level of knowledge and pride in Aboriginal and Torres Strait Islander histories, cultures and contributions. The program provides professional learning and curriculum resources to Australian teachers and learning services across the country. It currently supports 15,500 teachers, educators and community members, and 2,500 schools and early learning services representing ten percent of all schools and early learning services.
11. Our Indigenous Governance Program aims to progress reconciliation through recognising, supporting and celebrating strong Aboriginal and Torres Strait Islander governance and self-determination. Every two years we hold the Indigenous Governance Awards. In 2016, 138 Aboriginal and Torres Strait Islander organisations applied for the Awards.
12. From 2012 to 2017, Reconciliation Australia auspiced the RECOGNISE campaign, which raised community awareness about the principles of constitutional recognition and about racial discrimination in Australia's Constitution.
13. RECOGNISE was established following a recommendation of the Expert Panel on Recognising Aboriginal and Torres Strait Islander Peoples in the Constitution in 2012. At its conclusion in 2017, the Campaign had over 318,000 supporters, 160 Campaign Partners, 18,000 Australians had taken part in the Journey to Recognition, and a national youth network raising public awareness and knowledge of proposals for constitutional change was actively engaging on the issue.
14. Reconciliation Australia has been supportive of constitutional recognition and other important national reforms called for by Aboriginal and Torres Strait Islander people since our establishment in 2001 as the national body on reconciliation in Australia.
15. Our work in this area is informed by the work of the Council for Aboriginal Reconciliation which, in its Final Report released in 2000 following a decade of engaging the Australian community, recommended that:

*The Commonwealth Parliament prepare legislation for a referendum which seeks to:*

- *recognise Aboriginal and Torres Strait Islander peoples as the first peoples of Australia in a new preamble to the Constitution; and*

- *remove section 25 of the Constitution and introduce a new section making it unlawful to adversely discriminate against any people on the grounds of race.*

And,

*That the Commonwealth Parliament enact legislation...to put in place a process which will unite all Australians by way of an agreement, or treaty, through which unresolved issues of reconciliation can be resolved.<sup>4</sup>*

16. Reconciliation Australia has been centrally involved in recent processes designed to progress the issue of constitutional reform, including:

- As an ex-officio member of the Expert Panel on Constitutional Recognition of Indigenous Australians;
- As the auspicing agency of YouMeUnity and RECOGNISE Campaigns developed to build community understanding and support for Constitutional recognition;
- The Co-Chair of the RECOGNISE campaign, Tanya Hosch, participating as a member of the Aboriginal and Torres Strait Islander Act of Recognition Review Panel; and
- Appearing before, and making submissions to the previously constituted Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples which was appointed to inquire into and report on steps that can be taken to progress towards a successful referendum on Indigenous constitutional recognition.

17. We believe that addressing the silence in our nation's founding document in relation to Aboriginal and Torres Strait Islander peoples who have walked these lands for 60,000 years is a foundational pillar of a reconciled nation.

18. We also believe that there are related critical national reforms that support Aboriginal and Torres Strait Islander aspirations to address the unfinished business of reconciliation, including in relation to treaty-making, truth telling, and the implementation of the UN Declaration on the Rights of Indigenous Peoples (the Declaration).

### **3. Executive Summary**

19. Reconciliation Australia welcomes the opportunity to make a submission to the Joint Select Committee on Constitutional Recognition Relating to Aboriginal and Torres Strait Islander Peoples 2018 (the Committee).

20. Reconciliation Australia notes that the establishment of the Committee represents the fifth formal inquiry in seven years that has been designed to try to identify and

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<sup>4</sup> Council for Aboriginal Reconciliation, *Final report of the Council for Aboriginal Reconciliation to the Prime Minister and the Commonwealth Parliament* (2000), accessible at <<http://www5.austlii.edu.au/au/orgs/car/finalreport/text10.htm>>.

forge agreement on a proposal to take forward to a referendum on constitutional recognition of Aboriginal and Torres Strait Islander Peoples.

21. These include:

- The Referendum Council (2017);
- The Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples (2015);
- The Aboriginal and Torres Strait Islander Act of Recognition Review Panel (2014); and
- The Expert Panel on Constitutional Recognition of Indigenous Australians (2012).

22. Reconciliation Australia has engaged constructively with each of these processes, through submissions, appearing before committees, participating in consultations, participating as an ex officio member of the Expert Panel and as part of the Review Panel, and establishing a public awareness campaign to build understanding on the need for reform.

23. We note that these processes have not resulted in a lack of advice and proposals from Aboriginal and Torres Strait Islander people. Instead a political drift has stymied progressing along a clear pathway to agreement and a referendum.

24. Reconciliation Australia believes that the absence of a clear and agreed process will run the risk of repeating what has occurred with previous inquiries.

25. We further believe that the community is starting to disengage from such processes as political drift continues with no clear pathway to resolution and success in delivering on bipartisan commitments to reform.

26. We believe that a commitment to re-stating Parliament's bipartisan support for Constitutional recognition, and a process of negotiation between Parliament and Aboriginal and Torres Strait Islander people, is now required relating to the nature and detail of the proposals put forward since 2011 and how best they can be progressed.

27. This submission is intended to assist the Committee to progress the aspirations of Aboriginal and Torres Strait Islander peoples for constitutional and other important national reforms.

28. The aspirations of Aboriginal and Torres Strait Islander peoples identified in previous inquiries are not new. They are part of continued advocacy over decades by Aboriginal and Torres Strait Islander peoples, including through:

- The Yirrkala Bark Petitions (1963);
- The Barunga Statement (1988);
- Recognition, Rights and Reform: A Report to Government on Native Title Social Justice Measures, ATSIC (1996);
- The Redfern Statement (2017); and

- The Uluru Statement from the Heart (2018).

