

ULURU STATEMENT FROM THE HEART

We, gathered at the 2017 National Constitutional Convention, coming from all points of the southern sky, make this statement from the heart:

Our Aboriginal and Torres Strait Islander tribes were the first sovereign Nations of the Australian continent and its adjacent islands, and possessed it under our own laws and customs. This our ancestors did, according to the reckoning of our culture, from the Creation, according to the common law from 'time immemorial', and according to science more than 60,000 years ago.

This sovereignty is *a spiritual notion: the ancestral tie between the land, or 'mother nature', and the Aboriginal and Torres Strait Islander peoples who were born therefrom, remain attached thereto, and must one day return thither to be united with our ancestors. This link is the basis of the ownership of the soil, or better, of sovereignty.* It has never been ceded or extinguished, and co-exists with the sovereignty of the Crown.

How could it be otherwise? That peoples possessed a land for sixty millennia and this sacred link disappears from world history in merely the last two hundred years?

With substantive constitutional change and structural reform, we believe this ancient sovereignty can shine through as a fuller expression of Australia's nationhood.

Proportionally, we are the most incarcerated people on the planet. We are not an innately criminal people. Our children are alienated from their families at unprecedented rates. This cannot be because we have no love for them. And our youth languish in detention in obscene numbers. They should be our hope for the future.

These dimensions of our crisis tell plainly the structural nature of our problem. This is *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.

Makarrata is the culmination of our agenda: *the coming together after a struggle.* It captures our aspirations for a fair and truthful relationship with the people of Australia and a better future for our children based on justice and self-determination.

We seek a Makarrata Commission to supervise a process of agreement-making between governments and First Nations and truth-telling about our history.

In 1967 we were counted, in 2017 we seek to be heard. We leave base camp and start our trek across this vast country. We invite you to walk with us in a movement of the Australian people for a better future.

OUR STORY

Our First Nations are extraordinarily diverse cultures, living in an astounding array of environments, multi-lingual across many hundreds of languages and dialects. The continent was occupied by our people and the footprints of our ancestors traversed the entire landscape. Our songlines covered vast distances, uniting peoples in shared stories and religion. The entire land and seascape is named, and the cultural memory of our old people is written there.

This rich diversity of our origins was eventually ruptured by colonisation. Violent dispossession and the struggle to survive a relentless inhumanity has marked our common history. The First Nations Regional Dialogues on constitutional reform bore witness to our shared stories.

All stories start with our Law.

The Law

We have coexisted as First Nations on this land for at least 60,000 years. Our sovereignty pre-existed the Australian state and has survived it.¹

‘We have never, ever ceded our sovereignty.’ (Sydney)²

The unfinished business of Australia’s nationhood includes recognising the ancient jurisdictions of First Nations law.³

‘The connection between language, the culture, the land and the enduring nature of Aboriginal law is fundamental to any consideration of constitutional recognition.’ (Ross River)⁴

Every First Nation has its own word for The Law. Tjukurrpa is the Anangu word for The Law. The Meriam people of Mer refer to Malo’s Law.⁵ With substantive constitutional change and structural reform, we believe this surviving and underlying First Nation sovereignty can more effectively and powerfully shine through as a fuller expression of Australia’s nationhood.⁶

The Law was violated by the coming of the British to Australia. This truth needs to be told.

¹ Hobart Record of Meeting (ROM), p2; Broome ROM, p2; Dubbo ROM, p3; Perth ROM, p4; Canberra ROM, p2; Darwin ROM, p1; Melbourne ROM, p3, p6; Ross River ROM, p5; Cairns ROM, p2.

² Sydney ROM, p1.

³ Brisbane ROM, p6: ‘Belonging to country and spirituality are central to Aboriginal and Torres Strait Islander identity, and these need to be the basis for far-reaching structural change.’
Torres Strait ROM, p2: ‘Communities here should be in control of their own affairs. This is not a new concept. People in the Torres Strait did so for thousands of years prior to invasion.’

⁴ Ross River ROM, p1.

⁵ Perth ROM, p2: ‘We’ve got to continue the fight for the unwritten constitutions. We know there were 260 language groups, and in each language group there were unwritten constitutions. ... Prior to white man coming, there were 260 unwritten constitutions, rules, policies, procedures governing Aboriginal People and their lands.’

⁶ Cairns ROM, p2: ‘No one gives you sovereignty, you go out there and practice it and go out there and enforce it. But we are in a position that there are certain laws that mean we can’t go out and practise our sovereignty.’

Invasion

Australia was not a settlement and it was not a discovery. It was an invasion.⁷

‘Cook did not discover us, because we saw him. We were telling each other with smoke, yet in his diary, he said “discovered”.’ (Torres Strait)⁸

‘Australia must acknowledge its history, its true history. Not Captain Cook. What happened all across Australia: the massacres and the wars. If that were taught in schools, we might have one nation, where we are all together.’ (Darwin)⁹

The invasion that started at Botany Bay is the origin of the fundamental grievance between the old and new Australians: that Australia was colonised without the consent of its rightful owners.¹⁰ Now is an opportunity for the First Nations to tell the truth about history in our own voices and from our own point of view.¹¹ And for mainstream Australians to hear those voices and to reconsider what they know and understand about their nation’s history. This will be challenging, but the truth about invasion needs to be told.

‘In order for meaningful change to happen, Australian society generally needs to “work on itself” and to know the truth of its own history.’ (Brisbane)¹²

‘People repeatedly emphasised the need for truth and justice, and for non-Aboriginal Australians to take responsibility for that history and this legacy it has created: “Government needs to be told the truth of how people got to there. They need to admit to that and sort it out.”’ (Melbourne)¹³

Invasion was met with resistance.

Resistance

This is the time of the Frontier Wars, when massacres, disease and poison decimated First Nations, even as they fought a guerrilla war of resistance.¹⁴ The Tasmanian Genocide and the Black War waged by the colonists reveals the truth about this evil time. We acknowledge the

⁷ Dubbo ROM, p4: ‘Delegates spoke of the need to acknowledge the illegality of everything done since colonization, the first act aggression on first contact, the extreme cruelty and violence of the government, and the impact of the forced removals.’

⁸ Torres Strait ROM, p2.

⁹ Darwin ROM, p2.

¹⁰ Sydney ROM, p3: ‘Some spoke about the possibility of having a “La Perouse” statement, that reflected the impact of colonisation on that community. “Dispossession started there.”’

¹¹ Cairns ROM, p3: *‘The names of our people. We’ve got nothing that bears the names of our ancestors.’*

¹² Brisbane ROM, pp6–7.

¹³ Melbourne ROM, p2.

¹⁴ Perth ROM, p4: ‘A number of delegates expressed the importance of remembering and honouring First Nations people who had fought in wars, including frontier wars, but had not been recognised.’

Ross River ROM, p1: *‘[We] recall the Coniston massacre, and the many other massacres throughout the region. [We] remember the Aboriginal people involved in fighting in the frontier wars...If the government wants to speak about ‘recognition’ they need to recognise the true history, recognise the frontier wars.’*

Melbourne ROM, p1: ‘People spoke of the mass slaughter of Aboriginal people during colonisation and how genocide had been committed on over 180 clans in Victoria.’

Torres Strait ROM, p1: The meeting ‘remembered the massacres of the Kaurareg nation, and that the hurt and pain this had continues to this day, unresolved.’

resistance of the remaining First Nations people in Tasmania who survived the onslaught.

‘A statement should recognise *“the fights of our old people”*.’ (Hobart)¹⁵

Everywhere across Australia, great warriors like Pemulwuy and Jandamarra led resistance against the British. First Nations refused to acquiesce to dispossession and fought for their sovereign rights and their land.

‘The people who worked as stockmen for no pay, who have survived a history full of massacres and pain. We deserve respect.’ (Broome)¹⁶

The Crown had made promises when it colonised Australia. In 1768, Captain Cook was instructed to take possession ‘with the consent of the natives’. In 1787, Governor Phillip was instructed to treat the First Nations with ‘amity and kindness’. But there was a lack of good faith. The frontier continued to move outwards and the promises were broken in the refusal to negotiate and the violence of colonisation.

‘We were already recognised through the Letters Patent and the Imperial statutes that should be adhered to under their law. Because it’s their law.’ (Adelaide)¹⁷

‘Participants expressed disgust about a statue of John McDouall Stuart being erected in Alice Springs following the 150th anniversary of his successful attempt to reach the top end. This expedition led to the opening up of the “South Australian frontier” which lead to massacres as the telegraph line was established and white settlers moved into the region. People feel sad whenever they see the statue; its presence and the fact that Stuart is holding a gun is disrespectful to the Aboriginal community who are descendants of the families slaughtered during the massacres throughout central Australia.’ (Ross River)¹⁸

Mourning

Eventually the Frontier Wars came to an end. As the violence subsided, governments employed new policies of control and discrimination.¹⁹ We were herded to missions and reserves on the fringes of white society.²⁰ Our Stolen Generations were taken from their families.²¹

‘The Stolen Generations represented an example of the many and continued attempts to assimilate people and breed Aboriginality out of people, after the era of frontier killing was over.’ (Melbourne)²²

¹⁵ Hobart ROM, p2.

¹⁶ Broome ROM, p7.

¹⁷ Adelaide ROM, p3.

¹⁸ Ross River ROM, p3.

¹⁹ Sydney ROM, p2: ‘under non-Aboriginal law there have been killings, massacres, genocide, the stealing of land, the introduction of disease, and the taking of children.’

²⁰ Ross River ROM, p1: ‘Some of us can’t speak our language. Some of us went to school and it was bashed out of us. There are psychological reasons why we can’t speak our language.’

²¹ Perth ROM, p1: ‘There’s a lot of sad stories from the Stolen Generations: genocide, abuse. And none of the people will be brought before the justice system for the abuse of those children.’

²² Melbourne ROM, p1.

But First Nations also re-gathered themselves. We remember the early heroes of our movement such as William Cooper, Fred Maynard, Margaret Tucker, Pearl Gibbs, Jack Patten and Doug Nicholls, who organised to deal with new realities. The Annual Day of Mourning was declared on 26 January 1938. It reflected on the pain and injustice of colonisation, and the necessity of continued resistance in defence of First Nations. There is much to mourn: the loss of land, the loss of culture and language, the loss of leaders who led our struggle in generations past.

‘Delegates spoke of the spiritual and cultural things that have been stolen. Delegates spoke of the destruction of boundaries because of the forced movement of people, the loss of First Peoples and Sovereign First Nations spirituality, and the destruction of language.’ (Dubbo)²³

‘The burning of Mapoon in 1963 was remembered: “Mapoon people have remained strong, we are still living at Mapoon. Mapoon still exists in western Cape York but a lot of our grandfathers have died at New Mapoon. That isn’t where their spirits need to be.”’ (Cairns)²⁴

But as we mourn, we can also celebrate those who have gone before us.²⁵ In a hostile Australia, with discrimination and persecution, out of their mourning they started a movement – the modern movement for rights, equality and self-determination.

‘We have learnt through the leaders of the Pilbara Strike, we have learnt from the stories of our big sisters, our mothers, how to be proud of who we are.’ (Perth)²⁶

‘The old men and women were carrying fire. ... Let’s get that fire up and running again.’ (Darwin)²⁷

Activism

The movement for political change continued to grow through the 20th Century. Confronted by discrimination and the oppressive actions of government, First Nations showed tenacity, courage and perseverance.²⁸

‘Those who came before us marched and died for us and now it’s time to achieve what we’ve been fighting for since invasion: self-determination.’ (Adelaide)²⁹

Torres Strait Islanders have a long history of self-government. The civic local government was established in the late 1800s, and in the 1930s after the maritime strikes, local councils were created, and in the 1990s, the TSRA. The Torres Strait

²³ Dubbo ROM, p2.

²⁴ Cairns ROM, p1.

²⁵ Adelaide ROM, p2: *‘[We] want the history of Aboriginal people taught in schools, including the truth about murders and the theft of land, Maralinga, and the Stolen Generations, as well the story of all the Aboriginal fighters for reform. Healing can only begin when this true history is taught.’*

²⁶ Perth ROM, p1.

²⁷ Darwin ROM, p2.

²⁸ Darwin ROM, p2: *‘The government will always try to find a way to break you or beat you down. That doesn’t mean that we’re any weaker as Indigenous people because we lost. We’ve only lost in their eyes, they don’t know what we have underneath.’*

²⁹ Adelaide ROM, p1.

Islander peoples also have rights under the Torres Strait Treaty.’ (Torres Strait)³⁰

Our leaders knew that empowerment and positive change would only come from activism.³¹ Right across Australia, First Nations took their fight to the government, the people and the international community. From Yorta Yorta country, Yirrkala and many other places, people sent petitions urging the King, the Prime Minister and the Australian Parliament to heed their calls for justice. There were strikes for autonomy, equality and land in the Torres Strait, the Pilbara and Palm Island.

‘The history of petitions reminded people about the nationally significant Palm Island Strike. So many people from this region had been removed from Country to the “penal settlement” of Palm Island since its establishment in 1916. The Strike was also sparked by a petition, this time from seven Aboriginal men demanding improved wages, health, housing and working conditions, being ignored by the superintendent. We commemorate 60 years of the Strike in June 2017.’ (Cairns)³²

Our people fought for and won the 1967 Referendum, the most successful Yes vote in Australian history. In front of the world, we set up an embassy on the lawns of Parliament House and we marched in the streets of Brisbane during the Commonwealth Games.³³ In the west, grassroots leaders like the late Rob Riley took the fight on sacred sites, deaths in custody and justice for the Stolen Generations to the highest levels of government.

Land Rights

At the heart of our activism has been the long struggle for land rights and recognition of native title. This struggle goes back to the beginning. The taking of our land without consent represents our fundamental grievance against the British Crown.³⁴

The struggle for land rights has united First Nations across the country, for example Tent Embassy activists down south supported Traditional Owners in the Territory, who fought for decades to retain control over their country. The Yolngu people’s fight against mining leases at Yirrkala and the Gurindji walk-off from Wave Hill station were at the centre of that battle. Their activism led to the Commonwealth legislating for land rights in the Northern Territory.

The epic struggle of Eddie Mabo and the Meriam people resulted in an historic victory in 1992,

³⁰ Torres Strait ROM, p1.

³¹ Sydney ROM, p2: ‘Several delegates said that it was important to learn from the work of those who have gone before, for example from the demands that were contained in the three Yolngu petitions, including the Barunga statement, the Makaratta, Coe vs the Commonwealth, the Mabo decision, the 1938 10-point plan, as well as the Rights, Recognition and Reform Report compiled by ATSIC as a social justice package.’

³² Cairns ROM, p1.

³³ Canberra ROM, p1: ‘*[We] remember marching in the past despite knowing that we’d be met with police brutality and unwarranted arrests.*’

Brisbane ROM, p1: ‘The dialogue emphasised the unique political activism in Queensland, in particular the South East region. This history reflects the indelible relationship between Aboriginal and Torres Strait Islander Peoples in the struggle, with and for each other. It is important that this special relationship, based on our old peoples leadership, is recognized and continued.’

³⁴ Perth ROM, p3: ‘*We don’t have access to our own land ... We can’t access special places for women’s and men’s business. Without our spirituality and identity we are nothing ... There needs to be a mechanism to allow these things to take place. ... We don’t have access to our own sea as well.*’

when the High Court finally rejected the legal fallacy of terra nullius and recognised that the land rights of First Nations peoples survived the arrival of the British.³⁵

Makarrata

The invasion of our land was met by resistance. But colonisation and dispossession cut deeply into our societies, and we have mourned the ancestors who died in the resistance, and the loss of land, language and culture. Through the activism of our leaders we have achieved some hard-won gains and recovered control over some of our lands. After the *Mabo* case, the Australian legal system can no longer hide behind the legal fiction of terra nullius. But there is Unfinished Business to resolve. And the way to address these differences is through agreement-making.³⁶

‘Treaty was seen as the best form of establishing an honest relationship with government.’ (Dubbo)³⁷

Makarrata is another word for Treaty or agreement-making. It is the culmination of our agenda. It captures our aspirations for a fair and honest relationship with government and a better future for our children based on justice and self-determination.³⁸

‘If the community can’t self-determine and make decisions for our own community regarding economic and social development, then we can’t be confident about the future for our children.’ (Wreck Bay)³⁹

Through negotiated settlement, First Nations can build their cultural strength, reclaim control and make practical changes over the things that matter in their daily life.⁴⁰ By making agreements at the highest level, the negotiation process with the Australian government allows First Nations to express our sovereignty – the sovereignty that we know comes from The Law.

