



Animal Defenders Office

Using the law to protect animals

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The Animal Defenders Office Inc. is accredited by the National Association of Community Legal Centres.

Joint Select Committee on Constitutional Recognition Relating to Aboriginal and Torres Strait Islander Peoples
PO Box 6021
Parliament House
Canberra ACT 2600

By email: jscqr@aph.gov.au

Dear Sir/Madam

RE: Submission to the Joint Select Committee on Constitutional Recognition Relating to Aboriginal and Torres Strait Islander Peoples¹

Thank you for the opportunity to provide a submission to your inquiry into constitutional recognition relating to Aboriginal and Torres Strait Islander peoples.

About the Animal Defenders Office

The Animal Defenders Office (ADO) is a nationally accredited community legal centre that specialises in animal law. The ADO offers information and representation for individuals and groups wanting to take legal action to protect animals. The ADO also seeks to raise community awareness about animal protection issues and works to advance animal interests through law reform.

The ADO is founded on principles of social justice and fairness. We aim to pursue justice for all sentient creatures, but believe this can take place only in a country where justice has been achieved for its First Nations peoples. Without achieving justice and self-determination for Aboriginal and Torres Strait Islander peoples, we believe that all social justice campaigns will struggle to succeed.

Furthermore, as acknowledged in the *Uluru Statement from the Heart* (2017) (“**the Uluru Statement**”)², we recognise that Aboriginal and Torres Strait Islander tribes were the first sovereign Nations of the Australian continent and its adjacent islands, and that this sovereignty has never been ceded. We also acknowledge and respect the strong ties of coexistence that are present in Indigenous cultures between people, land and nonhuman animals.

¹ Joint Select Committee on Constitutional Recognition Relating to Aboriginal and Torres Strait Islander Peoples 2018 (“**the Committee**”),

https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Constitutional_Recognition_2018.

² *Uluru Statement from the Heart* (2017), https://www.referendumcouncil.org.au/sites/default/files/2017-05/Uluru_Statement_From_The_Heart_0.PDF.

Finally, as citizens of this country, we respectfully accept the invitation in the Uluru Statement to walk with Aboriginal and Torres Strait Islander peoples in this ‘movement of the Australian people for a better future’.

Our Submissions

We support the recommendations in the *Final Report of the Referendum Council* (2017) (“**the Final Report**”)³ and the Uluru Statement.⁴ Our three specific submissions are outlined below.

1. A Voice to Parliament

First and foremost, it is clear that the consensus among Aboriginal and Torres Strait Islander peoples for constitutional recognition is to establish a ‘First Nations Voice’ (“**the Voice**”) that can report directly to the Australian Parliament, and that is provided for in the Australian Constitution. This is the recommendation of the Uluru Statement and the Final Report.

The ADO supports this recommendation as being the option for constitutional recognition that accords most with ‘the wishes of Aboriginal and Torres Strait Island Peoples’⁵, and therefore the best way to advance ‘self-determination’ and to lead to ‘greater local decision making’ and ‘improved social outcomes’⁶.

We note that the form that the Voice may take has not been determined. The Final Report makes clear that this will be for the Australian Parliament to decide, in conjunction with Aboriginal and Torres Strait Islander peoples.⁷

We also note with regret that the Voice has been called a ‘Third House’ of Parliament by Prime Minister Malcolm Turnbull.⁸ The Prime Minister has claimed that if a body such as the Voice were empowered to oversee all legislation concerning Aboriginal and Torres Strait Islander peoples, then it would in effect be given the power to oversee *all* legislation, as all legislation affects Aboriginal and Torres Strait Islander peoples through their identity as Australians. The ADO submits, however, that this is an example of *reductio ad absurdum* reasoning: a body representing the interests of Indigenous peoples would oversee only those issues that directly relate to and disproportionately affect these peoples. Limits and guidelines are set on other parliamentary committees—and even, it should be noted, on the Houses of Parliament themselves—so there is no reason to suggest that the Voice would be any different. The Prime Minister’s claim is regrettable because it wrongly depicts the Voice as a

³ *Final Report of the Referendum Council* (2017), https://www.referendumcouncil.org.au/sites/default/files/report_attachments/Referendum_Council_Final_Report.pdf.

⁴ While we acknowledge the recommendations made by the Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples (2015) and those of the Expert Panel on Constitutional Recognition of Indigenous Australians (2012), we consider the Final Report and the Uluru Statement to be the most recent and representative expressions of the will of Aboriginal and Torres Strait Islander communities, and therefore to be prioritised.