29. To date, none of these calls or aspirations have been adequately addressed by our nation's Parliament.

30. This Committee must seek to change this and address the unfinished business of reconciliation. It must deliver a clear path forward for the calls made in recent years in relation to constitutional recognition.

31. This submission considers:

- the processes over the past 10 years in particular;
- engagement and negotiation with Aboriginal and Torres Strait Islander people as being key to taking national reforms forward;
- the importance of voice, truth-telling and agreement-making; and
- public support for change.

## 4. Recommendations

**Recommendation 1:** That legislation is introduced that establishes an Aboriginal and Torres Strait Islander representative body to provide a Voice to Parliament that:

- Is consulted and provides advice on legislation and policies that relate to Aboriginal and Torres Strait Islander peoples.
- Is enabled to negotiate a process by which Parliament and Aboriginal and Torres Strait Islander representatives negotiate the nature and timing of proposals put forward by the Referendum Council, the *Statement from the Heart*, and the Expert Panel on Constitutional Recognition of Aboriginal and Torres Strait Islander People in particular.
- Considers the role, including its representational membership, of the National Congress of Australia's First Peoples in providing a voice to Parliament.

**Recommendation 2:** That further legislation is introduced to:

- restate the commitment of parliament to constitutional recognition; and
- enshrine in legislation the timeframe and process negotiated with the Voice to Parliament through which Parliament and Aboriginal and Torres Strait Islander representatives negotiate proposals put forward by the Referendum Council, the *Statement from the Heart*, and the Expert Panel on Constitutional Recognition of Aboriginal and Torres Strait Islander People in particular.

**Recommendation 3:** That the Human Rights (Parliamentary Scrutiny) Act 2011 be amended to include referencing the United Nations Declaration on the Rights of Indigenous Peoples to allow for the Parliamentary Joint Committee on Human Rights to examine all bills and legislative instruments for compatibility with the Declaration.

**Recommendation 4:** Noting that further detailed development and negotiation of proposals put forward in the *Statement from the Heart*, the Referendum Council and the Expert Panel relating to Constitutional Recognition of Aboriginal and Torres Strait Islander People will be required, Reconciliation Australia supports:

- The establishment of a constitutionally enshrined body that gives First Nations' Peoples a Voice to the Commonwealth Parliament.
- The establishment of a Makarrata Commission to supervise Agreement Making between governments and First Nations.
- The establishment of formal processes of truth telling, including consideration of a Commission, oral history projects, memorialising, and other local projects charged with Truth Telling about our history.
- The removal of discriminatory clauses from our nation's Constitution.
- Constitutional, or extra-constitutional recognition (by enacting legislation passed by all Australian Parliaments, ideally on the same day) of Aboriginal and Torres Strait Islander people as the First Peoples of this nation.

**Recommendation 5:** That continued education of the Australian public on proposals for a referendum be supported by government.

## 5. Constitutional recognition processes to date

32. Reconciliation Australia notes that numerous committees in recent years have considered questions on the issue of constitutional recognition. These are outlined below.

Expert Panel on Constitutional Recognition of Aboriginal and Torres Strait Islander People 2012

33. The Expert Panel on Constitutional Recognition of Aboriginal and Torres Strait Islander people undertook extensive nationwide consultation.
34. The consultation schedule included meetings with key stakeholders in each capital city, and public consultations in 84 urban, regional and remote locations and in each capital city.
35. Between May and October 2011, the Panel held more than 250 consultations, with more than 4,600 attendees. The Panel received 3500 public submissions.
36. Based on this consultation, the Expert Panel made a series of recommendations to the Government and by extension the Parliament.
37. The government did not respond directly to those recommendations but instead supported the establishment of a public awareness campaign which became Recognise. Recognise was auspiced by Reconciliation Australia.
38. Recognise engaged the public on the need for recognition of First Peoples in our Constitution, using the Expert Panel's recommendations as the basis of their work.

In particular, the Expert Panel made recommendations on constitutional change and the process for the referendum.

39. With regards to constitutional change, they recommended that:

- That section 25 be repealed.
- That section 51(xxvi) be repealed.
- That a new 'section 51A' be inserted recognising Aboriginal and Torres Strait Islander peoples.
- That a new 'section 116A' be inserted to prohibit racial discrimination.
- That a new 'section 127A' be inserted to recognise Aboriginal and Torres Strait Islander languages.

40. With regards to process, the Expert Panel recommended that that a single question, supported by the major parties and a majority of state governments be put, supported by public awareness raising and ongoing consultation with Aboriginal and Torres Strait Islander people.

#### Aboriginal and Torres Strait Islander Act of Recognition Review Panel

41. In March 2014 the Minister for Indigenous Affairs initiated a review into public support for constitutional recognition under the Aboriginal and Torres Strait Islander Peoples Recognition Act 2013.

42. The Review Panel's work was informed by the Expert Panel, the consultations and interim report of the Joint Select Committee 2015, the work of the Recognise campaign and other relevant research.

43. The consultation schedule included targeted stakeholder consultations over three months with Commonwealth, State and Territory government ministers and opposition leaders, Indigenous community leaders and organisations, interest groups, constitutional law experts and academics.

44. The Review Panel's final report was tabled in September 2014.

45. The Review Panel made 5 recommendations, including the establishment of a Referendum Council to act as a 'circuit breaker' to 'draw debate on the model to a conclusion'.

46. Alongside agreeing to establish the Referendum Council, the government announced the Aboriginal and Torres Strait Islander Peoples Recognition (Sunset Extension) Bill 2015, which extended the previous sunset clause on the Bill for a further three years. The Aboriginal and Torres Strait Islander Peoples Recognition Act 2013 ceased to have effect on 28 March 2018.

## Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples 2015

47. The Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples 2015 drew on the work of the Expert Panel and undertook further consultation.
48. The consultation schedule included a number of private briefings, fifteen public hearings, and consultations with advisers, constitutional lawyers, submitters and witnesses. The committee received 139 submissions. The committee presented its final report in June 2015.
49. The committee put forward a number of recommendations, including three options for constitutional change which it considered would meet the dual objectives of achieving constitutional recognition and protecting Aboriginal and Torres Strait Islander peoples from racial discrimination. These were closely based on the Expert Panel recommendations.
50. The committee also recommended that the government hold constitutional conventions, with a number made up of Aboriginal and Torres Strait Islander delegates. The government established the Referendum Council in December 2015.

### Referendum Council

51. The Referendum Council was established in December 2015 following the Kirribilli meeting with the Prime Minister, Opposition Leader and 40 Aboriginal and Torres Strait Islander Leaders.
52. The Council undertook a national consultation process through the First Nations Regional Dialogues, which commenced in December 2016 and culminated in the National Constitutional Convention in May 2017
53. The dialogues engaged 1200 Aboriginal and Torres Strait Islander delegates.
54. The dialogues were designed by the Referendum Council's Indigenous Steering Committee, with input from three Indigenous leadership meetings with around 150 Aboriginal and Torres Strait Islander Traditional Owners, peak body representatives and individuals.
55. The Voice to Parliament proposal was endorsed at every dialogue as the option for constitutional change.
56. Agreement-making/treaty and truth-telling were also endorsed at each dialogue as critical national reforms for progress.
57. Following the dialogues, the National Constitutional Convention was held at Uluru in May 2017 with over 250 delegates. Delegates at the National Constitutional

Convention approved the Uluru Statement from the Heart which articulates the outcomes from the Convention and preceding dialogues.

58. The Statement from the Heart calls for:

- the establishment of a First Nations Voice enshrined in the Constitution; and
- the establishment of a Makarrata Commission to supervise agreement-making and facilitate a process of local and regional truth telling.

59. The Referendum Council delivered its final report in June 2017, recommending a referendum to establish a Voice to Parliament and an extra-constitutional Declaration of Recognition.

60. The government rejected the Council's recommendations, and established the Joint Select Committee on Constitutional Recognition Relating to Aboriginal and Torres Strait Islander Peoples in March 2018.

## **6. Aboriginal and Torres Strait Islander Voice**

Moving beyond a broad commitment, to a negotiation on proposals

61. The lack of progress on Constitutional Recognition of Aboriginal and Torres Strait Islander people is not due to an absence of Aboriginal and Torres Strait Islander aspirations being put to Australian Governments.

62. It is also not the result of the lack of support for constitutional change among the broader community.

63. The lack of progress on this issue is on the whole a result of political drift, and lack of Parliamentary acceptance and/or support of the proposals being put forward, that has stalled progress.

64. Successive governments have had a number of clear proposals from Aboriginal and Torres Strait Islander people, from 2012 with the delivery of the Expert Panel Report, to the *Statement from the Heart* and Referendum Council Final Report last year.

65. Reconciliation Australia welcomes the provisions in the Joint Select Committee's Resolution of appointment to consider these recommendations, including from:

- the Referendum Council (2017);
- the *Statement from the Heart* (2017);
- the Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples (2015); and
- the Expert Panel on Constitutional Recognition of Indigenous Australians (2012).

66. We see addressing the inaction that has followed these proposals as the major task of this Committee – finding a clear way through the political drift.

67. Reconciliation Australia welcomes the Committee's adoption of the four guiding principles initially considered by the Expert Panel, Joint Select Committee 2015, and Referendum Council. Namely, that proposals taken forward should be assessed to ensure that they are able to:
- 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 spectrums; and
  - be technically and legally sound.
68. We further support the principles set down by the Uluru Convention, namely that options should only proceed if they:
- Do not diminish Aboriginal sovereignty and Torres Strait Islander sovereignty;
  - Involve substantive, structural reform;
  - Advance self-determination and the standards established under the United Nations Declaration on the Rights of Indigenous Peoples;
  - Recognise the status and rights of First Nations;
  - Tell the truth of history;
  - Do not foreclose on future advancement;
  - Do not waste the opportunity of reform;
  - Provide a mechanism for First Nations agreement-making;
  - Have the support of First Nations; and
  - Do not interfere with positive legal arrangements.
69. Reconciliation Australia notes that a bipartisan commitment remains regarding the need for constitutional recognition.
70. As these processes have demonstrated, it is time to move beyond this high level commitment to constitutional recognition, to a negotiation on the proposals put forward by First Nation's Peoples. The principals developed as part of those processes provide clear and appropriate principals to inform such negotiations.
71. We believe a key task of this Committee is to propose a negotiating mechanism to achieve this, including through a legislated representative body and process as a step towards constitutional enshrinement.
72. The legislation could provide recognition of a representative voice to Parliament, and in addition to advising on policy and legislation relevant to Aboriginal and Torres Strait Islander people, the body could be empowered to negotiate a process that would set out a clear pathway to constitutional and other national reforms that have been called for.
73. In establishing such a body, it should have clarity of responsibility, and the authority to engage with, advise, and hold the Government to account on matters relating to Aboriginal and Torres Strait Islander people. It should be a genuinely representative body and shouldn't duplicate existing Aboriginal and Torres Strait Islander bodies,

but rather strengthen existing governance structures and support established effective decision-making bodies.

74. Importantly, legislating the establishment of such a body should not be seen as a substitute for a constitutionally enshrined body but rather a step towards it. It could negotiate the process and timeframe for moving toward a referendum, as well as other national reforms identified in the *Statement from the Heart*.