‘The group felt strongly that the Constitution needed to recognise the traditional way of life for Aboriginal people. ... It would have to acknowledge the “Tjukurrpa” – “our own Constitution”, which is what connects Aboriginal people to their creation and gives them authority.’ (Ross River)⁴¹

‘There is a potential for two sovereignties to co-exist in which both western and Indigenous values and identities are protected and given voice in policies and laws.’ (Broome)⁴²

³⁵ Darwin ROM, p2: ‘We have to fight for black and white. Mabo said to his son – let’s fight for black and white. His son asked, but why are we fighting for whitefellas? And Mabo said, because they are blindfolded, we need to open their eyes and let them recognise that we were in this country before them.’

³⁶ Broome ROM, p2: ‘There is a potential for two sovereignties to co-exist in which both western and Indigenous values and identities are protected and given voice in policies and laws.’

³⁷ Dubbo ROM, p4.

³⁸ Adelaide ROM, p4: ‘We want Australia to take a giant leap in humanity. This is about truth-telling. Whether it is constitutional change or Treaty. It is not about colour. It is about truth-telling and justice.’

³⁹ Canberra ROM, p3.

⁴⁰ Brisbane ROM, p8: ‘[A] treaty process will only be worth the effort if its effects and benefits can filter down to the grassroots and make a difference to people in their daily lives.’

⁴¹ Ross River ROM, p5.

⁴² Broome ROM, p2.

GUIDING PRINCIPLES

The following guiding principles have been distilled from the Dialogues. These principles have historically underpinned declarations and calls for reform by First Nations. They are reflected, for example, in the Bark Petitions of 1963, the Barunga Statement of 1988, the Eva Valley Statement of 1993, the report on the Social Justice Package by ATSIC in 1995 and the Kirribilli Statement of 2015. They are supported by international standards pertaining to Indigenous peoples' rights and international human rights law.

These principles governed our assessment of reform proposals:

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.

1. Does not diminish Aboriginal sovereignty and Torres Strait Islander sovereignty

Delegates at the First Nations Regional Dialogues stated that they did not want constitutional recognition or constitutional reform to derogate from Aboriginal sovereignty and Torres Strait Islander sovereignty. All of the Dialogues agreed that they did not want any reform to have consequences for Aboriginal sovereignty; they did not want to cede sovereignty: Melbourne,⁴³ Hobart,⁴⁴ Broome,⁴⁵ Dubbo,⁴⁶ Darwin,⁴⁷ Perth,⁴⁸ Sydney,⁴⁹ Cairns,⁵⁰ Ross River,⁵¹ Brisbane,⁵² Torres Strait⁵³ and Canberra.⁵⁴

⁴³ Melbourne ROM, 17-19 March 2017, pp3,5-6.

⁴⁴ Hobart ROM, 9-11 December 2016, pp2-6.

⁴⁵ Broome ROM, 10-12 February 2017, pp2,3,6-7.

⁴⁶ Dubbo ROM, 17-19 February 2017, pp1-5.

⁴⁷ Darwin ROM, 22-24 February 2017, pp1,3.

⁴⁸ Perth ROM, 3-5 March 2017, p4.

⁴⁹ Sydney ROM, 10-12 March 2017, pp1,4.

⁵⁰ Cairns ROM, 24-26 March 2017, pp2,3.

⁵¹ Ross River ROM, 31 March-2 April 2017, p5.

⁵² Brisbane ROM, 21-23 April 2017, pp1,8.

⁵³ Torres Strait ROM, 5-7 May 2017, pp2,6-7.

⁵⁴ Canberra ROM, 10 May 2017, pp1-2.

The Barunga Statement called ‘on the Commonwealth Parliament to negotiate with us a Treaty or Compact recognising our prior ownership, continued occupation and sovereignty and affirming our human rights and freedoms.’

The Expert Panel’s report in 2012 stated that the legal status of sovereignty is as follows:

‘Phillip’s instructions assumed that Australia was terra nullius, or belonged to no-one. The subsequent occupation of the country and land law in the new colony proceeded on the fiction of terra nullius. It follows that ultimately the basis of settlement in Australia is and always has been the exertion of force by and on behalf of the British Crown. No-one asked permission to settle. No-one consented, no-one ceded. Sovereignty was not passed from the Aboriginal peoples by any actions of legal significance voluntarily taken by or on behalf of them.’⁵⁵

And the final report of the Joint Select Parliamentary Committee found that ‘at almost every consultation, Aboriginal and Torres Strait Islander participants raised issues of sovereignty, contending that sovereignty was never ceded, relinquished or validly extinguished. Participants at some consultations were concerned that recognition would have implications for sovereignty’.⁵⁶

2. Involves substantive, structural reform

Delegates at the First Nations Regional Dialogues stated that the reform must be substantive, meaning that minimal reform or symbolic reform is not enough. Dialogues emphasising that reform needed to be substantive and structural include: Hobart,⁵⁷ Broome,⁵⁸ Darwin,⁵⁹ Perth,⁶⁰ Sydney,⁶¹ Ross River,⁶² Adelaide,⁶³ Brisbane,⁶⁴ Torres Strait⁶⁵ and Canberra.⁶⁶

This is consistent with the Kirribilli Statement that ‘any reform must involve substantive changes to the Australian Constitution. A minimalist approach, that provides preambular recognition, removes section 25 and moderates the races power [section 51(xxvi)], does not go far enough and would not be acceptable to Aboriginal and Torres Strait Islander peoples’.⁶⁷

This is consistent with Article 3 of the *United Nations Declaration on the Rights of Indigenous Peoples*: ‘Indigenous peoples have the right of self-determination. By virtue of that right they

⁵⁵ The Expert Panel on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples, *Recognising Aboriginal and Torres Strait Islander Peoples in the Constitution: Report of the Expert Panel*, January 2012, p22.

⁵⁶ Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples, *Final Report*, 25 June 2015, p69.

⁵⁷ Hobart ROM, 9-11 December 2016, p6.

⁵⁸ Broome ROM, 10-12 February 2017, p6.

⁵⁹ Darwin ROM, 22-24 February 2017, pp5-6.

⁶⁰ Perth ROM, 3-5 March 2017, pp2,5.

⁶¹ Sydney ROM, 10-12 March 2017, p5.

⁶² Ross River ROM, 31 March-2 April 2017, p4.

⁶³ Adelaide ROM, 7-9 April 2017, pp5-6.

⁶⁴ Brisbane ROM, 21-23 April 2017, pp6-7,10.

⁶⁵ Torres Strait ROM, 5-7 May 2017, p7.

⁶⁶ Canberra ROM, 10 May 2017, p2.

⁶⁷ Statement presented by Aboriginal and Torres Strait Islander attendees at a meeting held with the Prime Minister and Opposition Leader on Constitutional Recognition, HC Coombs Centre, Kirribilli, Sydney, 6 July 2015.

freely determine their political status and freely pursue their economic, social and cultural development'.⁶⁸ In addition, the *United Nations Declaration on the Rights of Indigenous Peoples* provides that 'Indigenous peoples have the right to the recognition, observance and enforcement of Treaties, Agreements and Other Constructive Arrangements concluded with States or their successors and to have States honour and respect such Treaties, Agreements and other Constructive Arrangements'.⁶⁹

3. Advances self-determination and the standards established under the *United Nations Declaration on the Rights of Indigenous Peoples*

Many delegates at the First Nations Regional Dialogues referred to the importance of the right to self-determination as enshrined in Article 3 of the *United Nations Declaration on the Rights of Indigenous Peoples*.⁷⁰ In 1988, the Barunga Statement called for the recognition of our rights 'to self-determination and self-management, including the freedom to pursue our own economic, social, religious and cultural development.' One of the fundamental principles underpinning ATSIC's report on the Social Justice Package was 'self-determination to decide within the broad context of Australian society the priorities and the directions of their own lives, and to freely determine their own affairs.'⁷¹

Dialogues that referred to self-determination and the *United Nations Declaration on the Rights of Peoples* include: Hobart,⁷² Broome,⁷³ Darwin,⁷⁴ Perth,⁷⁵ Sydney,⁷⁶ Cairns,⁷⁷ Ross River,⁷⁸ Adelaide,⁷⁹ Brisbane,⁸⁰ Torres Strait⁸¹ and Canberra.⁸²

4. Recognises the status and rights of First Nations

Many delegates at the First Nations Regional Dialogues wanted the status and rights of First Nations recognised. Dialogues that referenced status and rights of First Nations include:

⁶⁸ See also Article 38: 'States, in consultation and cooperation with indigenous peoples, shall take the appropriate measures, including measures to achieve the ends of this Declaration'; and Article 37: '1. Indigenous peoples have the right to the recognition, observance and enforcement of Treaties, Agreements and Other Constructive Arrangements concluded with States or their successors and to have States honour and respect such Treaties, Agreements and other Constructive Arrangements. 2. Nothing in this Declaration may be interpreted as to diminish or eliminate the rights of Indigenous Peoples contained in Treaties, Agreements and Constructive Arrangements.'

⁶⁹ Art 37, UNDRIP.

⁷⁰ Art 3, UNDRIP.

⁷¹ ATSIC, *Recognition, Rights and Reform: A Report to Government on Native Title Social Justice Measures* (1995), 10.

⁷² Hobart ROM, 9-11 December 2016, pp2,10.

⁷³ Broome ROM, 10-12 February 2017, p2.

⁷⁴ Darwin ROM, 22-24 February 2017, p3.

⁷⁵ Perth ROM, 3-5 March 2017, pp1,3,5.

⁷⁶ Sydney ROM, 10-12 March 2017, pp2-3.

⁷⁷ Cairns ROM, 24-26 March 2017, pp2,3,5.

⁷⁸ Ross River ROM, 31 March-2 April 2017, pp2,4-5.

⁷⁹ Adelaide ROM, 7-9 April 2017, pp1-3,5-6.

⁸⁰ Brisbane ROM, 21-23 April 2017, pp2,9.

⁸¹ Torres Strait ROM, 5-7 May 2017, pp2-3,5,7-8.

⁸² Canberra ROM, 10 May 2017, pp2-3.

Melbourne,⁸³ Hobart,⁸⁴ Broome,⁸⁵ Dubbo,⁸⁶ Darwin,⁸⁷ Perth,⁸⁸ Sydney,⁸⁹ Cairns,⁹⁰ Ross River,⁹¹ Adelaide,⁹² Brisbane,⁹³ Torres Strait⁹⁴ and Canberra.⁹⁵

The Barunga Statement called for the government to recognise our rights ‘to respect for, and promotion of our Aboriginal identity, including the cultural, linguistic, religious and historical aspects, and including the right to be educated in our own languages and in our own culture and history.’ One of the fundamental principles underpinning ATSIC’s report on the Social Justice Package was ‘recognition of Indigenous peoples as the original owners of this land, and of the particular rights that are associated with that status.’⁹⁶

Consistent with Article 3 on the right of self-determination, the preamble of the *United Nations Declaration on the Rights of Indigenous Peoples* recognises ‘the urgent need to respect and promote the inherent rights of indigenous peoples which derive from their political, economic and social structures and from their cultures, spiritual traditions, histories and philosophies, especially their rights to their lands, territories and resources’.

5. Tells the truth of history

The Dialogues raised truth-telling as important for the relationship between First Nations and the country. Many delegates at the First Nations Regional Dialogues recalled significant historical moments including the history of the Frontier Wars and massacres. Dialogues that stressed the importance of truth-telling include: Melbourne⁹⁷, Broome⁹⁸, Darwin⁹⁹, Perth¹⁰⁰, Sydney¹⁰¹, Cairns¹⁰², Ross River¹⁰³, Adelaide¹⁰⁴, Brisbane¹⁰⁵, Torres Strait.¹⁰⁶

⁸³ Melbourne ROM, 17-19 March, p5.

⁸⁴ Hobart ROM, 9-11 December 2016, pp6-7.

⁸⁵ Broome ROM, 10-12 February 2017, pp1,2,4,5.

⁸⁶ Dubbo ROM, 17-19 February 2017, pp1-5.

⁸⁷ Darwin ROM, 22-24 February 2017, pp1,4,7.

⁸⁸ Perth ROM, 3-5 March 2017, pp1,3,5.

⁸⁹ Sydney ROM, 10-12 March 2017, pp3-4.

⁹⁰ Cairns ROM, 24-26 March 2017, pp3-5.

⁹¹ Ross River ROM, 31 March-2April 2017, pp2-3, 5.

⁹² Adelaide ROM, 7-9 April 2017, p5.

⁹³ Brisbane ROM, 21-23 April 2017, pp1-3,11.

⁹⁴ Torres Strait ROM, 5-7 May 2017, pp3-4, 6.

⁹⁵ Canberra ROM, 10 May 2017, p2.

⁹⁶ ATSIC, *Recognition, Rights and Reform: A Report to Government on Native Title Social Justice Measures* (1995).

⁹⁷ Melbourne ROM, 17-19 March, pp2, 5.

⁹⁸ Broome ROM, 10-12 February 2017, pp1,7.

⁹⁹ Darwin ROM, 22-24 February 2017, pp2,6.

¹⁰⁰ Perth ROM, 3-5 March 2017, pp1,4.

¹⁰¹ Sydney ROM, 10-12 March 2017, p5.

¹⁰² Cairns ROM, 24-26 March 2017, p1.

¹⁰³ Ross River ROM, 31 March-2April 2017, pp1,5.

¹⁰⁴ Adelaide ROM, 7-9 April 2017, pp2,4,6.

¹⁰⁵ Brisbane ROM, 21-23 April 2017, pp1-2,6-7.

¹⁰⁶ Torres Strait ROM, 5-7 May 2017, pp2,5.

The importance of truth-telling as a guiding principle draws on previous statements such as the ATSIC report for the Social Justice Package.¹⁰⁷ The Eva Valley Statement said that a lasting settlement process must recognise and address historical truths.

The *United Nations Declaration on the Rights of Indigenous Peoples* enshrines the importance of truth-telling,¹⁰⁸ as does the United Nations General Assembly resolution on the basic principles on the right to a remedy and reparation for victims of gross violations of international human rights law and serious violations of international humanitarian law.¹⁰⁹

In its Resolution on the Right to the Truth in 2009, the Human Rights Council stressed that the victims of gross violations of human rights should know the truth about those violations to the greatest extent practicable, in particular the identity of the perpetrators, the causes and facts of such violations, and the circumstances under which they occurred. And that States should provide effective mechanisms to make that truth known, for society as a whole and in particular for relatives of the victims.¹¹⁰ In 2010, the UN General Assembly proclaimed the International Day for the Right to the Truth Concerning Gross Human Rights Violations and for the Dignity of Victims.¹¹¹ In 2012, the Human Rights Council appointed a Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence.¹¹² In 2013, the UN General Assembly passed the Resolution on the right to the truth.¹¹³

6. Does not foreclose on future advancement

Many delegates at the First Nations Regional Dialogues stated that they did not want constitutional reform to foreclose on future advancement. Constitutional reform must not prevent the pursuit of other beneficial reforms in the future, whether this be through beneficial changes to legislation, policy, or moving towards statehood (in the Northern Territory) or towards Territory status (in the Torres Strait). Dialogues that referenced this include: Hobart,¹¹⁴ Sydney,¹¹⁵ Darwin,¹¹⁶ Torres Strait¹¹⁷ and Canberra.¹¹⁸

7. Does not waste the opportunity of reform

Many delegates at the First Nations Regional Dialogues stated that constitutional reform was an opportunity and therefore should not be wasted on minimalist reform: a minimalist approach, that provides preambular recognition, removes section 25 and moderates the races power (section 51(xxvi)), does not go far enough and would not be acceptable to Aboriginal

¹⁰⁷ ATSIC, *Recognition, Rights and Reform: A Report to Government on Native Title Social Justice Measures* (1995) Recommendations 53-55.

