



## Constitutional Reform Briefing Paper August 2017

On June 30, 2017 The Referendum Council presented PM Turnbull and Opposition Leader Shorten with their [Final Report](#)<sup>1</sup>. Two weeks later, the PM released the report publicly.

There are two recommendations detailed in the report; firstly that a referendum be held to include a provision in the constitution for an Aboriginal and Torres Strait Islander First Nations Voice to the Commonwealth Parliament (the Voice); and secondly that a Declaration of Recognition be enacted to articulate a symbolic statement of recognition to unify Australians.

The Referendum Council contends that these recommendations achieve a number of aims that the Council sought to achieve:

- the primary function is to provide an avenue for advocacy and agency for Aboriginal and Torres Strait Islander peoples
- that it be seen as an “appropriate form of recognition, of both substantive and symbolic value, of the unique place of Aboriginal and Torres Strait Islander peoples in Australian history and in contemporary Australian society.” The report details that the most endorsed option for constitutional reform from the dialogues was ‘the Voice’.

The second recommendation is a symbolic statement of recognition and reconciliation, an ‘extra constitutional’<sup>2</sup> Declaration of Recognition, to be enacted by legislation on the same day, by all Australian Parliaments, around the same time as the referendum. The intent of this declaration, as detailed in the report, is to be unifying, containing inspiring words that articulate Australia’s shared history, heritage and aspirations. “The Declaration should bring together the three parts of our Australian story: our ancient First Peoples’ heritage and culture, our British institutions, and our multicultural unity.”

A significant part of the Uluru Statement called for the establishment of a Makarrata Commission with the function of supervising agreement-making and facilitating a process of local and regional truth telling. Due to the legislative nature of this initiative, it falls outside of the terms of reference of the Referendum Council, so is not included in the final recommendations. There has been some [criticism](#) that not including this is failing to uphold the consensus achieved at the Constitutional Convention.

The Statement from the Co-Chairs of the Referendum Council Pat Anderson and Mark Leibler precedes the Referendum Council’s recommendations. They contend that the recommendations put forward are “modest, reasonable, unifying” and importantly achievable at a referendum, that “With focused political leadership and continued multiparty support for meaningful recognition, the Voice to the Parliament proposal can succeed at a referendum.”

Member of the Referendum Council, Amanda Vanstone, published a ‘qualifying statement’ as an appendix within the Final Report. Ms Vanstone lays out her concerns about the process and final recommendations, making clear that there remains a lot of work to do. “A voice in the constitution is

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<sup>1</sup> NB: all quotes in this section of the briefing paper are attributed to the [Final Report of the Referendum Council](#). (30, June 2017)

<sup>2</sup> ie sits outside of the constitution, does not limit parliamentary supremacy

the only option we now have. Recommending a referendum is the last step. The first is finding the common ground.” Ms Vanstone’s discomfort is clear.

In July, the Cape York Institute then released a [Design Issues Report](#), which was produced for the Referendum Council to identify the broad parameters of a First Nations Voice that may be enshrined in the Constitution. It seeks to identify the design issues that face the consideration and development of such an institution.

In August, at this year’s [Garma Festival](#) the Referendum Council’s Final Report received considerable focus due to the timing of the release of the Final Report, the attendance of both Prime Minister Turnbull and Opposition Leader Shorten, and the focus of discussion on this issue. Shorten [announced at Garma that the Labour Party supported](#) the recommendations from the Referendum Council as well as the Makaratta Commission. PM Turnbull however was [cautious](#) and [non-committal](#) in his response.

### **Moving on from ‘recognition’**

A significant section of the final report is taken up with addressing how and why the Council moved away from the majority of the proposals they sought feedback on at the outset of their community engagement, as detailed in their [discussion paper](#), which had been informed by the work of the Expert Panel and the Joint Select Committee.

The Final Report presented evidence and feedback from the dialogues that any proposal to include a statement of recognition or acknowledgement would be rejected.