#### Engagement with Aboriginal and Torres Strait Islander peoples

75. Reconciliation Australia welcomes the inclusion in the Committee's Resolution of Appointment of the provision to examine:

*'...the methods by which Aboriginal and Torres Strait Islander Peoples are currently consulted and engaged on policies and legislation which affects them, and consider if, and how, self-determination can be advanced, in a way that leads to greater local decision making, economic advancement and improved social outcomes'*

76. This is particularly important given the proposal of the Referendum Council explicitly sought to address an absence of structured and mandated engagement with Aboriginal and Torres Strait Islander people on policies and pieces of legislation that affect them.
77. This absence of engagement has been a regular theme in submissions and consultations relating to the Closing the Gap policy framework Refresh, was a central part of the historic Redfern Statement of all Aboriginal and Torres Strait Islander national peak bodies around the country, and has been a central request from the national representative body, the National Congress of Australia's First Peoples, and many other Aboriginal and Torres Strait Islander organisations.
78. The failure of successive Australian governments to bring about social and economic inclusion for Indigenous Australians illustrates the clear need for a permanent mechanism for Aboriginal and Torres Strait Islander peoples to advise the Government on policies and decisions affecting them.
79. The *Statement from the Heart* calls for an end to the structural nature of this exclusion; 'the torment of our powerlessness':

*We seek constitutional reforms to empower our people and take a rightful place in our own country. When we have power over our destiny our children will flourish. They will walk in two worlds and their culture will be a gift to their country.*

*We call for the establishment of a First Nations Voice enshrined in the Constitution.*

80. Progress towards reconciliation must be underpinned by clear, structured, and mandated engagement with Aboriginal and Torres Strait Islander People that ensures First Peoples' voices are heard in the development, application and evaluation of legislative and policy processes.
81. Such engagement must support self-determination and be consistent with the UN Declaration on the Rights of Indigenous Peoples (the Declaration).
82. The Declaration offers the most comprehensive international tool to advance the rights of Indigenous Peoples. However, since endorsing the Declaration in 2009 few steps have been taken by Government to formally recognise or implement it in domestic policy and legislation.
83. The right of Aboriginal and Torres Strait Islander people to have a voice in the decisions and policies that affect them is articulated in the Declaration, leads to better outcomes, and is a principle supported by the broader community.
84. The UN Special Rapporteur, following her visit to Australia in 2017, reported:

*While Australia has adopted numerous policies aiming to address the socioeconomic disadvantage of Aboriginal and Torres Strait Islander peoples, the failure to respect their rights to self-determination and to full and effective participation is alarming.<sup>5</sup>*

85. A solid body of evidence, both domestically and internationally, shows that policies developed through genuine collaboration and partnerships are more likely to succeed, creating a sense of ownership and empowerment in those affected. The Government's relationship with the Aboriginal Community Controlled Health Services (ACCHS) sector is a good example of this, and has seen ACCHSs deliver culturally appropriate and effective healthcare across Australia since the 1970s.
86. There is strong public support for this principle. The 2016 Australian Reconciliation Barometer, Reconciliation Australia's biennial nationally representative survey of attitudes and perceptions towards reconciliation, found that:
  - Seventy-three per cent of the general community, and ninety-one per cent of Indigenous respondents agree that Aboriginal and Torres Strait Islander people hold a unique place as the first Australians; and
  - Eighty-eight per cent of the general community and ninety-eight per cent of Indigenous respondents believe it is important for Aboriginal and Torres Strait Islander peoples to have a voice when it comes to matters that affect them.<sup>6</sup>

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<sup>5</sup> Tauli-Corpuz, V (2017) *Report of the Special Rapporteur on the rights of indigenous peoples on her visit to Australia*, accessible at <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/234/24/PDF/G1723424.pdf?OpenElement>> p.7.

<sup>6</sup> Reconciliation Australia, *Australian Reconciliation Barometer* (2016), accessible at [https://www.reconciliation.org.au/wp-content/uploads/2017/11/RA\\_ARB-2016-Full-report\\_FINAL-1.pdf](https://www.reconciliation.org.au/wp-content/uploads/2017/11/RA_ARB-2016-Full-report_FINAL-1.pdf).

87. The Government has acknowledged its intention to ‘work with not for’ Aboriginal and Torres Strait Islander peoples. In his first Closing the Gap Address, the Prime Minister affirmed his commitment to do things ‘with Aboriginal people, not things to them’:

*It is equally important we listen to Aboriginal and Torres Strait Islander people when they tell us what is working and what needs to change. It’s our role as government to provide an environment that enables Indigenous leaders to develop local solutions. Again, Mr Speaker, it is time for Governments to ‘do things with Aboriginal people, not do things to them’.<sup>7</sup>*

88. Structured and properly resourced Aboriginal and Torres Strait Islander representation at the national level is necessary to ensure this engagement with Government is meaningful. It is a key means of upholding principles of self-determination and free, prior and informed consent.

**Recommendation 1:** That legislation is introduced that establishes an Aboriginal and Torres Strait Islander representative body to provide a Voice to Parliament that:

- Is consulted and provides advice on legislation and policies that relate to Aboriginal and Torres Strait Islander peoples.
- Is enabled to negotiate a process by which Parliament and Aboriginal and Torres Strait Islander representatives negotiate the nature and timing of proposals put forward by the Referendum Council, the *Statement from the Heart*, and the Expert Panel on Constitutional Recognition of Aboriginal and Torres Strait Islander People in particular.
- Considers the role, including its representational membership, of the National Congress of Australia’s First Peoples in providing a voice to Parliament.