¹⁰⁸ Preambular paragraphs 3, 4, 8, 15 and 21; Articles 5, 15, 37 and 40.

¹⁰⁹ A/RES/60/147.

¹¹⁰ A/HRC/RES/9/11; A/HRC/RES/12/12.

¹¹¹ General Assembly resolution 65/196 of 21 December 2010.

¹¹² A/HRC/RES/18/7.

¹¹³ A/RES/68/165.

¹¹⁴ Hobart ROM, 9-11 December 2016, p 8.

¹¹⁵ Sydney ROM, 10-12 March 2017, p 4.

¹¹⁶ Darwin ROM, 22-24 February 2017, p 7.

¹¹⁷ Torres Strait ROM, 5-7 May 2017, p 6.

¹¹⁸ Canberra ROM 10 May 2017, p 2.

and Torres Strait Islander peoples. Dialogues emphasising that reform needed to be more than a minimalist position include: Melbourne,¹¹⁹ Hobart,¹²⁰ Broome,¹²¹ Dubbo,¹²² Darwin,¹²³ Perth,¹²⁴ Sydney,¹²⁵ Cairns,¹²⁶ Adelaide,¹²⁷ Torres Strait¹²⁸ and Canberra.¹²⁹

8. Provides a mechanism for First Nations agreement-making

Many delegates at the First Nations Regional Dialogues stated that reform must provide a mechanism for First Nations agreement-making. Dialogues that referenced a mechanism for agreement-making include: Melbourne,¹³⁰ Broome,¹³¹ Perth,¹³² Cairns,¹³³ Ross River,¹³⁴ Adelaide,¹³⁵ Brisbane¹³⁶ and Torres Strait.¹³⁷

The obligation of the state to provide agreement-making mechanisms is reflected in the *United Nations Declaration on the Rights of Indigenous Peoples*. Article 37 proclaims, ‘Indigenous peoples have the right to the recognition, observance and enforcement of Treaties, Agreements and Other Constructive Arrangements concluded with States or their successors and to have States honour and respect such Treaties, Agreements and other Constructive Arrangements’.

9. Has the support of First Nations

A message from across the First Nations Regional Dialogues was that any constitutional reform must have the support of the First Nations right around the country. The Dialogues emphasised that constitutional reform is only legitimate if First Nations are involved in each step of the negotiations, including after the Uluru Convention. Dialogues emphasising that reform needed the support of First Nations include: Hobart,¹³⁸ Broome,¹³⁹ Dubbo,¹⁴⁰ Darwin,¹⁴¹ Perth,¹⁴²

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- ¹¹⁹ Melbourne ROM, 17-19 March, p4.
 - ¹²⁰ Hobart ROM, 9-11 December 2016, p6.
 - ¹²¹ Broome ROM, 10-12 February 2017, p3.
 - ¹²² Dubbo ROM, 17-19 February 2017, p1.
 - ¹²³ Darwin ROM, 22-24 February 2017, p6.
 - ¹²⁴ Perth ROM, 3-5 March 2017, pp4,5.
 - ¹²⁵ Sydney ROM, 10-12 March 2017, p5.
 - ¹²⁶ Cairns ROM, 24-26 March 2017, p5.
 - ¹²⁷ Adelaide ROM, 7-9 April 2017, pp5-6.
 - ¹²⁸ Torres Strait ROM, 5-7 May 2017, pp5-6.
 - ¹²⁹ Canberra ROM, 10 May 2017, p2.
 - ¹³⁰ Melbourne ROM, 17-19 March, pp2-7.
 - ¹³¹ Broome ROM, 10-12 February 2017, p5.
 - ¹³² Perth ROM, 3-5 March 2017, p5.
 - ¹³³ Cairns ROM, 24-26 March 2017, p5.
 - ¹³⁴ Ross River ROM, 31 March-2 April 2017, pp5-6.
 - ¹³⁵ Adelaide ROM, 7-9 April 2017, p4.
 - ¹³⁶ Brisbane ROM, 21-23 April 2017, pp3,8-10.
 - ¹³⁷ Torres Strait ROM, 5-7 May 2017, pp7-8.
 - ¹³⁸ Hobart ROM, 9-11 December 2016, p9.
 - ¹³⁹ Broome ROM, 10-12 February 2017, pp2, 6.
 - ¹⁴⁰ Dubbo ROM, 17-19 February 2017, pp1, 2, 3.
 - ¹⁴¹ Darwin ROM, 22-24 February 2017, pp2, 5, 7.
 - ¹⁴² Perth ROM, 3-5 March 2017, pp1, 3.

Sydney,¹⁴³ Melbourne,¹⁴⁴ Canberra,¹⁴⁵ Brisbane,¹⁴⁶ Torres Strait,¹⁴⁷ Adelaide,¹⁴⁸ Ross River¹⁴⁹ and Cairns.¹⁵⁰

The failure to consult with First Nations has been a persistent cause of earlier activism. For example, the 1963 Yirrkala Bark Petition was launched by the Yolngu people after the Federal Government excised their land without undertaking consultation or seeking Yolngu consent. They complained that ‘when Welfare Officers and Government officials came to inform them of decisions taken without them and against them, they did not undertake to convey to the Government in Canberra the views and feelings of the Yirrkala aboriginal people.’ The Eva Valley Statement of 1993 demanded that the development of legislation in response to the *Mabo* decision have ‘the full and free participation and consent of those Peoples concerned.’

The importance of First Nations’ support is recognised by the *United Declaration on the Rights of Indigenous Peoples*, which states in Article 3, that through the right of self-determination, Indigenous peoples must be able to ‘freely determine their political status and freely pursue their economic, social and cultural development’. The *Declaration* also recognises in Article 19 that, before any new laws or policies affecting Indigenous peoples are adopted, ‘States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent’.

10. Does not interfere with positive legal arrangements

Many delegates at the First Nations Regional Dialogues expressed their concerns that any constitutional reform must not have the unintended consequence of interfering with beneficial current arrangements that are already in place in some areas, or with future positive arrangements that may be negotiated. Dialogues that supported this principle were: Cairns,¹⁵¹ Torres Strait¹⁵² and Canberra (Wreck Bay).¹⁵³

¹⁴³ Sydney ROM, 10-12 March 2017, pp2, 4, 5.

¹⁴⁴ Melbourne ROM, 17-19 March 2017, p5.

¹⁴⁵ Canberra ROM, 10 May 2017, pp2-3.

¹⁴⁶ Brisbane ROM, 21-23 April 2017, pp2, 4.

¹⁴⁷ Torres Strait ROM, 5-7 May 2017, pp2, 6.

¹⁴⁸ Adelaide ROM, 7-9 April 2017, pp2-3, 6.

¹⁴⁹ Ross River ROM, 31 March-2 April 2017, pp2-3, 6.

¹⁵⁰ Cairns ROM, 24-26 March 2017, p6.

¹⁵¹ Cairns ROM, 24-26 March 2017, p5.

¹⁵² Torres Strait, 5-7 May 2017, ROM, pp2-3.

¹⁵³ Canberra ROM 10 May 2017, p3.

REFORM PRIORITIES

This is a synthesis of the reforms that emerged from the Dialogues with the highest level of support across the country. These were the Voice to Parliament, Treaty and Truth-telling.

The Dialogues' responses to the reform proposals are evidenced in the table below.

	Statement of Acknowledgement	Head of Power	Prohibition on Racial Discrimination	A Voice to Parliament	Agreement-Making
Hobart					
Broome					
Dubbo					
Darwin					
Perth					
Sydney					
Melbourne					
Cairns					
Ross River					
Adelaide					
Brisbane					
Thursday Island					
Canberra					

	endorsed
	not endorsed
	inconclusive
	not recorded

Below is an assessment of the various reform options against the Guiding Principles.

	Statement of Acknowledgement	Head of Power	Prohibition on Racial Discrimination	A Voice to Parliament	Agreement-Making
Does not diminish Aboriginal sovereignty and Torres Strait Islander sovereignty					
Involves substantive, structural reform					
Advances self-determination and the standards established under the <i>United Nations Declaration on the Rights of Indigenous Peoples</i>					
Recognises the status and rights of First Nations					
Tells the truth of history					
Does not foreclose on future advancement					
Does not waste the opportunity of reform					
Provides a mechanism for First Nations agreement-making					
Has the support of First Nations					
Does not interfere with positive legal arrangements					

	Meets principle
	Does not meet principle
	Inconclusive

Voice to Parliament

A constitutionally entrenched Voice to Parliament was a strongly supported option across the Dialogues.¹⁵⁴ It was considered as a way by which the right to self-determination could be achieved.¹⁵⁵ Aboriginal and Torres Strait Islander peoples need to be involved in the design of any model for the Voice.¹⁵⁶

There was a concern that the proposed body would have insufficient power if its constitutional function was ‘advisory’ only, and there was support in many Dialogues for it to be given stronger powers so that it could be a mechanism for providing ‘free, prior and informed consent’.¹⁵⁷ Any Voice to Parliament should be designed so that it could support and promote a treaty-making process.¹⁵⁸ Any body must have authority from, be representative of, and have legitimacy in Aboriginal and Torres Strait Islander communities across Australia. It must represent communities in remote, rural and urban areas, and not be comprised of handpicked

¹⁵⁴ **Hobart:** Supported a powerful representative body.

Broome: Four out of five groups ranked the Indigenous voice as number one, either on its own or in combination with other options.

Dubbo: All groups supported the voice to parliament, with two groups prioritising this option.

Darwin: Considered important by all groups and was ranked as a priority in any reform package.

Perth: First preference for a voice for the First Nations people of Australia to Parliament and agreement making.

Sydney: Constitutionally guaranteed a First Nations Voice to Parliament was priorities by several groups and was considered as crucial.

Melbourne: The most supported package alongside agreement making. The Voice to Parliament was important to increase political power and authority and needs to be enshrined into the Constitution.

Cairns: Strong agreement across the groups for a Voice to Parliament as an important priority.

Ross River: Some people suggested embedding a representative body for Aboriginal people in the Constitution as a good option.

Brisbane: Well supported option.

Torres Strait: A Voice to Parliament was seen as an ‘engine room’ for change and a way of realising the right to self-determination.

¹⁵⁵ **Torres Strait:** A Voice to Parliament was seen as an ‘engine room’ for change and a way of realising the right to self-determination.

¹⁵⁶ **Brisbane:** The Aboriginal and Torres Strait Islander People need to be consulted on the model.

¹⁵⁷ **Hobart:** Supported a powerful representative body with the consensus that a body must be stronger than just an advisory body to Parliament.

Broome: Someone suggested that the Parliament would need to be compelled to respond to the advice of the Body, and there was discussion of giving the body the right to address the Parliament.

Dubbo: There was a strong view that the Indigenous body must have real power: a power of veto and the power to make a difference.

Melbourne: There was a concern that the body could become a tokenistic process. Hence, it must be more than advisory and consultative. It needs powers of compliance and to be able to hold Parliament on account against the standards of the UNDRIP.

Brisbane: The body needs to be more than just advisory. It needs to be able to provide free, prior and informed consent that is binding on government.

¹⁵⁸ **Melbourne:** Support was also given for the statement that would underpin and strengthen a Voice to Parliament to enable it to progress and protect a treaty process. This should be a statement of ‘intent’ and a statement of the ‘inherent rights of the First Peoples’. The statement could refer to Australia’s international obligation (e.g. UNDRIP) and acknowledge the sovereign position of Australia’s First Peoples and the crimes committed against the humanity.

Cairns: It could be used to pursue economic developments and to pursue negotiations of treaties with government.

Torres Strait: It could support and promote a treaty-making process.

leaders.¹⁵⁹ The body must be structured in a way that respects culture.¹⁶⁰ Any body must also be supported by a sufficient and guaranteed budget, with access to its own independent secretariat, experts and lawyers.¹⁶¹ It was also suggested that the body could represent Aboriginal and Torres Strait Islander Peoples internationally.¹⁶²

A number of Dialogues considered ways that political representation could be achieved other than through the proposed constitutional Voice. These included through the designation of seats in Parliament for Aboriginal and Torres Strait Islander Peoples (although there was some concern that these politicians would be bound by party politics),¹⁶³ the creation of a 'Black Parliament',¹⁶⁴ that represents communities across Australia.¹⁶⁵ There was discussion about how these reforms could be connected to a constitutional body. For instance, the body's representation could be drawn from an Assembly of First Nations, which could be established through a series of treaties among nations.¹⁶⁶

Treaty

The pursuit of Treaty and treaties was strongly supported across the Dialogues.¹⁶⁷ Treaty was seen as a pathway to recognition of sovereignty and for achieving future meaningful reform for

¹⁵⁹ **Hobart:** A selection process should be put in place to ensure that the body is representative of Aboriginal and Torres Strait Islander Peoples.

Darwin: The body would need to be elected and connected to the community.

Perth: Very strong support for a Voice to Parliament that would represent all lands and waters across Australia.

Ross River: The body must represent communities across Australia and have legitimacy in remote, rural and urban areas. It was also suggested that it should include representatives across generations.

Brisbane: The body needs to be representative of grassroots. Not a handpicked organisation like the Indigenous Advisory Council. It needs to be elected by grassroots and consult back with the community.

Adelaide: The Aboriginal Voice could be drawn from the First Nations and reflect the song lines of the country.

¹⁶⁰ **Brisbane:** The structure of the body needs to respect Aboriginal cultural heritage – 'the oldest governance structure on the planet'.

¹⁶¹ **Broome:** The body must be supported – with a budget, with experts (eg, through a supporting secretariat) and with lawyers.

Darwin: The body would need to be properly resourced.

Brisbane: The body needs to have guaranteed funding. One way of guaranteeing funding that was discussed was through a percentage of taxes (land taxes, water taxes) or linked to representatives.

¹⁶² **Thursday Island:** The body could be a way of achieving representation internationally (at the UN) and also connecting with other First Nations people internationally.

¹⁶³ **Hobart:** A number of delegates also supported reserved parliamentary seats. "but... are they slave to party politics."

Broome: The body could be a vehicle through which to achieve other things, such as Indigenous representation in Parliament itself. For example, it was suggested that the body could appoint Indigenous MPs (designated seats) or be the start of a new political party.

¹⁶⁴ **Dubbo:** "We need a Black Parliament".

Brisbane: "We need to be looking at our own Parliament."

¹⁶⁵ **Sydney:** Constitutionally guaranteed a First Nations Voice to Parliament was prioritised by several groups and was considered as "crucial". Suggestions to achieve this by designation of seats for Aboriginal people in the Senate and an Aboriginal Parliament that represents communities across Australia.

¹⁶⁶ **Cairns:** A number of groups suggested the body could be drawn from an Assembly of First Nations which could be established through a series of treaties among nations.

Brisbane: Other ways of achieving political representation were discussed, including designated seats, or the creation of 'our own Parliament'.

¹⁶⁷ **Hobart:** Supported and firmly committed to pursuing Treaty.

Dubbo: Strong consensus across all groups for a treaty as a form of establishing an honest relationship with government and perhaps achieving other options.

Darwin: As an overarching aspiration, Treaty was regarded as important.