⁵ The Committee, Terms of Reference, subparagraph 1(d)(ii).

⁶ *Ibid*, paragraph 1(b).

⁷ The Final Report, 2.2.3 ‘Outcomes’.

⁸ ABC News 2017, *Q&A*, <http://www.abc.net.au/news/2017-12-12/turnbull-on-first-peoples-voice-in-parliament/9248380>.

revolutionary body, rather than as a ‘modest but profound’⁹ and ‘constitutionally conservative’¹⁰ proposal for democratic reform.

The ADO also supports the Voice because it would serve both symbolic and practical functions. It would grant formal recognition to Aboriginal and Torres Strait Islander peoples, whilst also allowing them to determine and address the issues that are of particular concern to their communities. In the spirit of advisory councils and joint committees, which are a common and accepted means of developing responsible policy, the Voice would work within the established framework of our parliamentary democracy. However, by being in direct communication with Aboriginal and Torres Strait Islander peoples, and consisting of representatives whose role would be to represent the interests of these peoples, we believe that meaningful reform in Indigenous affairs that has so eluded the Australian Parliament over the decades may finally begin.

2. Declaration of Recognition

The ADO supports the recommendation made by the Final Report for the Australian Parliament to pass an extra-constitutional Declaration of Recognition (“**the Declaration**”). The Declaration would acknowledge ‘our ancient First Peoples’ heritage and culture, our British institutions, and our multicultural unity’, thereby reinforcing the aim of Aboriginal and Torres Strait Islander peoples to maintain and strengthen their cultures in full awareness of the links they now have with modern Australia’s multicultural and diverse peoples and institutions.¹¹

As such, the ADO submits that the Declaration would be an appropriate ‘complementary legislative measure’¹² to constitutional recognition. It would serve as a sign of symbolic national unity and therefore ‘contribute to a more unified and reconciled nation’¹³.

3. Establishment of a Makarrata Commission

Both the Uluru Statement and the Final Report call for the establishment of a Makarrata¹⁴ Commission (“**the Commission**”). The purpose of the Commission would be to lay the foundation for treaties between federal and state governments and First Nations, and to establish forums for truth-telling.

Australia has been guilty in the past of failing to acknowledge the perspectives of its Indigenous peoples in favour of prioritising British and European narratives. Establishing a commission that gives Indigenous peoples a forum for relaying their lived experiences and those of their communities would be a vital step in healing the wounds that have been caused by ignorance or rejection of Aboriginal and Torres Strait Islander narratives within Australia’s history.

⁹ Professor Greg Craven, <https://www.theaustralian.com.au/opinion/columnists/greg-craven/noel-pearsons-indigenous-recognition-plan-profound-and-practical/news-story/472ff0238ad4f48cd423fdd9f74a9363>.

¹⁰ Shireen Morris, ‘A Voice, Not a Veto’, in *The Uluru Statement from Heart, One Year On: Can a First Nations Voice Yet Be Heard?*, 26 May 2018, <http://www.abc.net.au/religion/articles/2018/05/26/4848714.htm>.

¹¹ The Final Report, page 2.

¹² The Committee, Terms of Reference, paragraph 1(c).

¹³ Ibid, subparagraph 1(d)(i).

¹⁴ This Yolngu word is rich with associations relating to reconciliation after a struggle, and to agreement through treaties: Galarrwuy Yunupingu, ‘*Rom Watangu—The Law of the Land*’, in *The Monthly*, July 2016 (as reproduced in The Final Report, Appendix D).

In implementing the Commission, Australia would do well to consider the successes and failures of the Truth and Reconciliation Commission of South Africa. Like that commission, the Makarrata Commission would not be focused on recriminations and the apportioning of blame to certain parties, but rather the process of peacefully listening to the experiences of others in order to come to the kind of deeper understanding that is necessary to move on from the traumas of our shared past.

Conclusion

We are grateful for the invitation from the First Nations people through the Uluru Statement to engage with them on a road to a more peaceful coexistence.

To this end, the ADO supports the establishment of a First Nations Voice to Parliament, the passing of a Declaration of Recognition, and the establishment of a Makarrata Commission, in line with the *Uluru Statement from the Heart* and the recommendations of the *Final Report of the Referendum Council*.

Yours faithfully

Serrin Rutledge-Prior and Tara Ward
Animal Defenders Office

11 June 2018