**Recommendation 2:** That further legislation is introduced to:

- restate the commitment of parliament to constitutional recognition; and
- enshrine in legislation the timeframe and process negotiated with the Voice to Parliament through which Parliament and Aboriginal and Torres Strait Islander representatives negotiate proposals put forward by the Referendum Council, the *Statement from the Heart*, and the Expert Panel on Constitutional Recognition of Aboriginal and Torres Strait Islander People in particular.

89. It should be noted that Aboriginal and Torres Strait Islander people have particular rights under the United National Declaration on the Rights of Indigenous Peoples, including the right to free, prior and informed consent, self-determination and the right to be consulted. The Declaration therefore supports and underpins Aboriginal and Torres Strait Islander voice, and legislation and policy should be consistent with it.

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<sup>7</sup> Prime Minister Malcolm Turnbull, *Speech to Parliament on the 2016 Closing the Gap Report*, accessible at < <https://www.malcolmturnbull.com.au/media/speech-to-parliament-on-the-2016-closing-the-gap-report>>.

90. An important existing mechanism for reviewing legislation to ensure consistency with human rights standards are met is the Parliamentary Joint Committee on Human Rights which examines bills and legislation for human rights compatibility. This Committee should also be empowered to consider bills and legislation in relation to the UN Declaration on the Rights of Indigenous Peoples.

**Recommendation 3:** That the Human Rights (Parliamentary Scrutiny) Act 2011 be amended to include the United Nations Declaration on the Rights of Indigenous Peoples to allow for the Parliamentary Joint Committee on Human Rights to examine all bills and legislative instruments for compatibility with the Declaration.

### Models and processes for a Voice to Parliament

91. In supporting the *Statement from the Heart* and the referendum Council's Final Report, Reconciliation Australia acknowledges the need to develop further detail around the proposals.
92. In recognition of Parliamentary supremacy, the Referendum Council recommended that the details of the Voice's "structure and functions would be established by Parliament through legislation that could be altered by Parliament."
93. To date, a number of models have been put forward, including draft legislation from Uphold and Recognise, and Mr Nyunggai Warren Mundine AO's local body proposal. These build on a strong tradition of regionally representative bodies and structures, including ACCHOs, Native Title Bodies, and ATSIC.
94. Reconciliation Australia also acknowledges the role of National Congress of Australia's First Peoples as the national representative body with more than 9000 Aboriginal and Torres Strait Islander individual members as well as broad coverage of Aboriginal and Torres Strait Islander sectoral peak representative bodies as organisational members.
95. Reconciliation Australia Co-Chair, Professor Tom Calma, informed the Committee on June 18 that Reconciliation Australia would address Mr Nyunggai Warren Mundine AO's proposal regarding local bodies within this submission.
96. Mr Mundine's proposal, described in an essay titled 'Practical Recognition from the Mob's Perspective' published by Uphold and Recognise, calls for the creation of local bodies to represent 'nations' or 'peoples'.
97. Mr Mundine's reasons for the establishment of local bodies include:
- an increased likelihood of support from non-Indigenous Australians;
  - increased accountability through local communities;
  - the ability to operate within existing legal owners without risking Native title law;
  - preservation of languages as secondary purpose;

- a direct pathway for government and local bodies to deliver services within the control of community.<sup>8</sup>
98. Through our work, we are able to take a principles-based approach to this and other proposals.
99. The 2008 report, *Building a Sustainable National Indigenous Representative Body – Issues for consideration*, identified lessons learnt from previous national Indigenous representative bodies. The recurring factors creating barriers to sustainability and effectiveness were:
- The failure to define relationships between governments, the body and other stakeholders;
  - The failure to articulate and detail the functions of the representative body in accordance with the aspirations of Indigenous Australians;
  - The need to represent diverse Indigenous interests; and
  - Constraints on the ability of bodies to represent Indigenous interests due to the lack of government support for a strong Indigenous agenda setting policy organisation as opposed to an advisory body.<sup>9</sup>
100. These barriers continue to be relevant. Therefore, as Professor Calma informed the Committee on 18 June, any model must:
- Be established with clarity of responsibility, and the authority to engage with, advise, and hold the Government to account on matters relating to Aboriginal and Torres Strait Islander peoples;
  - Be a genuinely representative body; and
  - Not duplicate existing Aboriginal and Torres Strait Islander bodies, but rather strengthen existing governance structures and support established effective decision-making bodies.
101. A number of existing representative bodies, including the National Congress of Australia's First Peoples, and the National Health Leadership Forum, provide examples of effective national representation. National Congress for example, involves individual members, jurisdictional members and peak body organisations who are nominated and elected by its membership. The National Health Leadership Forum involves peak Aboriginal and Torres Strait Islander health bodies who have a mandate to represent Aboriginal and Torres Strait Islander health interests to the Government.
102. As the Committee has identified, participants in the national dialogues and in the Committee's own hearings have repeatedly warned against self-appointed or government appointed spokespeople, as they do not represent Aboriginal and Torres Strait Islander communities. Reconciliation Australia shares this concern.

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<sup>8</sup> Warren Mundine (2017) *Practical Recognition from the Mob's Perspective – Enabling our mobs to speak for country*, accessible at <[https://static1.squarespace.com/static/57e8c98bbebafba4113308f7/t/59184bc71b10e3f7ad227d72/1494764490065/Mundine-Practical\\_Recognition.pdf](https://static1.squarespace.com/static/57e8c98bbebafba4113308f7/t/59184bc71b10e3f7ad227d72/1494764490065/Mundine-Practical_Recognition.pdf)>.

<sup>9</sup> Aboriginal and Torres Strait Islander Social Justice Commissioner (2008) *Building a Sustainable National Indigenous Representative Body – Issues for consideration*, accessible at <[https://www.humanrights.gov.au/sites/default/files/content/social\\_justice/rebody/rebody\\_paper2008.pdf](https://www.humanrights.gov.au/sites/default/files/content/social_justice/rebody/rebody_paper2008.pdf)> p.24.