Perth: Agreement making and Treaty was a high priority for a number of groups.

Aboriginal and Torres Strait Islander Peoples. Treaty would be the vehicle to achieve self-determination, autonomy and self-government.¹⁶⁸

The Dialogues discussed who would be the parties to Treaty, as well as the process, content and enforcement questions that pursuing Treaty raises. In relation to process, these questions included whether a Treaty should be negotiated first as a national framework agreement under which regional and local treaties are made. In relation to content, the Dialogues discussed that a Treaty could include a proper say in decision-making, the establishment of a truth commission, reparations, a financial settlement (such as seeking a percentage of GDP), the resolution of land, water and resources issues, recognition of authority and customary law, and guarantees of respect for the rights of Aboriginal and Torres Strait Islander Peoples.¹⁶⁹ In relation to enforcement, the issues raised were about the legal force the Treaty should have, and particularly whether it should be backed by legislation or given constitutional force.

There were different views about the priority as between Treaty and constitutional reform.¹⁷⁰ For some, Treaty should be pursued alongside, but separate from, constitutional reform.¹⁷¹ For others, constitutional reform that gives Aboriginal and Torres Strait Islander people a voice in the political process will be a way to achieve Treaty.¹⁷² For others, specific constitutional amendment could set out a negotiating framework, and give constitutional status to any concluded treaty.¹⁷³

Sydney: While there was strong support in many of the groups for pursuing Treaty negotiations, there was no overall consensus as to how this could be achieved.

Melbourne: The most supported package alongside the Voice.

Cairns: Strong support for treaty, but not a clear consensus when a treaty should be pursued.

Torres Strait: A strong support for the pursuit of treaty that would give Torres Strait Islander Peoples self-determination, autonomy and self-government.

Sydney: Strong support to pursue Treaty negotiations but no overall consensus on how to do that.

¹⁶⁸ **Torres Strait:** A strong support for the pursuit of treaty that would give Torres Strait Islander Peoples self-determination, autonomy and self-government.

¹⁶⁹ **Hobart:** Treaty needs to recognise sovereignty, a land and a financial settlement, and recognition of rights.

Broome: People looked to agreement-making for a proper say in decision-making, recognition of authority and customary law, guaranteed or quarantined funding so people can plan for the long term, addressing issues that fall outside the scope of native title agreements, a better form of legal enforcement and better legal protection of rights.

Dubbo: Strong consensus across all groups for a treaty as a form of establishing an honest relationship with government and perhaps achieving other options.

Adelaide: Strong support for Agreement Making as a vehicle for implementing policies such as a truth and reconciliation commission, designated seats in Parliament, self-determination policies, and economic measures such as seeking a percentage of Gross Domestic Product (GDP).

¹⁷⁰ **Dubbo:** Treaty could be pursued outside the constitutional reform process, or it could be pursued together with constitutional recognition through a voice to Parliament and a racial non-discrimination clause.

Darwin: This could be achieved inside or outside the Constitution.

Perth: For a number of groups, agreement making and Treaty was a high priority, but that in terms of timing it could follow constitutional reform.

Cairns: Strong support for treaty, but not a clear consensus when a treaty should be pursued.

Brisbane: This was a primary aspiration for the region but not ranked as a major priority for the reform.

¹⁷¹ **Hobart:** Treaty needed to be included in the final report from the Referendum Council and put into legislation, but not included in a referendum proposal.

¹⁷² **Sydney:** Some suggested that this could be done simultaneously while pursuing constitutional reform or achieved and strengthened through constitutional change such as through the inclusion of a Voice in Parliament.

Broome: The general sense was that agreement-making should be in the Constitution, because it is proper recognition of people, sovereignty and the importance of local culture, values and customary law.

Perth: Should be timed to follow constitutional reform.

Adelaide: Some chose to package the Voice with Agreement Making because they felt the agreement making process would be enhanced by the involvement of the Aboriginal Voice.

¹⁷³ **Darwin:** Negotiating framework for the treaty needs to be enshrined in the Constitution.

Truth-telling

The need for the truth to be told as part of the process of reform emerged from many of the Dialogues.¹⁷⁴ The Dialogues emphasised that the true history of colonisation must be told: the genocides, the massacres, the wars and the ongoing injustices and discrimination.¹⁷⁵ This truth also needed to include the stories of how First Nations Peoples have contributed to protecting and building this country.¹⁷⁶ A truth commission could be established as part of any reform, for example, prior to a constitutional reform or as part of a Treaty negotiation.¹⁷⁷

¹⁷⁴ **Sydney:** One group also suggested that dealing with question of ‘truth and justice’ had to be part of the process of constitutional reform.

Melbourne: People repeatedly emphasised the need for truth and justice, and for non-Aboriginal Australians to take responsibility for that history and this legacy it has created. The group believed that there needed to be a truth and reconciliation process as part of the larger process.

Cairns: This history and the suffering needed to be acknowledged before progress could be made with constitutional reform.

Ross River: The meeting recalled the Coniston massacre, and the many other massacres throughout the region. The meeting remembered the Aboriginal people who had been involved in fighting in the frontier wars. They also spoke of the Aboriginal people who fought in the wars, such as in the Vietnam war, but have not been recognised. If the government want to speak about ‘recognition’ they need to recognise the true history, recognise the frontier wars. They need to recognise the atrocity of Maralinga.

¹⁷⁵ **Broome:** The need to generate greater understanding of our people and our history across Australia. The massacres were referred to many times across the Dialogue.

Dubbo: One group stated that it was important to correct the record. Delegates spoke of the need to acknowledge the illegality of everything done since colonization, the first act of aggression of first contact, the extreme cruelty and violence of the government, and the impact of the forced removals.

¹⁷⁶ **Darwin:** There was a very strong feeling that the true history of Australia, the massacres and frontier killings, the stolen generations and other stories of how First Nations peoples have contributed to protecting and building this country are not taught in Australian education institutions.

¹⁷⁷ **Melbourne:** One suggestion was to achieve change by 2020, with a truth and reconciliation commission to occur during that time, and a checkpoint in 2018.

Adelaide: Strong support for Agreement Making as a vehicle for implementing policies such as a truth and reconciliation commission, designated seats in Parliament, self-determination policies, and economic measures such as seeking a percentage of Gross Domestic Product (GDP).

ROADMAP

First Stage: Uluru

1. The delegates of Aboriginal and Torres Strait Islander First Peoples gathered at Uluru this week to sign the Uluru Statement from the Heart which seeks constitutional reforms that will enable the establishment of a Voice of Aboriginal and Torres Strait Islander First Peoples, as the precursor to the establishment of a Makarrata Commission to supervise agreements with First Peoples at the local level.
2. As part of the Roadmap, the delegates endorse the following process for appointing a Makarrata Roadmap Working Group:
 - a. One female and one male representative from each of the 13 Regions
 - b. Representatives selected on the basis of their ability to contribute to the working group's functions
 - c. Representatives are signatories to the Uluru Statement from the Heart and committed to its strategic goal

Second Stage: Following Uluru

3. The Makarrata Roadmap Working Group will be assisted by an Expert Group and an appropriately resourced secretariat.
4. The Working Group will convene as soon as practicable following Uluru and meet with the Referendum Council to convey the Uluru Statement from the Heart, prior to the Referendum Council's report to the Prime Minister and the Leader of the Opposition.
5. The Working Group will establish a program of meetings and shuttle diplomacy with representatives of the government, the opposition and all of the parliamentary parties and independent cross-benchers to advance the development of a Makarrata Roadmap to be settled between representatives of First Peoples and Parliamentary Representatives.
6. The Working Group will negotiate the specific wording of constitutional reforms. This wording will be brought back for endorsement to a national gathering of the Regional Dialogue representatives to be held at Garma on 4-7 August 2017.

Third Stage: Garma

7. The Uluru signatories will gather at Garma in August.

8. The Prime Minister, Leader of the Opposition and the leaders of the parliamentary parties, as well as independent cross-benchers will be invited to Garma to settle the Makarrata Roadmap.
9. The Roadmap will provide for the Parliament to legislate the Voice and any constitutional provisions will buttress the Voice.

Fourth Stage: Following Garma

10. The Working Group will continue to work with representatives of the government, the opposition and the parliamentary parties, including independent cross-benchers, on the details of the Bill establishing the referendum.

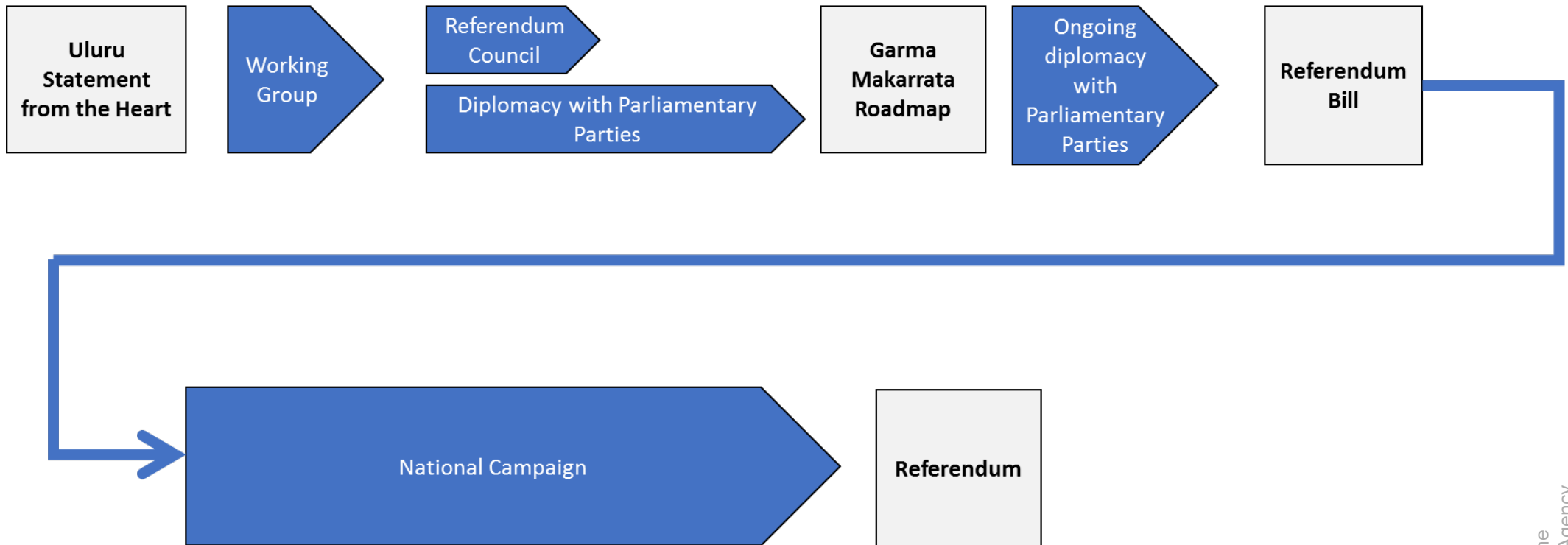
Fifth Stage: Establishing the Voice

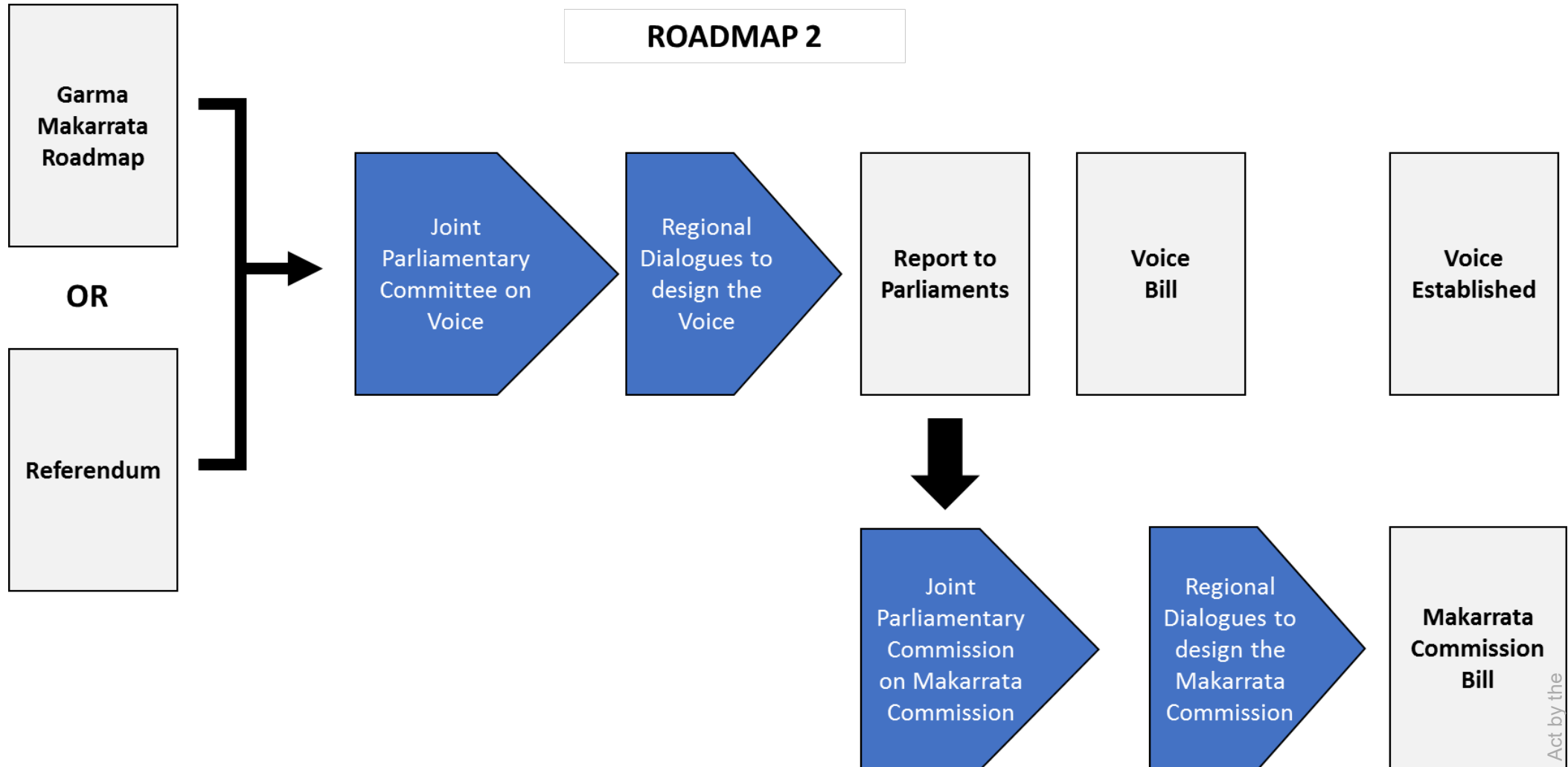
11. The Commonwealth Parliament should legislate the powers, functions and representation of the Voice for Aboriginal and Torres Strait Islander First Peoples.
12. The Voice should be established to enable it to perform its functions as a representative institution of Aboriginal and Torres Strait Islander First Peoples, enabling First Peoples to deal with the Executive Government of the day as well as the Parliament.
13. The Voice should be accommodated on an appropriate site within the parliamentary circle in Canberra.
14. The promulgation of a Bill to establish the Voice should follow this process:
 - a. A special Joint Parliamentary Committee should be established to report to the Commonwealth Parliament on a Bill, with 2 First Peoples representatives (one male and one female) from each State and Territory appointed by the First Peoples of that jurisdiction, and 2 representatives of each State and Territory (one government and one opposition) appointed by the parliament of each jurisdiction.
 - b. This Committee should report to the Commonwealth Parliament within 12 months of its appointment, and to each State and Territory parliament.
 - c. All First Peoples and representative organisations should be engaged in the design of the Voice and contribute to the development of a Bill.
 - d. Regional Conferences should be convened to give the opportunity for First Peoples to workshop the design of the Voice, and to make representations to the Committee.
15. A Bill establishing the Voice should be presented to the Commonwealth Parliament within the second year following a successful referendum or settlement of the Garma Makarrata Roadmap.
16. The Voice should be established within 12 months of the passage of the enabling Bill.