*“All Dialogues asserted the fact that Aboriginal peoples and Torres Strait Islander peoples never ceded their sovereignty. For this reason, delegates were not persuaded of the benefit of acknowledgement inside the Constitution.”*

From the dialogues and the convention as a whole the delegates moved away from amending or deleting the ‘race power’, section 51 (xxvi) as it was too risky to leave words such as ‘benefit’ or ‘advancement’ up to judicial interpretation, and that “removing the word ‘race’ was not regarded as an improvement on the status quo of the people affected.” The inclusion of a protection from racial discrimination was seen as a reactive tool, whereas a voice to parliament would provide a [“new norm of participation and consultation”](#). Finally the proposed removal of s25 (which allows the state to exclude some Australians from voting on the basis of their race) was deemed to provide, “no substantive benefit on Aboriginal and Torres Strait Islander peoples”.

So the remaining option was the Aboriginal and Torres Strait Islander First Nations Voice to the Commonwealth Parliament. Even though as it is currently proposed it would not hold veto, it would provide a significant opportunity for the elected members of this body to provide feedback, and help inform government policy and legislation that affects Aboriginal and Torres Strait Islander Peoples. There remain questions about how representatives on this body would be appointed, and what the wording would be within the constitution. It is clear, significant work remains on a number of different levels.

**The report also publicised the ten guiding principles** that were established from the dialogues and presented at the convention to ensure that any reform proposed would adhere to the following principles: 1. Does not diminish Aboriginal sovereignty and Torres Strait Islander sovereignty. 2. Involves substantive, structural reform. 3. Advances self-determination and the standards established under the



United Nations Declaration on the Rights of Indigenous Peoples. 4. Recognises the status and rights of First Nations. 5. Tells the truth of history. 6. Does not foreclose on future advancement. 7. Does not waste the opportunity of reform. 8. Provides a mechanism for First Nations agreement-making. 9. Has the support of First Nations. 10. Does not interfere with positive legal arrangements.

### Where to next?

Firstly, we are still awaiting a formal response from PM Turnbull, however Opposition Leader Bill Shorten has [announced the Labour Party's support](#). Now that the report has been released publicly we can only assume that a formal response is being tabled. PM Turnbull has commented [publicly](#) that "it is a very big new idea" and "it was short on detail". Opposition leader Shorten [countered](#) that although big changes, they were not 'beyond us'. Liberal MP Ken Wyatt has called for a [representative voice to be enshrined in legislation rather than the constitution](#), and Labor MP Linda Burney and Senator Pat Dodson have both questioned why the reform proposal didn't include dealing with the [race power](#).

Significantly, as of August 11, 2017, Recognise has been [disbanded](#), and is [transitioning into Reconciliation Australia](#). No further details have been provided at this time about the transition.

A group of Aboriginal and Torres Strait Islander leaders and supporters of constitutional reform have released a [joint statement of support](#) for the Referendum Council's recommendations. They urge "[the leadership of this country to support the Referendum Council's first recommendation to have a voice to Parliament, to have a body that enables us to determine our affairs.](#)" The National Congress of Australia's First Peoples have released a [media release](#) detailing their support, [Reconciliation Australia](#) has done so too.

**How should the Reconciliation Network and Reconciliation Victoria navigate the upcoming months? How does the network best support and advocate for Aboriginal and Torres Strait Islander communities living in Victoria during this time? These are important questions that we all need to reflect on and consider.**

Reconciliation Victoria encourages the reconciliation network to stay informed, and to talk with your local Aboriginal and Torres Strait Islander community members about their reactions to this most recent iteration of proposed constitutional reform. But it is not our time to act just yet. There is a process in train, we will wait for Aboriginal communities and individuals to determine appropriate directions and then we will have some principles on which our actions can be based. We need to wait for these outcomes before we start to act.

*For more information please check out our dedicated website pages on [Constitutional Reform](#) and [Treaties](#) or contact the office directly at [info@reconciliationvic.org.au](mailto:info@reconciliationvic.org.au).*