103. A structure of genuine representation must also take into account Australia's history of dispossession and forced migration. There have been proposals that call for Nation-based/ Traditional Owner regional leadership. While this structure may be effective for some areas of Australia with strong nation-based leadership, it risks entrenching the impacts of dispossession elsewhere, particularly in urban environments or areas of frontier contact.
104. Consideration could be given to a national framework for First Nations' nation building to support emerging regional structures to engage as part of a voice to Parliament in the future.
105. While there are countless examples of effective Indigenous governance and representation, the critical missing element is an obligation on the part of the Australian Government to acknowledge and consider the aspirations of Aboriginal and Torres Strait Islander people in matters affecting them.

**Recommendation 4:** Noting that further detailed development and negotiation of proposals put forward in the *Statement from the Heart*, the Referendum Council and the Expert Panel relating to Constitutional Recognition of Aboriginal and Torres Strait Islander People will be required, Reconciliation Australia supports:

- The establishment of a constitutionally enshrined body that gives First Nations' Peoples a Voice to the Commonwealth Parliament.
- The establishment of a Makarrata Commission to supervise Agreement Making between governments and First Nations.
- The establishment of formal processes of truth telling, including consideration of a Commission, oral history projects, memorialising, and other local projects charged with Truth Telling about our history.
- The removal of discriminatory clauses from our nation's Constitution.
- Constitutional, or extra-constitutional recognition (by enacting legislation passed by all Australian Parliaments, ideally on the same day) of Aboriginal and Torres Strait Islander people as the First Peoples of this nation.

## 7. Truth Telling and Historical Acceptance

106. In a reconciled Australia, Aboriginal and Torres Strait Islander rights, histories and cultures are valued. Achieving a process to recognise Aboriginal and Torres Strait Islander peoples and acknowledging our past through truth, justice and healing are important milestones in establishing a shared national identity.
107. The establishment of a Makarrata Commission that would drive a formal process of truth telling, and progress towards treaty and agreement making was a key recommendation of the Uluru Convention.

108. Reconciliation Australia believes that truth telling is a precondition of better relationships based on respect and a common understanding of our past. As such it is the foundation upon which better outcomes and successful approaches in Indigenous Affairs can be built.
109. Formal processes of truth telling such as truth and reconciliation commissions have been used many times in the international sphere as a starting point for coming to terms with a period of conflict, upheaval or injustice.
110. In Australia, there is increasing attention on formal truth telling processes, particularly in relation to truth commissions, and public history/memorialising of Aboriginal and Torres Strait Islander history.
111. Historical Acceptance, one of the five dimensions of reconciliation articulated in Reconciliation Australia's State of Reconciliation Report 2016, refers to all Australians' understanding and accepting of agreed facts about the wrongs of the past, and their historical and contemporary impact.
112. It involves promoting a true account of our nation's history to educate the broader community, and make amends for wrongs and ensuring they are never repeated.
113. The Council for Aboriginal Reconciliation discussed the topic in its final report, following a nine-year process of community consultation about how Aboriginal and Torres Strait Islander and non- Indigenous Australians could move forward together. The report found there was:
- ...a strong desire within the Australian community to make amends for the past, to recognise and value the unique status of Aboriginal and Torres Strait Islander peoples, and to work towards a future where all Australians enjoy their rights, accept their responsibilities, and have the opportunity to achieve their full potential.<sup>10</sup>*
114. These processes promote awareness of the historical and ongoing impact of past actions, and encourage all sides to forge ahead in a reconciled and peaceful way.
115. The Referendum Council highlighted the importance of truth telling in its 2017 final report. Truth-telling was one of three recommendations supported at each of the council's 18 dialogues as necessary initiatives.
116. The *Statement from the Heart* also called for truth telling as part of a Makarrata Commission.

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<sup>10</sup> Council for Aboriginal Reconciliation, *Final report of the Council for Aboriginal Reconciliation to the Prime Minister and the Commonwealth Parliament* (2000), accessible at <<http://www5.austlii.edu.au/au/orgs/car/finalreport/text10.htm>>.

117. The growing momentum towards formal truth telling processes is complemented by an increasing public awareness of its importance.
118. There is also a growing desire to develop an honest and full understanding of colonisation, the dispossession and trauma that First Nations Peoples were subjected to in the following years, and the ongoing impact of this history.
119. Reconciliation Australia's research shows that perceptions of the relationship between Aboriginal and Torres Strait Islander peoples and other Australians improve when Australians are more aware of our history, and its ongoing impacts.
120. The 2016 Australian Reconciliation Barometer found that those people in the general community who agree that past racial policies and Australia's colonial legacy are the causes of Indigenous disadvantages also widely disagree that Aboriginal and Torres Strait Islander Australians are responsible for their own disadvantages.
121. The Barometer also found that fifty-nine per cent of respondents in the general community whose main source of information about Aboriginal and Torres Strait Islander peoples is school education or other research believe the relationship between Indigenous and non-Indigenous people is very important, compared to only forty-four per cent of respondents whose main source of information is the media.
122. Importantly, the proportion of general community respondents who believe that the relationship is very important has increased across both groups (media as information source and education as information source) since 2014.
123. Reconciliation Australia's workplace RAP Barometer, which measures attitudes and perceptions of employees in organisations with RAPs, further illustrates the importance of education and awareness of Aboriginal and Torres Strait Islander histories and culture in building stronger relationships:
- Seventy-six per cent of employees in RAP organisations consider the relationship between Aboriginal and Torres Strait Islander peoples and non-Indigenous Australians to be very important, compared with forty-eight per cent of the broader Australian community.
  - Seventy-seven per cent of employees in RAP organisations are proud of Aboriginal and Torres Strait Islander cultures, compared with sixty per cent of the broader Australian community;
  - Seventy-seven per cent of employees in RAP organisations have high trust for Aboriginal and Torres Strait Islander peoples, compared with twenty-four per cent of the broader Australian community;
  - Eighty-two per cent of employees in RAP organisations agree that Australia is better off with many different races and cultures, compared with sixty-six per cent of the broader Australian community.<sup>11</sup>

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<sup>11</sup> Reconciliation Australia (2016) *Workplace RAP Barometer*.