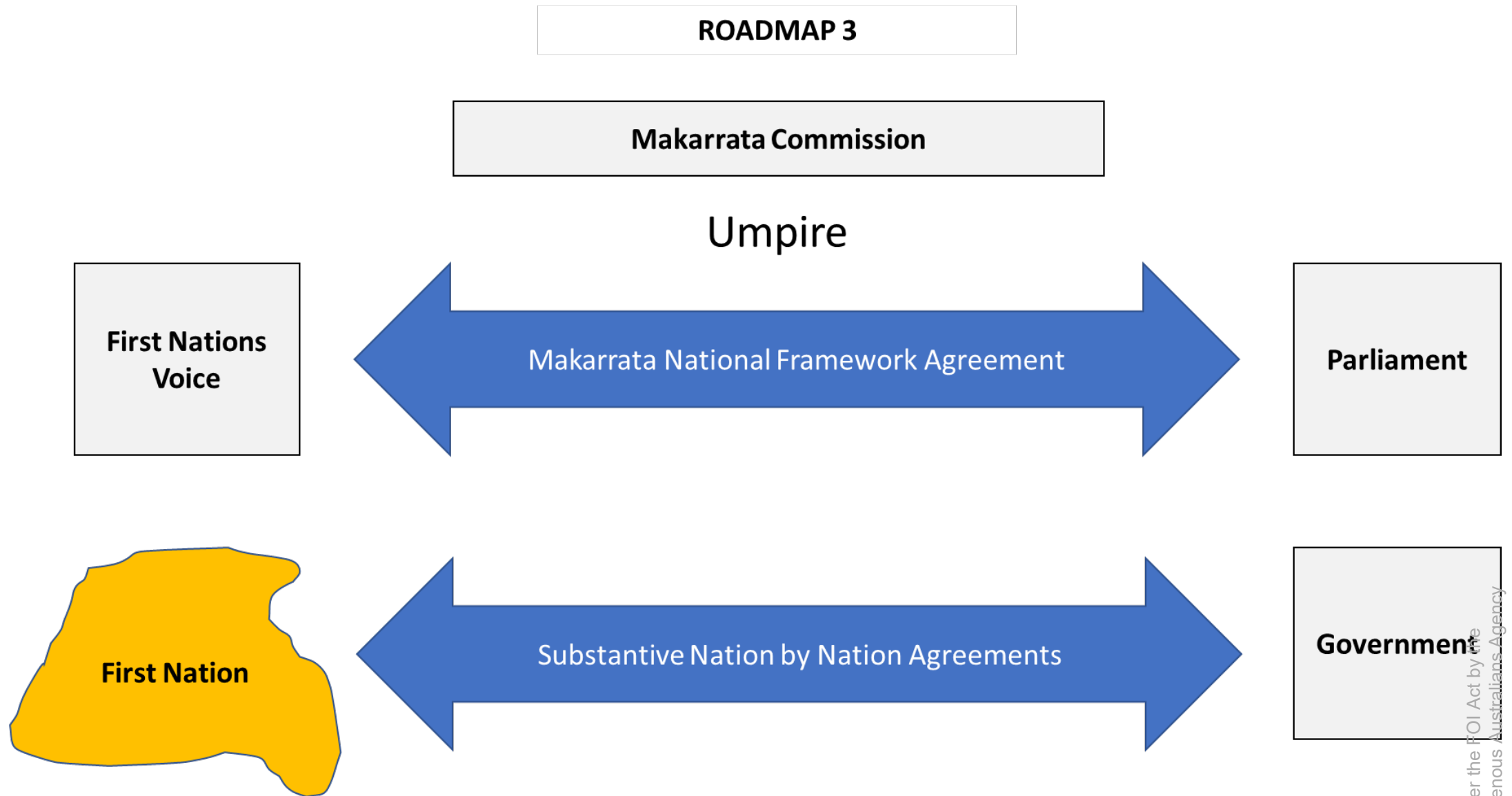
Sixth Stage: Towards Makarrata

17. Following the report of the special Joint Parliamentary Committee on a Bill establishing the Voice, the Committee should undertake an inquiry into a second Bill establishing an appropriate institution (to be called the Makarrata Commission) to supervise the making of agreements between First Peoples and Australian governments.
18. Engagement and consultation with First Peoples and public hearings should follow the same process as for the promulgation of a Bill establishing the Voice.
19. The Bill establishing the Makarrata Commission should confer all necessary powers and functions to facilitate the settlement of a National Makarrata Framework Agreement between Australian Governments and First Peoples, as well as subsequent First People Agreements at the local level (named in the relevant ancestral language of the First Nation, representing for example the Meriam, Yorta Yorta, Anangu, Wiradjuri and the many First Nations of Australia). The role of the National Native Title Tribunal should be subsumed by the Makarrata Commission, which should have as one of its functions the role of a Truth and Reconciliation Commission to enable all Australians to face the truth of the past and to embrace a common hope for the future.
20. The consultation and negotiation leading up to the settlement of the National Makarrata Framework Agreement should take place between the Voice and the governments of all relevant jurisdictions in a process supervised by the Makarrata Commission.
21. The Makarrata outcome should be legislated by the parliaments of all relevant jurisdictions.

ROADMAP 1







Record of Meeting – Hobart First Nations Regional Dialogue

Location - Risdon Cove, 9-11 December 2016.

Day 1 – Meeting began at 1:30pm

The dialogue began with a Smoking Ceremony and Welcome to Country dances performed by s47F .

The Co-Convenors, Mr s47F and Ms s47F introduced themselves, welcomed participants, provided general housekeeping rules and outlined the nature of the meeting.

Participants were advised a photographer was present to take photos during the meeting and to notify the Convenors, working group leaders or photographer if they had objections to their photo being taken.

s47F outlined the agenda, group discussions themed around the five proposals. Participants were advised to keep ideas and discussions smart as what is proposed needs to get through parliament.

s47F , the Executive Officer to the Referendum Council, outlined the Referendum Council Indigenous consultations process of the 12 First Nations Regional Dialogues and a National Indigenous Constitutional Convention. s47F provided a presentation on the Referendum Council members, its Terms of Reference, the Indigenous consultations held to date, the five proposals and the approach to the Regional Dialogues and National Convention.

A video presentation on the *History of Indigenous Advocacy for Recognition and Reform* was played to the group.

s47F led a group session on Treaty.

Following the presentations there was a broad ranging group discussion and several ideas were expressed:

- We are not citizens, we are not currently recognised in the Constitution.
- Various conversations on the proposals relating to Non-Discrimination and the Race Powers.
- The need for an Indigenous voice to parliament - could be through designated Senate seats, the creation of a political party, or a constitutionally enshrined body.
- Lengthy discussion on issues regarding a Treaty.

The Group also discussed a number of questions, such as whether the government would proceed with constitutional recognition if Indigenous people didn't agree, whether constitutional recognition or Treaty were high priorities and what constitutional recognition could achieve.

Day 1 – Meeting closed at 5pm.

Day 2 – Meeting opened at 9:00am

s47F welcomed participants and provided a short recap of the previous afternoon, the overview of day two and reminded participants to nominate for group discussions.

Participants were again advised a photographer was present to take photos during the meeting and to notify the Convenors, working group leaders or photographer if they had objections to their photo being taken.

Referendum Council co-Chair, s47F, provided an overview of the Council and its Indigenous consultations process and its plan to start the process in Hobart to acknowledge the horrific, tragic past.

Participants then separated into five groups to discuss each option, consider the pros and cons of each and then report back to the plenary. The following points were raised:

Group 1 - Law making power

Spokespeople – s47F and s47F

- Does the Commonwealth still need powers to make laws for Indigenous people?
- If yes, the language should be changed from 'race' to Aboriginal and Torres Strait Islander Peoples.
- Can the Commonwealth powers be used as a positive?

Group 2 - Prohibition on racial discrimination

Spokesperson – s47F

- Important for Aboriginal people but should we also include other non-Aboriginal peoples?
 - Benefits of including others:
 - Discrimination is discrimination regardless of where you come from
 - A better chance of success if other people are involved, and
 - Potentially more opposition if just Aboriginal.
 - Risks of including others:
 - Make it harder to get up.
- More power if included in constitution:
 - If not, it can be easily set aside, and
 - We trust judges more than politicians.
- Need an education process for non-Indigenous people.
- Could it be used for positive discrimination?

Group 3 – A Statement of Acknowledgement

Spokesperson – s47F

- The statement should not be in preamble as this would be tokenistic. It has to be in body of the Constitution.
- Is the statement the first step to a Treaty?
- A Statement should recognise:

- Right to self-determination
- The fights of our old people, and
- We've never ceded sovereignty.
- A Statement should acknowledge:
 - Us as First Peoples/Nations (language is important!)
 - Sovereignty
 - Land and seascapes, and
 - Lore.
- Must include the concept and language of 'ownership'.

Group 4 – A voice to Parliament

Working Group Leader – S47F (with assistance from scribe S47F)

- The Advisory Body must be included in the Constitution, and it must:
 - have teeth – has to be stronger than 'advisory', potentially 'advocacy', and
 - have permanency – must be funded and changing it must be very hard.
- Could have an international voice?
- Would have to be better than ATSIC.
- Have to design the representative selection process right.
- Designated Senate seats ... but... are they slave to party politics?

Group 5 – Agreement Making/Treaty

Working Group Leader – The whole group presented back to the Plenary

- Vs constitutional recognition – Treaty is the best form of recognition.
- Treaties are already possible without constitutional change.
- Where do we start and who with?
 - Beginning process in constitution
 - Benefit: government brought in
 - Risk: we are enclosed by government
- Needs rights to land and sovereignty – not just constitutional recognition.
- The 7th state concept of a defined territory in Australia made up of Aboriginal-owned or native title lands; an elected Assembly with powers of State governments; having its own constitution; etc.
- Need to look at the international community, learn from best practice.

Following the presentations there was a short group discussion on some of the issues raised above.

For the final plenary session S47F asked participants to re-form the working groups to evaluate the options. Groups were asked to consider the following:

- What could a package of reforms look like?
- What do we want?
- What don't we want?

Each group reported to the Plenary on their discussions. An overview of the discussions found the following:

Group 1 - Working Group Leader - s47FWhat we want

- Designated seats in the Senate.
- An Aboriginal elected body.
- Prohibition of Racial Discrimination.
- Treaty within the Constitution.

What we don't want

- Not to be in the Preamble, it is a tokenistic gesture.

Group 2 – Working Group Leader – s47FWhat does the package look like?

- Deciding on wording to include in the constitution that enables us to sign a Treaty.
- Treaty included in the Constitution process.
- A Treaty Commission.
- Would consider all five proposals.
- Support the idea of designated seats in parliament, but are aware of the issues.

What we don't want

- To wait for Constitutional Recognition before we start working on a Treaty.
- Treaty being separate to Constitutional Recognition.

Group 3 – Working Group Leader – s47FWhat does the package look like?

- All five proposals. They are interconnected so important to have them all in the package.

Group 4 – Working Group Leader – s47FWhat does the package look like?

- Leave Treaty out of the Constitution.
- A voice to parliament.
- Statement that Aboriginal people are the first and original owners of the land that is known as 'Australia'.
- Additional clause '116A'.
- Additional sub section explaining who determines what 'disadvantage'.
- Section 51 XXVI.

Group 5 – Working Group Leader – s47FWhat does the package look like?

- Use this Constitutional Recognition process to progress Treaty negotiations.
- Law making power, but not giving up Sovereignty.
- Recognition in the body of the Constitution

- Include treaty making in Constitution.
- A voice to Parliament.

What we don't want

- Slack, meaningless words, ie. Prior, acknowledgement, recognition. We want strong words ie. First Nations People.
- No statement in a preamble.
- To diminish our Sovereignty.

A complete list of the working group considerations can be found at [Attachment B](#).

Following the groups reporting back to the Plenary, s47F provided an overall summary of the day's discussions. The participants were widely supportive of s47F overview. The summary was then used to form the basis of the draft Communique.

Day 2 – Meeting closed at 4:30pm

Day 3 – Meeting opened at 9:00am

s47F opened the final day by welcoming participants back to the meeting and invited Referendum Council members s47F and s47F to address the crowd on viability and feasibility of models, and an overview of the recent discussions with the Prime Minister, Leader of the Opposition and Indigenous parliamentarians on their views of the proposed models.

The group discussed the information. There was a sense it would have been useful for this information to have been provided on the first day, so it could inform the working group deliberations. Participants noted it was important to not lose heart and that significant change would be challenging but worth fighting for.

s47F led the group through the session on finalising the Communique. A draft Communique was shown to participants, and s47F went through each drafted section. After some minor amendments unanimous agreement was reached (see Attachment A).

The final session was the election of the 5 delegates to attend the National Indigenous Constitutional Convention at Uluru. Participants were asked to nominate during the meeting. Once nominations closed, each nominee was given 1 minute to present their case for selection. Then each participant was given a voting sheet and voted for their 5 preferences. s47F was the Returning Officer, with assistance from the legal advisers s47F and s47F. The 5 participants elected were:

1. Mr s47F
2. Ms s47F
3. Mr s47F
4. Ms s47F
5. Mr s47F

The participants were also advised that the two Convenors, five Working Group leaders and S47F (as a member of the Key Indigenous Leaders group) would also be invited to the National Indigenous Constitutional Convention.

Meeting closed at 1:00pm.

Attachment A**Hobart Communiqué**

The delegates of the Hobart dialogue affirmed that a discussion of constitutional recognition could only take place simultaneously with a proper consideration of Treaty.

Treaty

The delegates of the Hobart dialogue are all firmly committed to pursuing Treaty. Treaty needs to recognise amongst other things sovereignty, a land and a financial settlement, and recognition of rights. A treaty-making process would need to have an agreed timeframe. There was agreement that a treaty proposal must be discussed at Regional Dialogues, included in the final report from the Referendum Council, and put into legislation, but not included in a referendum proposal.

Statement of Acknowledgement

It was a unanimous view of the Hobart Dialogue that a Statement of Acknowledgement, without being accompanied by substantive changes, would be unacceptable.

Law-making power

The delegates of the Hobart dialogue agreed it was preferable that the Federal Parliament be first required to seek consent of Aboriginal and Torres Strait Islander peoples before such laws are made.

There was a pragmatic acceptance for ensuring that the Federal Parliament has the power to make positive laws for Aboriginal and Torres Strait Islander peoples. Provided that any amendment is accompanied by a limitation that protects against adverse use of the power, there was also strong support for the removal of the term 'race' and support for it to be replaced with 'Aboriginal and Torres Strait Islander peoples'.

Racial non-discrimination clause

There was support expressed for a racial non-discrimination clause, although there was ongoing debate about whether a non-discrimination clause should protect all racial groups, or be limited to Aboriginal and Torres Strait Islander peoples. The delegates recognised that a non-discrimination clause would need to be qualified by an exception for positive laws affecting Aboriginal and Torres Islander peoples.

Voice to Parliament

A powerful representative body for Aboriginal and Torres Strait Islander peoples protected in the Constitution was supported, and there was a consensus that the body must be stronger than just an advisory body to Parliament. There would have to be a process of selection to ensure the body is properly representative of Aboriginal and Torres Strait Islander people/s, and therefore legitimate. A number of delegates also supported reserved parliamentary seats.

Attachment B

Reporting of Plenary Session Two

Group 1 - Working Group Leader - S47FWhat does the package look like?