124. Truth telling forms part of discussions and campaigning around Australia Day each year, and increasingly the role of public space in raising awareness of historical facts regarding our shared history is also being considered.

125. The Australian Heritage Council, in its 2018 report, *Protection of Australia's Commemorative Places and Monuments*, noted:

*5.12 While the impact of European settlement has long been acknowledged and steps towards greater recognition have been made, the violent conflicts between early European settlers and Aboriginal people are known and acknowledged to a much lesser extent. Further acknowledgment of these conflicts, including stories of Aboriginal resistance, could help to build recognition of the pride of Aboriginal people in their heritage...*

*5.14 An open dialogue on settler conflicts could potentially create a shift in the perception of Aboriginal people both from within and without, and create a ripple effect in other aspects of life.<sup>12</sup>*

126. Acknowledgement of history is occurring locally as well. This year, 'Wirin' statue in Perth's Yagan Park was installed to commemorate Aboriginal warrior Yagan, who was a Whadjuk Noongar leader and a resistance fighter during the early years of the Swan River Colony in Western Australia. This followed the 2015 erection of the 'Yininmadyemi – Thou didst let fall' monument in Sydney's Hyde Park, to pay tribute to Aboriginal and Torres Strait Islander people who served in the military.

127. The Myall Creek Massacre memorial site and annual commemoration service provides an excellent case study of communities coming together to address and reconcile with the truth of their local history.

128. Across the country there are many other examples of local councils and communities using public spaces to highlight the histories, cultures and contributions of First Nations' Peoples.

129. Australians' acceptance and understanding of the wrongs of the past and the ongoing impacts of these wrongs through a process of truth, justice and healing, is integral to reconciliation.

## **8. Agreement Making**

130. In addition to truth-telling, the Uluru Statement from the Heart called for a Makarrata Commission that would drive treaty and agreement making.

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<sup>12</sup> Australian Heritage Council (2018) *Protection of Australia's Commemorative Places and Monuments*, accessible at < <http://www.environment.gov.au/system/files/resources/4474fb91-bd90-4424-b671-9e2ab9c39cca/files/protection-australia-commemorative-places-monuments.pdf> > p.18.

131. Calls for Treaty have been made for decades by Aboriginal and Torres Strait Islander peoples, with a particularly strong movement taking shape in the 1980s in the lead up to the 1988 Bicentenary.

132. In June 1988, then Prime Minister Bob Hawke was presented with the Barunga Statement at the annual Barunga cultural and sporting festival. Written on bark, the Statement called for Aboriginal self-management, a national system of land rights, compensation for loss of lands, respect for Aboriginal identity, an end to discrimination, and the granting of full civil, economic, social and cultural rights.

133. The Prime Minister responded by saying that he wished to conclude a treaty between Aboriginal and other Australians by 1990:

*The government affirms that it is committed to work for a negotiated Treaty with Aboriginal people.*

*The Government sees the next step as Aborigines deciding what they believe should be in the Treaty.*

*The Government will provide the necessary support for Aboriginal people to carry out their own consultations and negotiations: this could include the formation of a Committee of seven senior Aborigines to oversee the process and to call an Australia wide meeting or Convention.*

*When the Aborigines present their proposals the Government stands ready to negotiate about them.*

*The Government hopes that these negotiations can commence before the end of 1988 and will lead to an agreed Treaty in the life of this Parliament.*

134. This commitment was not acted on.

135. In 2000, the Final Report of the Council for Aboriginal Reconciliation (CAR) made two Recommendations relating to treaty and agreement making that the Government has not responded to:

*Recommendation 5. Each government and parliament to:*

*recognise that this land and waters were settled as colonies without treaty or consent and that to advance reconciliation it would be most desirable if there were agreements or treaties; and,*

*negotiate a process through which this might be achieved that protects the political, legal, cultural and economic position of Aboriginal and Torres Strait Islander peoples.*

*Recommendation 6. That the Commonwealth Parliament enact legislation to put in place legislation which will unite all Australians by way of agreement, or treaty through which unresolved issues of reconciliation can be resolved.*

136. In late 2017, The Australian NGO Coalition Submission Report to UN CERD commented on Treaty processes (s7.2) stated that:

*Australia should take concrete steps to establish a Makarrata Commission that incorporates and facilitates a process for truth telling, as recommended by the Referendum Council and the Uluru Statement.*

137. The Redfern Statement Alliance of eighteen Aboriginal and Torres Strait Islander peak organisations and some thirty non-Indigenous organisations included a call for treaty and constitutional recognition in the 2016 release of the Redfern Statement.

138. Each of the constitutional recognition processes undertaken since 2012 have involved advocacy from Aboriginal and Torres Strait Islander people (and others) in relation to progressing treaties.

139. The Expert Panel on Constitutional Recognition of Indigenous Australians (2010-2012), the Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples (2015), and the Referendum Council (2015-2017) have all considered Treaty and noted it is unfinished business.

140. The Expert Panel's (Panel) report included comprehensive analysis of agreement making and treaties. Consultations conducted by the Panel found that agreement-making featured strongly in the aspirations of Aboriginal and Torres Strait Islander people and also found strong support within the non-Indigenous community.