- Aboriginal Elected Representatives
- Nominator roles in Senate from each State and Territory (Designated seat in the Senate)

What we want

- Designated seat in the Senate
- Aboriginal elected body – must have within a timeframe
- Racial Discrimination Act
- Treaty within the Constitution:
 - Human rights
 - Cultural rights
 - Land rights
 - Sea/ocean rights
 - Broad terms

What we don't want

- Not to be in the Preamble, it is a tokenistic gesture.

Group 2 – Working Group Leader – S47FWhat does the package look like?

- International conversations
- Deciding on wording to include in the constitution that enables us to sign a treaty
- Include Treaty in the Constitution process
- A Treaty Commission
- International cyber space network 'teangi'
- Look at '5'
- Law making powers
- Probation or racial discrimination
- Be positive

What we want

- We support the idea of designated seats in parliament but are fully aware of the issues associated with that.

What we don't want

- To wait for Constitutional Recognition before we start working on a treaty

- Treaty being separate to Constitutional Recognition.
 - Who will Government talk to and work with?
 - Constitutional Recognition could be the platform to give us the capacity to start negotiations.

Group 3 – Working Group Leader – s47F

What does the package look like?

- All interconnected so important to have all
- Click them all together
- Strengthen each other

What we want

- All five proposals.

Law making power

- The law power should only ever be used for the benefit of Aboriginal power.
- Risk if power is removed and returned to the State.
- Language around 'race' needs to be changed

Prohibition on racial discrimination

- Should be a clause to protect from discrimination
- Should be inclusive of other cultures
- Should be only for first peoples – we have been here for over 40,000 years versus other cultures of 50 years

Statement of acknowledgement

- Don't agree with acknowledgement as whole but want to be included so need to have forward thinking
- Must be in body of the Constitution
- Don't shoot ourselves in the foot by not including ourselves

Voice to Parliament

- Concerns about the detail sits with Parliament no Aboriginal community
- Members view doesn't support the provision in Constitution
- Parliament can use to their advantage or disadvantage as required

Treaty

- Treaty versus Constitutional Recognition
- If words are wrong how do we change it or have we lost our chance at treaty?
- Terminology is most important and clear not open to interpretation
- A view that treaty and Constitutional Recognition should go in hand

Group 4 – Working Group Leader – s47F

- Take clause 25 out

What does the package look like?

- Leave treaty out of the package
- Australian broader population will not agree for 'other' changes
- Treaty needs to be dealt with separately
- It might not be interrupted the way we want if too in the future
- For the old people/Elders is important to be recognised (mixed opinion)
- Constitutional change is the first step (mixed opinion – one does not agree)
- Funding for Treaty
- Voice to parliament
- Important to be heard but priority is changes to Constitution and starting a Treaty
- Language/worded legally

Package up to Commonwealth

- Needs to be careful of language, timing and delivery

What's going in the 'package'?

- Statement that Aboriginal people are the first and original owners of the land that is known as 'Australia'
- Additional clause '116'
- Additional sub section explaining who determines what 'disadvantage'
- Section 51 XXVI

Question: Would one replace the other?

Group 5 – Working Group Leader – S47F

What does the package look like?

- Use this Constitutional Recognition process to progress Treaty negotiations.
- Our focus is 'us', our people.

What do we want?

- Law making power, but not giving up Sovereignty
- Recognition in the body of the Constitution
- Include treaty making in Constitution
- Must be comprehensive, not just 'prior' owners
- Two treaties (State and National)

What we don't want

- Slack, meaningless words, ie. Prior, acknowledgement, recognition
- We want strong words ie. First Nations People
- No preamble

- To diminish our Sovereignty

Voice to parliament

- Yes, we need strong voices, not advisory
- Include in Constitution
- Must be representative and decisive eg. Saami parliament
Question: How did the Saami achieve this?
- Must be independent of government
- Must be permanent
- Financially secure e.g royalties
- Better than ATSIC
- Enact thru Parliament
- The body could have multiple ways of having voice/s eg. Senators (12)
dedicated seats, representation proportionate to population.

Treaty

Treaty must include:

- Land and sea rights
- A fixed percentage of Gross Nation Product. Rates/land tax/royalties
- Right to self determination
- Timeline to achieve
- Aboriginal control

BROOME DIALOGUE, 10-12 February 2017
Referendum Council

DAY 1 – 10 February 2017

“Reform? We’re the most reformed people in this country. What I want to see is government reform. A lot of our words fall on deaf ears.”

On 10, 11 and 12 February, 100 delegates from Kimberley and Pilbara met in Broome at Notre Dame University to discuss constitutional recognition:

1. What would your region or community look like day to day, week to week, if there was proper recognition?’

Several delegates expressed education as a priority, both mainstream education and the continued cultural education for our people. Some emphasised that Indigenous studies should be compulsory – including teaching language, culture and dance. Also mentioned was the need to generate greater understanding of our people and our history across Australia. The massacres were referred to many times across the dialogue.

“Indigenous studies and language should not be optional but compulsory.”

There was call for a State language policy to preserve and maintain languages.

“The languages of the Pilbara and Kimberley are the most at risk of becoming extinct in Australia and the world. Within 100 years of occupation, the Pilbara lost 7 of 31 languages.”

“If we lose language, we lose our culture and our communities.”

Delegates called for equality and equitable access to basic human rights, including access to running water and power in regional communities. Small towns should have the same amenities as big ones as this enables connection to land and culture. There should be equity and equality for Indigenous women. And a bill of rights in the Constitution so people can fight for them in court.

Looking forward, delegates expressed a yearning for independence and the need to move away from dependence on government funding. Recognition was linked to economic development and self-sustainability of communities. Business development and increased employment for Aboriginal people were identified priorities, so too economic development for Indigenous women.

“We’ve been living off handouts for far too long. I want to see business development and self-sustainability.”

There was a call to hold an internal inquiry into abuse in communities with a real opportunity to do something about it.

BROOME DIALOGUE, 10-12 February 2017
Referendum Council

The right to practise and preserve Aboriginal law and culture was said to be all important. There needs to be recognition of the Dreaming system and law in the Constitution and the whitefella system.

When communities engage with government, it was said there should be a substantive acknowledgement (not tokenistic) of the rightful place of Aboriginal people in this country as first nations – recognition of language groups and of legal systems – and that people never ceded their sovereignty. There is a potential for two sovereignties to co-exist in which both western and Indigenous values and identities are protected and given voice in policies and laws.

“Our ancestors never ceded their sovereign rights“

There was a call for incorporation of the principles of self-determination in the UN Declaration of Rights of Indigenous Peoples (UNDRIP)

There should be Aboriginal political representation at all levels of government: national, state and local. People should have a say in Indigenous affairs. The government should not be able to make laws to the detriment of Aboriginal without their approval.

“Tired of blanket policies and funding.”

"Recognise the power of TOs to say no."

"Us as the first people need to be at the forefront of discussion with government."

A treaty or treaties that protect land and water rights and provide for compensation are needed. ILUAs and other agreements that already exist should be protected in the Constitution against the State government changing them without the agreement and consent of the Aboriginal group that signed them. And the Constitution should allow people to expand on those existing agreements and move into comprehensive settlements that can be enforced in the courts. Another view was that treaty might be a 'lesser' form of recognition at this stage until sovereign recognition is achieved in the Constitution.

The language of 'disadvantage' needs to stop, and so does the discrimination on the street and at work.

“I’m tired of Aboriginal people being labeled as disadvantaged and vulnerable.”

"I want to go to the shop without being stared at."

A delegate said we should stop the mining on our land to preserve it for the next generation. It is important to give people a better form of land tenure and more control over their country. There is also a need to preserve the programs that are working like the various ranger programs.

“Stop mining on my land“

BROOME DIALOGUE, 10-12 February 2017
Referendum Council

An Indigenous head of state: This was said to be a way to acknowledge Indigenous peoples as the original owners.

2. General discussion on options for recognition and reform

Statement of acknowledgement

The group believed there should be some statement recognising the 'First Nations' or 'First Peoples' as opposed to 'Aboriginal and Torres Strait Islander' or 'Indigenous' people.

There was considerable discussion about strategy, particularly about how the statement might interact with the other proposals. There was a general sense that a statement by itself would not be sufficient, especially if it had no legal power. Another key consideration was about where the statement should go. Having the statement in the preamble, although not legally binding, would set a strong opening statement about First Nations/Peoples in the nation's founding document. It may also make sense to place it as an introduction to the other provisions, to ensure they have the right context about why they are important to First Nations/Peoples. There is also concern that having a statement in the constitution might make some people wary about ceding their sovereignty. It might be better to place the statement outside the constitution so that support for the other provisions is not jeopardised.

Head of power

The head of power should be limited to making laws only for the benefit of Aboriginal and Torres Strait Islander peoples. Several ways to achieve this limitation were discussed including a racial discrimination prohibition, adapting the language of 51(xxvi) to limit the power, and a provision requiring consultation and agreement with communities as to what constitutes 'benefit'.

Removal of the term 'race' and replacing it with 'Aboriginal and Torres Strait Islanders' was seen as calling a spade a spade.

Racial non-discrimination

The group believed that any racial discrimination prohibition should be inclusive clause – not just limited to Aboriginal and Torres Strait Islander people.

The group is aware that such a provision carries a risk of misinterpretation by courts and law-makers. This risk could be reduced through pairing with an Indigenous voice to parliament.

BROOME DIALOGUE, 10-12 February 2017
Referendum Council

From a local standpoint, the group wanted to suggest a measure that prevents states from watering down legislation – as has been the case with native title legislation. They also called for the simplification of native title process, which could lead to the creation and protection of commercial rights and economic development of peoples. Again, negotiation on equal terms with the government was emphasised.

Indigenous Voice to Parliament

There was discussion about where the body would sit in the Parliament, whether it would be better focused in the House of Representatives or the Senate, or both. Someone suggested that the Parliament would need to be compelled to respond to the advice of the Parliament.

It was suggested that the body would be able to stand up and put forward information on Indigenous issues, with consistency across governments. The body would not have to stick to the “party line”. The body could interact with the head of power (s 51(xxvi)) as an assurance that laws enacted for Aboriginal and Torres Strait Islander peoples are for their benefit, although it was noted that the body would not provide a guarantee of this.

The group discussed what the difference would be between this proposal and other ‘advisory’ bodies that already exist, and the importance of having the body constitutionally protected, to prevent it from being abolished, and the constitutional right to have the advice of the body tabled in Parliament (publicized), and how this could be used to generate political pressure. It was discussed how else the body could leverage political power – publicity of advice, lobbying, the media – and also the possible advantages of giving the body the right to address the Parliament, and that having a voice recorded in Hansard (public record).

It was also discussed how the body could be a vehicle through which to achieve other things – such as Indigenous representation in the Parliament itself. For example, it was suggested that the body could appoint Indigenous MPs (designated seats), or be the start of a new political party.

The group thought it would need to be clear about what the purpose of the body is, to make sure the government doesn’t use it against us.

How do we make the body relevant to the wider Australian community? It might be associated with ATSIC, which has a negative perception in the community.

There was a strong view that the body must not be appointed or handpicked by the government. There was a strong sense that the body needed to be elected, although this might be through existing structures such as PBCs, or other Indigenous organisations where no PBC existed. The body needs to be endorsed by existing Indigenous organisations and have the authority to speak on behalf of mob. It needs to be endorsed by mob. The body must also be able to ‘walk the talk’, have credibility with government to convey the message effectively. The members elected should be actively involved in their community and be able to answer the question “What are you doing in your community?”.

BROOME DIALOGUE, 10-12 February 2017 Referendum Council

The body must be supported – with a budget, with experts (eg, through a supporting secretariat) and with lawyers.

The body might be able to be involved not just in providing advice on laws, but also co-designing policies and service delivery – in areas such as health, education, housing, social issues – and evaluating service delivery – education, health etc.

There was concern that the word 'advisory' was a 'tokenistic term', and if we want the body to have more functions, the language should reflect the functions. Language is important here. A point was raised that giving the body an Indigenous name could be difficult, because a word in one language can mean something different in another language, and the definition might be obscured. Might be better to adopt neutral language such as the 'Assembly of First Nations'.

Agreement-making

It was noted that agreement-making is already happening in the native title space but what people are interested in is agreements that can't be overturned 'by the whim of government'. One WG member pointed to the strength of State Agreement Acts and the ability of miners to secure their position under SAAs.

It was recognised that in order to get government to enter strong agreements there needs to be a trigger point. In the case of James Price Point it was the economic need the State had for a development to proceed.

As the Commonwealth and States move into a National Partnership Agreement arrangement, the suggestion was made that rather than bilateral, that agreement could be trilateral and involve Aboriginal people as a third party.

The problems mentioned by people about how business is done by government at present pointed to areas that could be improved by agreement making between government and Aboriginal people. These included:

- lack of accountability
- uniformity ('we don't want uniformity')
- the watering down of laws and gains made in the past

People also looked to agreement-making for

- a proper say in decision-making
- recognition of authority and customary law
- guaranteed or quarantined funding so people can plan for the long term
- addressing issues that fall outside the scope of native title agreements
- a better form of legal enforcement and
- better legal protection of rights.

With any agreement it is important to build in the ability to change it by consent because circumstances change over time.

BROOME DIALOGUE, 10-12 February 2017 Referendum Council

There was a suggestion that getting an Agreement-Making Commission could help the process of achieving what people want through constitutional change: 'The body could help with the fight, pushing for whatever we want to get.'

There was a strong emphasis on heritage protection laws being watered down and an interest in whether agreement making offered a way of doing something about that.

Q: should agreement-making be in the Constitution? A: The general sense was yes. The reason for wanting it in the Constitution is because it is proper recognition of people, sovereignty and the importance of local culture, values and customary law.

It was suggested that we can't talk about agreement-making without talking about the idea of 'treaty'. It was discussed that service delivery agreements and agreements with government for the delivery of functions they provide anyway is not a Treaty.

3. Preferences for constitutional recognition

The Indigenous voice to parliament was ranked number one by 4/5 groups, either individually or in a combination with other options.

A prohibition on racial discrimination received lesser preferences. Some groups expressed the view that the option was not a priority with the feeling that it could be achieved through the combined package of the voice, and agreement making.

Amending the head of power was not a high priority but if it were amended it should ensure that laws were made for the benefit of a peoples; even if that doesn't guarantee a positive outcome from the court, it gives legislators and courts some direction.

Acknowledgement was supported by some and raised concerns for others. Those who supported acknowledgement did so on the condition it was combined with a more substantive reform.

No group put forward a single proposal as a priority. All put forward a package of proposals as their preferred option.

4. Other issues that emerged during the Dialogue:

The following are a series of concerns and thoughts of the Broome delegates:

- *“Noongar agreement has given community more power in relation to negotiating.”*
- Governments and groups shouldn't self-select.
- *“We want government to talk to mob, and spend more time with us – more than half an hour, which is what they usually do.”*
- Government policy should focus on self-determination.
- Can we incorporate compensation 'on just terms' provisions into 51(xxvi)? That is, can we provide for compensation for first nations when the government makes laws to our detriment?
- We need an Indigenous political party

BROOME DIALOGUE, 10-12 February 2017
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- The government should have a look at the change that they want to make and respect the people of this country. The people who worked as stockman for no pay, who have survived a history full of massacres and pain. We deserve respect.
- What role does the Queen play in this?
- *“They’re putting everything out, except for the money.”*
- *“We have been kicked around pillar to post.”*
- One delegate raised the possibility that Aboriginal and Torres Strait Islander peoples need to make this a bigger movement around race. Bring other groups together.
- *“Sovereignty creates values and your identity; and from that we get our laws.”*
- We need to create unity across Indigenous people to be able to fight.

We need to stop the white government conquering and dividing our people and our families.

DUBBO DIALOGUE, 17-19 February 2017 Referendum Council

On 17, 18 and 19 February, invited delegates and self-nominated attendees met in Dubbo, on Wiradjuri land, to discuss constitutional reform. The participants were not fully representative of the First Peoples and Sovereign First Nations of regional NSW due to time and resource constraints.

TWO PRELIMINARY ISSUES:

The importance of language: Throughout the dialogue, delegates emphasised the importance of using the right language. In this record of meeting, we have used the words ‘Aboriginal’, ‘Indigenous’ or ‘Aboriginal people’, unless delegates have specifically used the language ‘First Nations’ or ‘First Nations people’. However, delegates expressed their views that the classification as “Aboriginal” is a form of oppression and represents ongoing colonisation. There was a general preference expressed in the dialogue for the language of “First Nations”, “First Peoples”, “Sovereign First Nations” or “Sovereign Peoples”.

“We need to be sure that our identity is the first and utmost priority that is given recognition to. I am not an Aboriginal woman. That is a classification by a white man. I am a First Nations woman of this country.”

The importance of process: There were concerns raised about the legitimacy of the process by which delegates were selected to attend the dialogue, and a view was expressed that every nation should have been invited to the meeting, and that the meeting should have been an open forum. There were also concerns around the authority of the Referendum Council. Delegates spoke of the importance of getting the process right to establish jurisdiction/authority.

“It never comes from the people up, it always come from the top down.”

Concerns were raised about how delegates would get information back to their community before Uluru, so that they could see what mob want. The group wanted certainty that what was discussed in the dialogue would be taken to Uluru and be discussed there. Delegates need to be informed of what’s happening in the other dialogues before Uluru. A concern was raised as to whether there would be further consultation with the community after Uluru.

There was a strong feeling that the process felt very rushed, that there was not enough time to have the conversations and think through the options.

“They are not going to listen to us, they will make their own mind up, about what they want to do.”

NATION-BUILDING EXERCISE

Delegates were asked: “If your nation were to be recognised, what would it look like day-to-day?”

Power of unity: There was a strong sense that there needed to be unity across the nations. One delegate reminded the meeting that the reason that Federal Council for

DUBBO DIALOGUE, 17-19 February 2017 Referendum Council

the Advancement of Aboriginal and Torres Strait Islanders strong was that it spoke as one people. He called on people to come together again, to capture that spirit again, and made a suggestion that there be a state conference organised to tie up all of the loose ends. Another delegate said that the government takes advantage of divisions across the community. Money has been the cause of division across communities.

“We’ve got to come together. ... Unity is the word.”

“We have a power and that power is called fear. Government fears us coming together as a people.”

Another delegate spoke of the need for First Nations to recognise each other first, and treaty amongst themselves. Another suggestion was that First Peoples and Sovereign First Nations could have a referendum amongst themselves first.

The importance of fixing the issues internally within communities was raised.

“We are our own worst enemies.”

Spiritual and cultural: Delegates spoke of the spiritual and cultural things that have been stolen. Delegates spoke of the destruction of boundaries because of the forced movement of people, the loss of First Peoples and Sovereign First Nations spirituality, and the destruction of language. **And for the present and future governments to act in good faith with ethical and honest dialogue with all First Peoples and Sovereign First Nations.** Delegates spoke of the need to protect and teach language more to rebuild communities and achieve cultural revival. One group focused a lot on the need to respect and care for elders because these are the people who hold First Peoples and Sovereign First Nations lore and identity.

“They need to recognise our creators. First and foremost, recognise our creators.”

Rights and fears of assimilation: One delegate expressed concern about the government’s violation of the human rights of First Peoples and Sovereign First Nations. Another delegate spoke of the importance of inherent rights: the right to their own culture and their own way of life, and that the endpoint would be rebuilding respect for specific inherent rights through process and we have to be able to measure how we are sustaining culture within our people.

“I don’t know how we are going to survive.”

“We don’t mind being potted, we just don’t want to be melted.”

Economic prosperity: There were many concerns expressed about the need to ensure economic prosperity for First Peoples and Sovereign First Nations. One delegate spoke of the need for First Peoples and Sovereign First Nations to have independence, freedom and resources to support themselves. Some delegates were concerned about the amount of money that government and private enterprises making out of First Peoples and Sovereign First Nations land. One group spoke of the need for better

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employment opportunities in the communities, and ensuring that contractors employed First Peoples and Sovereign First Nations.

"I want our people to be the billionaires and not the beggars on our land."

"We don't want your crumbs when we own the cake"

Social issues: Delegates spoke of the need for support for housing, support for education, better health, employment and other services, funding for community programs, not having to pay rent on their own land. There was a comment that the justice system was failing First Peoples and Sovereign First Nations. One delegate spoke of the lack of accountability, transparency and legitimacy with many established First Peoples and Sovereign First Nations organisations, and the need for greater accountability against measurable standards for the welfare of the community.

"If you get sick in my community, you will die there."

"How is that helping single mum with three kids down the road."

"We need reform to ensure we can trigger a response to any sense of emergency."

Children and young people: Delegates spoke about the need for change to give children hope, to address the crisis in youth suicide, to address the juvenile justice rate. It is difficult to engage young people. One delegate spoke of the need to change to a strength-based approach, to celebrate what we are achieving, rather than approaching it from a victim, otherwise there is no hope for the next generation.

"It's not about me, you, or anybody. It's about our children."

"We need to take the football out of their hands and put a book in it."

"I'm glad we don't have young kids here, they would hear the negativity and withdraw from it."

Sovereignty and self-determination: Very strong statements that First Peoples and Sovereign First Nations people had never ceded sovereignty and never ceded their lands, waters, fires, sub-surface, airspace and Allodial Title. There was concern expressed that if a referendum were to be held, it would give the government jurisdiction, take away sovereignty, take away inherent rights. There was concern about lack of access to country. There was support expressed for a Treaty that acknowledged First Peoples and Sovereign First Nations as a sovereign people, gave them autonomy, and provided reparations for past criminal acts and compensation for present and future criminal acts.

"Australia was never lost to be found."

"The Crown is a headless hat"

Another delegate referred to summits that were held in Alice Springs two years ago in which a Treaty was drawn up, and it could provide an example of what a treaty might look like. (See **Annexure** of "A Call for Treaties of Unity").

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Acknowledging wrongs: One group stated that it was important to correct the record. Delegates spoke of the need to acknowledge the illegality of everything done since colonization, the first act aggression on first contact, the extreme cruelty and violence of the government, and the impact of the forced removals.

“When we are talking about constitutional recognition, this needs to be dealt with.”

Racism: Concerns were raised about the increased levels and sophistication of racism, and that people feel quite free and open to say whatever they like now. Police, hospitals and schools were not treating people with respect and humanity. Cultural competency needs to be enforced in agencies with advice and training.

PRIORITIES FOR REFORM

There was a strong consensus across all groups for a treaty. Treaty was seen as the best form of establishing an honest relationship with government. One group indicated that through a treaty the other options might be achieved. One group expressly said this must be pursued outside the constitutional reform process, and could be pursued together with constitutional recognition through a voice to Parliament and a racial discrimination clause.

There was also support for the voice to parliament, with two groups prioritising this option. There was a strong view that the Indigenous body must have real power: a power of veto and the power to make a difference.

“If this Voice to Parliament doesn’t have enough power to force the adoption of the 339 recommendations of the deaths in custody report, don’t bother, because it doesn’t have any power.”

“We need a Black Parliament”

One group commented that if a prohibition on racial discrimination was supported, it must bind the Commonwealth Parliament. A Bill of Rights would stop the discrimination against anyone.

There was strong disagreement expressed for a tokenistic constitutional recognition package. One group said *“acknowledgment is not enough.”*

If it has no legal effect, it’s not recognition.

There was not much discussion of the importance of changing the head of power. One group said that the head of power should be left alone.

FURTHER OBSERVATIONS:

- There was a suggestion made about challenging the legality of colonization, perhaps through class action, or making an appeal directly to the Crown.
- One delegate spoke of the danger of relying on government appointed bodies and the need to be activists and negotiate with government that way.

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- There were a number of comments made about how disempowered many people felt.

“People like us have been shoved on the political scrapheap.”

“If we give the government a flat tyre, they just pump it up again.”

Other comments:

“That Constitution we have in our bags. It’s a dud. It’s not meant for black people.”

“Reconciliation is a waste of time and money.”

“Community have all the need, government have all the money.”

“FEAR IS STOPPING US”

“We are unique. We should look to our own traditions, culture and laws to develop a model.”

“We are not part of multiculturalism, we are the First Nations.”

DARWIN DIALOGUE, 22-24 February 2017
Referendum Council

On 22, 23 and 24 February, delegates met in Darwin on Larrakia country to discuss constitutional reform.

1. Nation building: What would your region or community look like day to day, week to week, if there was proper recognition?

The meeting discussed a broad range of issues relevant to the issue of constitutional recognition. This includes sovereignty, treaty, powerlessness and racial discrimination. Delegates expressed a need for protection from discrimination in the Constitution to protect them from detrimental use of the Territories Power (s122 of the Constitution) citing the Northern Territory Emergency Reponse (Intervention). The territories power makes the recognition and reform issues a unique legal problem specific to the territories.

Delegates to the meeting emphasised the importance of the land, our waters and seas, our ancestors, our knowledge, our culture and our lore.

We're not here speaking for ourselves, we're speaking for our land.

*We want to stand with pride and dignity with our culture, spirituality and lore.
 We are sovereign people.*

We have to do what we can to protect our own lore.

The indignity of Aboriginal human remains in overseas museums and institutions was raised and the repatriation of human remains is a continuing challenge for Aboriginal people:

We want the bodies of our ancestors returned to us from overseas. They're the missing pieces of us. Makes you cry.

Many Delegates expressed the view that this process of Aboriginal dialogues was building on the struggle of the old men and women that had gone before us:

The old men and women were carrying fire. ... Let's get that fire up and running again.

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Referendum Council

The government will always try to find a way to break you or beat you down. That doesn't mean that we're any weaker as Indigenous people because we lost. We've only lost in their eyes, they don't know what we have underneath.

I'm pretty emotional on this issue. I've been with it for a long time. It's unfinished business. We have to stay focussed.

The question here is why are we all talking, our past elders have been through this. Now it is up to us.

It was acknowledged that 1967 referendum was recognition. And the Mabo decision was recognition.

My big question – why are we going for the constitution? I've already been recognised. 1967 was recognition. Mabo was a form of recognition. The apology was recognition.

I look at when they said 'Sorry', yes, it was a great acknowledgement, and helped through healing process but if we don't educate the country, we'll be back in 25 years doing the same thing.

There was a very strong feeling that the true history of Australia, the massacres and frontier killings, the stolen generations and other stories of how First Nations peoples have contributed to protecting and building this country are not taught in Australian education institutions.

We have to fight for black and white. Mabo said to his son – let's fight for black and white. His son asked, but why are we fighting for whitefellas? And Mabo said, because they are blindfolded, we need to open their eyes and let them recognise that we were in this country before them.

Australia must acknowledge its history, its true history. Not Captain Cook. What happened all across Australia: the massacres and the wars. If that were taught in schools, we might have a one nation, where we are all together.

We have a Prime Minister who recently said at the Port Arthur massacre that it was Australia's worst massacre, but I'm not sure whose history lesson he went to.

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The national curriculum must include Aboriginal history, language and culture. A number of delegates suggested including Aboriginal history and affairs as a compulsory (core) subject in the school curriculum, for black and white Australia. It was stressed that it was important for First Nations people to teach their kids as well.

These really important discussions are not happening in our communities. We don't see those timelines in our schoolrooms, in language, in translation.

Across the dialogue, there was widespread mistrust of governments past and present. The delegates acknowledged the importance of the right to self-determination; some groups discussing the loss of community control and community decision making. Many delegates recalled the international norm of Indigenous peoples right to self-determination and the right to create their own institutions such as an Indigenous Parliament.

I am sick of these governments. All they have ever done is steal our country. This land belongs to the First Nations of this country. You have a lot of imposters in Parliament – they are not the sovereign peoples of this country.

Let's make our own constitution, the Yolngu Constitution. We've been too much pushed around by their constitution. We've been pushed around like a leaf when the tide goes out and the tide comes in.

Delegates raised the idea of an First Nations Parliament, this would include elected representatives, power to draft legislation to take to the Australian parliament, veto powers and lobbying. An First Nations Parliament would provide both symbolic and substantive recognition. The United Nations Declaration on the Rights of Indigenous Peoples was suggested as an important standard that should underpin the process.

Communities have been stripped of their funding and now there is a lack of control over funds and decision making by Aboriginal people and communities:

We are living within a system that is not geared towards advancing our mob. For example, the ABA fund has an Indigenous board that considers applications from different groups, but then the Minister can accept or choose to ignore recommendations from that board.

Delegates expressed disempowerment by government policies because of the withdrawal of funding and community control. The provision of core services to remote communities needed to be provided in a culturally respectful way. Many community organisations had lost funding to mainstream NGOs particularly after the amalgamation of local councils and, the Indigenous Advancement Strategy.

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There was a perception that Northern Territory Housing is not serving the needs of Aboriginal people. Homelessness, housing and overcrowding was highlighted as a major concern at the meeting. There is a strong desire for community control over social and public housing. Some delegates suggested independent Aboriginal community controlled housing peak body.

Health was also raised as a fundamental ongoing challenge for communities. There are not enough rehabilitation facilities for our people who have substance abuse and mental health issues - particularly in remote communities. The mainstream rehabilitation centres lack cultural understanding. There is a demand for dialysis machines in remote communities and bureaucracy is a roadblock to the provision of these machines in communities where sick people don't want to leave their family to get treatment. Having to leave family to seek treatment may compound the illness.

We need a better health system, a better education system.

We are suffering and dying

The system has failed us miserably.

Services aren't there to help. It's getting worse.

A number of delegates spoke of the importance of taking responsibility and power for protecting children, as well as educating them about their own history.

Too many children are in care, the jails are filling up.

Delegates raised concerns about the rate of removals of Aboriginal children into non-kin out of home care.

We do not have safe communities. Our children are not in safe places.

Sick and tired of them taking our children away, still.

Children are being stolen from their families

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Treaty was the subject of discussion. There was mixed opinions as to desire for treaty at this point in time. The different views surround how to get there. If a treaty were to be pursued, its terms would rely on the mutual agreement of the First Nations and government.

There was a call for unity across Indigenous communities.

We talk but our voices are not being heard, we need to come together.

We are coming together here as one voice. Not individuals here, but one voice. We are all blackfellas.

We have all got to be on the same level. We all have cultural authority. We need to be one nation, one voice.

We're treating our own mob how they treat us.

There was a call for greater involvement of young people in the movement.

Is there an opportunity for young people to have their say on this issue? This is about their future.

We're making a pathway for young people.

People were concerned about the process after Uluru. People did not want to be rushed but they are feeling rushed.

2. Preferences for constitutional reform

Delegates preferred the word 'reform' to 'recognition'.

The Voice to the Parliament was regarded by all groups as important. If constitutional reform was to occur there was support for a package of strong constitutional reform. A majority of the groups ranked a Voice to the Parliament as a priority in any reform package. Most groups, although not all, thought a guarantee against racial discrimination by the federal parliament was a necessary component of a reform package. Although one group said that combating racial discrimination could be achieved by the First Nations body or Voice to the Parliament.

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As an overarching aspiration, the Treaty was regarded as important. This could be achieved inside or outside the Constitution. It was emphasised that any treaty negotiating framework developed in the future needs to be enshrined in the Constitution to protect against governments making legislative changes.

One suggestion was a package including the Voice to Parliament and the prohibition on racial discrimination along with the changes to the head of power – the use of which would be limited to beneficial use because of the inclusion of the other two options.

It was suggested that a lot of things could be achieved through the Voice to Parliament, including support for treaty-making by First Nations, but it would be important to ensure that the Voice to Parliament was elected and connected to the community, and properly resourced:

We are First Nations people and we have to have a voice.