141. Analysis of the submission to the Panel found that of the 164 submissions received that referred to an agreement-making power:

- 141 explicitly supported the inclusion of an agreement making power in the Constitution.
- 66 supported a treaty between the Commonwealth and Aboriginal and Torres Strait Islander peoples.

142. The Panel concluded that the matter of agreement making should not be considered within the constitutional amendment process at hand as it 'would likely be too confusing and would jeopardise support for the Panel's Recommendations on Constitutional reform'.

143. The Panel did however point to current Commonwealth powers under sections 51 (xxvi) and 61 of the Constitution to confer sufficient powers to advance agreement-making with Aboriginal and Torres Strait Islander peoples without the need for Constitutional Reform.

144. More recently, the *Statement from the Heart* called for a Makarrata Commission with the function of supervising agreement making and facilitating a process of local and regional truth telling. These were included in the Referendum Council's Report as recommendations outside of their terms of Reference, but ones

that could be addressed through a legislative process separate from a referendum on constitutional reform.

145. States and territories have recognised the importance of treaty-making to their constituents, and have engaged in treaty processes in the Northern Territory, South Australia and Victoria.

146. Treaty-making has been clearly and consistently communicated as a significant aspiration of Aboriginal and Torres Strait Islander peoples, a reflection of rights to sovereignty and self-determination.

## 9. Public support for change

147. The third of the Expert Panel's Guiding Principles, that any proposal must be capable of being supported by an overwhelming majority of Australians from across the political and social spectrums, was seen not to have been met in the Referendum Council's recommendations by the Prime Minister, Attorney-General, and Minister for Indigenous Affairs.

*The Government does not believe such an addition to our national representative institutions is either desirable or capable of winning acceptance in a referendum.*<sup>13</sup>

148. With only eight of forty-four Australians having passed since 1901, there is evidently a need for bipartisan support, public education, and popular ownership of the proposal for a referendum to be successful.

149. The Australian Reconciliation Barometer and other national polls have illustrated popular support for the Council's proposals:

- Eighty-eight per cent of the general community and ninety-eight per cent of Indigenous respondents believe it is important for Aboriginal and Torres Strait Islander peoples to have a voice when it comes to matters that affect them, according to the Australian Reconciliation Barometer in 2016;
- Sixty-one per cent of respondents broadly supported a proposal to "change the constitution to set up a representative Indigenous body to advise the parliament on laws and policies affecting Indigenous people", according to an OmniPoll online survey conducted for Griffith University and UNSW in August 2017.<sup>14</sup>

150. However, while it is important for proposals to be capable of winning the support of the Australian public, it is essential that they have the support of Aboriginal and Torres Strait Islander peoples.

151. The Referendum Council's final report and the Uluru Statement from the Heart reflect the aspirations of 1200 Aboriginal and Torres Strait Islander

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<sup>13</sup> <https://www.pm.gov.au/media/response-referendum-council%E2%80%99s-report-constitutional-recognition>

<sup>14</sup> <https://app.secure.griffith.edu.au/news/wp-content/uploads/2017/10/Griffith-University-UNSW-Australian-Constitutional-Values-Survey-Sept-2017-Results-2.pdf>

representatives, the most proportionately significant consultation process ever undertaken with Aboriginal and Torres Strait Islander peoples.

152. Senator Dodson wrote recently:

*Without government support, any future referendum proposal will fail. Without cross-party support, any future referendum proposal will fail. Without hearing and listening to calls from First Nations people, any proposal for a referendum will be pointless.*<sup>15</sup>

153. Former Chairman of chairman of the Australian Government's Indigenous Advisory Council, Mr Nyunggai Warren Stephen Mundine AO wrote:

*The push for recognition needs to capture the hearts and minds of Indigenous Australians. It must not be framed around the way others have looked at us, but how we look at ourselves; it must not be about recognising a race of people, it must be about recognising first nations of our country and the mobs to which each of us still belongs.*<sup>16</sup>

154. Recognise Campaign polling from September 2017 illustrates strong support for the idea of a representative Indigenous body:

- Sixty-six per cent of the general community and seventy-eight per cent of the Indigenous communities would widely vote “yes” for a representative Indigenous Body, if a referendum were held then;
- Eighty-two per cent of the general community and eighty-five per cent of the Indigenous community would vote “yes” for recognition;

155. People aware of the Council’s recommendations were more likely to vote ‘yes’ for an Indigenous Body, compared to those not aware.

156. Furthermore, the relationship between Aboriginal and Torres Strait Islander peoples is important to all Australians.

- Eighty-nine per cent of the general population agree that the relationship between Indigenous and non-Indigenous Australians is important;
- Ninety-seven per cent of Indigenous respondents agree that the relationship between Indigenous and non-Indigenous Australians is important.

157. In addition, there has been widespread institutional support for the *Statement from the Heart* and Referendum Council’s recommendations across political lines and industry sectors. The Australian Council of Social Services, the Australian Medical Association, Australian Independent Bar Associations, the Public Interest Advocacy Centre and others, have all independently backed the calls put forward.

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<sup>15</sup> Senator Patrick Dodson (2018) *Challenge of Negotiation: Learning the Hard Way*, Griffith Review 60, p. 61.

<sup>16</sup> Mr Nyunggai Warren Stephen Mundine AO (2017) *Constitutional recognition profoundly important for us all*, Sydney Morning Herald (Opinion 18 May 2017) accessible at <https://www.smh.com.au/opinion/warren-mundine-constitutional-recognition-profoundly-important-for-all-of-us-20170518-gw7ynq.html>.

This follows years of cross-sector support of over a hundred Australian businesses and community organisations of the Recognise campaign.

**Recommendation 5:** That the Joint Select Committee recommend the continued education of the Australian public on proposals for a referendum.