The English interpretation of the word 'culture' does not cover the full reality of Aboriginal and Torres Strait Islander spirituality and the significance of connection to country. Culture is a very broad term and often over generalised.

One group suggested that in the Northern Territory, it may not be as important to change the head of power in s 51(xxvi) because the Commonwealth can also make laws under the territories power (s 122); however it would be essential to have a racial non-discrimination clause (s 116A) to limit the federal parliament's power to pass discriminatory laws.

No group supported the statement of acknowledgement on its own without stronger reforms at the same time.

There was a suggestion that the statement of acknowledgement should be changed to be called a 'veracity statement' or 'truth statement', and it should acknowledge the history and truth, including the history of massacres and wars. If a veracity statement was prepared from Uluru it could be a tool for education and persuasion across the wider community towards a referendum and a package of constitutional changes. Such a statement might draw on the Barunga Statement and other earlier documents of that kind.

Something in the preamble is just like an afterthought

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There was also a suggestion by one group that a Bill of Rights should be considered.

3. Other individual comments:

A Bill of Rights should precede constitutional reform.

I am not a supporter of the Recognise campaign. They are not a grassroots campaign. It is a mainstream brand. They have a lot of money and here we have a council [the Referendum Council] struggling to get the funds to bring the community together. There should be an army behind this council going from community to community. As far as I'm concerned, Recognise should be scrapped and the money devoted to this process.

Get the Indigenous Advisory Council to resign. They are handpicked people who don't represent us.

For the last 50 years we've had countrymen down south who talk for us. We're grateful for that but today, now, we in remote communities want to be involved in consultation with governments. We can't be left out. We want our voice to be heard.

I hope they don't go along the lines of separating the Aboriginal peoples across the nation. I want to stay as a collective and talk as a collective.

I don't trust this government to do the right thing.

Statehood is an important consideration in the Northern Territory and there was discussion about how it relates to a debate over changing the Australian Constitution. Is Statehood an opportunity here in the Northern Territory to set new standards for the country?

Statehood is a real opportunity to be world changers, about how we set up and participate in governance of our patch.

STATEMENT OF RECORD PERTH DIALOGUE, 3-5 March 2017

On 3-5 March 2017, delegates met on Whadjuk country of the Noongar Nation to discuss constitutional reform.

There was a strong commitment to the importance of First Nations governance and self-determination through customary lore, heritage, language, culture and spirituality, and therefore it is imperative to protect and teach the next generation to give them the strength to lead and govern.

"We need more input from Elders, we used to have Elder's councils in the past. Family structures have been lost, we go back to our own homes. We need to build more cultural aspirations and togetherness."

One delegate emphasised that Western Australia was a large state, and that there was lots of diversity across the regions, with different cultural practices.

The ongoing trauma and impacts of the Stolen Generations continues to be strongly felt by many delegates at the dialogue. Many delegates also referred to their resilience.

"There's a lot of sad stories from the stolen generations: genocide, abuse. And none of the people will be brought before the justice system for the abuse of those children."

"Our country is our university. We have learnt through the leaders of the Pilbara Strike, we have learnt from the stories of our big sisters, our mothers, how to be proud of who we are. Many of us have been split up because of welfare, we've been taken away as wards of the state. Through the connection of our natural instinct, intellect, we've gone back home."

Delegates spoke of the continuing devastating impact that the government's policies in relation to child welfare have had and continue to have on communities and children.

"The DCP control our families and they've taken our power away from us."

Delegates want self-determination – First Nations policies and services must be designed and implemented by First Nations people, including a First Nations education system. There needs to be support for community leaders who are doing the work in community to address social issues. There are high levels of suicide, family violence and high morbidity rates. Delegates commented on the importance of the Referendum Council processes being designed and led by First Nations peoples.

"Aboriginal specific funding and money is going to non-Aboriginal organisations. This makes us look like we are asking for handouts when we are not. There needs to be more accountability in that regard."

"We've got to continue the fight for the unwritten constitutions. We know there were 260 language groups, and in each language group there were unwritten constitutions. ... Prior to white man coming, there were 260 unwritten constitutions, rules, policies, procedures governing Aboriginal People and their lands."

The lived experience of First Nations people in Western Australia qualifies them to contribute to this discussion. One delegate explained how strong you had to be to be a First Nations person to deal with the discrimination and racism every day. Delegates spoke of institutional and structural racism in the delivery of services in First Nations communities. First Nations people are experiencing unacceptable level of institutional racial discrimination through shire councils, schools, hospitals, police, social media etc.

"Carnarvon Shire Council incited racism, claiming discrimination against them for refusing to fly the Aboriginal flag."

"The three-strike system is discriminatory. Lots of people in Carnarvon live in poverty. The only Aboriginal organisation is the AMS, and people come from everywhere to access it so demand is very high. People try to go to hospital in Carnarvon, but are being turned away and being told to go to AMS instead."

"We get rapport with police and they finally get accepted into our community, but then they are told to move along. We have had deaths in custody, failures of duties of care and responsibilities. Our young ones don't know who to go to make complaints, to go to for help."

Some delegates spoke of the importance of practical and substantial reform which empowers First Nations people.

"Unless there are practical outcomes at the end of this then we will have failed."

One delegate shared a story about when an excavator was digging into one of his community's sacred sites. When he went to confront them, they didn't even acknowledge him, *"they walked straight at me, they didn't see me, they didn't hear me, they didn't even smell me"*. He spoke about how the failure to be seen is a curse that affects First Nations people, and affects how they see themselves.

"Aboriginal people have this curse on them declaring them nothing. That's terra nullius."

Delegates spoke about the importance of reaffirming rights for First Nations people in Western Australia: land and water rights, basic rights, rights to housing, good health, medical services, aged care facilities and education. One group warned of the difficulty of reaffirming rights through constitutional reform.

"We don't have access to our own land ... We can't access special places for women's and men's business. Without our spirituality and identity we are nothing ... There needs to be a mechanism to allow these things to take place. ... We don't have access to our own sea as well."

"Constitutional reform will never give you rights. You will always have to fight for them."

Many delegates spoke of being invisible to bureaucracies and politicians and of lacking a political voice and political power. All services in the community need more accountability through First Nations control, leadership and management.

"We are First Nations of Australia and free born."

"Why does someone always have to die, or a coronial inquest have to happen for the government to take responsibility for their actions."

"People who know nothing about us are making laws for us. Our role is to provide advice and input at the end of the day; it is tokenistic. We need to be part of the fabric of society and set the agenda not just contribute to it."

"Under the Heritage Act, government agencies tell us – they try to tell us – where the boundaries are. We know where they are, we know who our families are. They should be listening to us not telling us."

Delegates spoke of the importance of language, particularly in the way in which their people were described and the importance of language to culture. There was a clear preference for use of terminology other than 'Indigenous'.

"I'm happy to see this called the First Nations Dialogue, because that's what we are."

"When we start to integrate language, old language, values, stories and our ways of being, this gives us better ways to work together."

Concern was expressed about the negative portrayal of First Nations people in the media, and how this dictates how the wider community perceives First Nations people and interacts with us.

A number of delegates expressed the importance of remembering and honouring First Nations people who had fought in wars, including frontier wars, but had not been recognised.

Many delegates agreed on the importance of unity among First Nations people, the requirement to act with strong political, cultural and spiritual leadership, and the importance of engaging and developing the next generation of young people and children. This gathering recognised and acknowledged the significant role including leadership and decision-making played by both men and women working together and through their respective business and lore.

There is a great amount of respect given to those leaders and Elders past, present and future. A number of delegates commented that Aboriginal Affairs has gone backwards, and that unity and strength is more important than ever. There was a call to reach out to the wider community to secure the outcomes we want for ourselves.

"The first thing we need to do is to come together, we need to find ourselves and to heal each other if we take this big journey. We need to find our spirit before we take this journey."

"We need to change the attitudes of everyday Australians to make them understand what it feels like to be the First Nations people."

Preferences for constitutional reform

Delegates expressed strongly that they feel unrepresented within the Constitution in its current form.

The dialogue said its priorities were a Voice for the First Nations people of Australia to Parliament and agreement-making.

The Voice to Parliament could take many forms. The Voice is connected to the affirmation that First Nations people have never ceded their sovereignty.

Groups that prioritised a change to a head of power, supported a prohibition on racial discrimination, some saying it was essential to reforming the power to prevent it being used against First Nations people.

All groups in the dialogue agreed that the statement of acknowledgement is the weakest form of recognition, and was the lowest priority. There was a suggestion that the statement should be one of 'honour' or 'significance', rather than 'acknowledgement'.

This was not in terms of whether First Nations people need to be acknowledged in the Constitution, but where effort should be focused for reform. There was support for section 51A, which contains a statement of acknowledgement.

"We've got plenty of symbolism, we need action."

The Voice to Parliament received strong support. Groups discussed the need for any Voice to Parliament to be representative of our lands and waters across Australia, building on or incorporating existing regional and local decision-making bodies, as well as to represent men, women, youth, and children. This is underpinned by our cultural authority.

One group indicated that there was a need to include a hook into the Constitution to gain momentum for meaningful change, which could be achieved through a Voice to Parliament or through a prohibition against racial discrimination.

For a number of groups, agreement-making and Treaty was a high priority, but that in terms of timing it could follow constitutional reform.

"Recognition in the Constitution will give us more authority, more clout to negotiate a treaty."

STATEMENT OF RECORD SYDNEY DIALOGUE, 10-12 March 2017

On 10-12 March 2017, delegates participated in a Regional Dialogue held in Western Sydney. This statement of record contains the general comments that were made in the plenary session from day one of the Dialogue, followed by the final preferences expressed on day two.

General Comments made on Day One of the Dialogue

The meeting strongly affirmed that Aboriginal people have never ceded their sovereignty. Some delegates said they were concerned about being involved in a process that might result in sovereignty being ceded. Some people objected to the Constitution and the basis on which it is built.

"We have never, ever ceded our sovereignty. ... People need to get serious about our sovereign rights. Not other watered down rights."

"They developed a Constitution that is not traditional to us as Aboriginal people."

"Putting us in the Constitution is going to do nothing for us."

"Section 51(26) is a race power. That race power has never given us equal rights to whitefellas."

"Before you make decisions on the constitution we need to understand what we are giving up."

A number of delegates expressed support for pursuing a Treaty because they said it would recognise Aboriginal sovereignty.

"Treaty is about sovereign rights. Treaty is about being real in sitting down and speaking to us as equals, about our customs, our country, our future, our kids' and our grandkids' future."

It was suggested that Aboriginal people wanted a "Treaty Council" and not a "Referendum Council", because a Treaty Council would talk about issues relevant to communities. The serious issues confronting communities were outlined, including youth suicide, the targeting of Aboriginal people by police and welfare dependency. Power and authority is what is needed, and that Aboriginal people need a body that "we respect" and that "is representative of us", that is not held by the government.

"I'd like a Referendum Council to look like a Treaty Council because... I'd like to see our children stop killing themselves. I'd like not to be picked off by... not even police... the paramilitary forces that control our lands."

Day to day, week to week, probably fortnight to fortnight – that's the reality because of welfare dependency, in the richest country in the world.

The solution is not in their bible."

Several delegates said that it was important to learn from the work of those who have gone before, for example from the demands that were contained in the three Yolngu petitions, including the Barunga statement, the Makaratta, Coe vs the Commonwealth, the Mabo decision, the 1938 10-point plan, as well as the *Rights, Recognition and Reform Report* compiled by ATSIC as a social justice package. Delegates believe that it was up to this generation to get involved, and to build on the work that had been done by leaders in the past. There was also a call for greater unity among Aboriginal people to move forward and not be in the same place in another 40 years.

Other delegates said that it wasn't helpful to talk about throwing away the Constitution, because it could be through recognition in the Constitution that Aboriginal people could *"hang our hat"* for a Treaty or a Bill of Rights. Another urged people to get involved and *"to take control and get us in there"*. Another delegate said it was important that constitutional recognition worked for Aboriginal people, to ensure that it includes customary and traditional law.

"Let's make it work for us. A working Constitution that works for us. We been pushed out for too long."

A number of delegates expressed concern that politicians were seeking constitutional recognition to appease their own conscience, to make the Constitution *"look nice"*, and that constitutional change will only benefit the government, and not Aboriginal people. A lot of distrust was expressed about the government and the Constitution, and that under non-Aboriginal law there have been killings, massacres, genocide, the stealing of land, the introduction of disease, and the taking of children. The question was raised as to whether constitutional recognition would diminish racism, or make any difference to Aboriginal people, or whether it would give government greater control over Aboriginal people.

Delegates objected that when native title rights came in, Aboriginal people were told by government they had to prove connection and continuation with culture, history and bloodline. Another delegate stated that the change to the races power in 1967 didn't achieve equal rights for Aboriginal people.

There was discussion about having more Aboriginal representation in Parliament. There was a concern that when this process was finished, it would be given over to the politicians, and nothing would be achieved or it would be watered down.

"We just keep fighting and fighting and fighting. We need to get black faces in Parliament so that our own mob in Parliament can fight for us and so we can get what we want through Parliament."

"There are Aboriginal People who have been elected to Parliament. But they do not represent us. They represent the Liberal Party or the Labor Party, not Aboriginal People."

It was suggested the creation of a "First Australians Party" representing Aboriginal people. That might provide a way for Aboriginal people to come together and fight together.

"Imagine if we got together, the power that we would have together."

Another suggestion was to establish an Aboriginal Parliament, and an Aboriginal Constitution. It was said that before ATSIC was abolished, Aboriginal people did have the right to make decisions for themselves. Delegates spoke of the need to assert our right to self-determination.

Another idea that was put forward was a Bill of Rights that identifies Aboriginal people as the First People of this country.

"A Bill of Rights that sits comfortably within the Constitution will give us a greater say in our own rights and where we want to go."

The need to combat racism across the community was discussed. The debate around section 18C (of the *Racial Discrimination Act*) was raised as an important factor in the discussions. Another said that if clubs have signs up about no indecent language they should have signs up that say that racism will not be tolerated too.

The majority of delegates said they found the word "Indigenous" offensive, and that they were Aboriginal people.

"We're being pushed into the mainstream because of that word 'Indigenous'."

Some were angry about the millions of dollars that have been spent by the government on 'Closing The Gap', *"but the gap has gotten wider"*. Comments were made about the need to pursue economic development, including cultural tourism. Delegates outlined the rates at which children were taken away from their families, the levels of Aboriginal incarceration, and the fact that Aboriginal women were 34 times more likely to be part of domestic and family violence. Another Delegates expressed regret that Aboriginal kids are not getting proper educations, and he spoke of the need to educate and protect Aboriginal kids to be leaders of the country. Delegates spoke about deaths in custody and the government *"taking our children and ripping our families apart"*.

Some spoke about the possibility of having a "La Perouse" statement, that reflected the impact of colonisation on that community.

"Dispossession started there. The first Stolen Generations started there."

The preferences of the Dialogue

"It shouldn't be about what they want, it's what we want."

A number of groups noted that it was important for Uluru to take a strong position from which to negotiate. Some of the groups also spoke about the importance of the process after Uluru. Other suggestions were that after Uluru, there should be a process for the delegates to have a right of reply to the government's response to the report and for the proposed wording of the referendum question to be approved by the delegates.

A First Nations Voice to Parliament that is constitutionally guaranteed was prioritised by several groups, with a view expressed that it was *"crucial"*. For example, it could ensure laws are scrutinised by Aboriginal people. There were suggestions that this could be achieved either by establishing the designation of seats for Aboriginal people in the Senate and an Aboriginal Parliament that represents communities across the country.

A number of groups also supported a prohibition on racial discrimination, one group saying *"it needed to be dealt with first and foremost"*. There was wide support expressed for a constitutional Bill of Rights in Australia that would include specific protections for Aboriginal people's rights.

There was extensive discussion at the Dialogue of the statement of acknowledgement. There was a suggestion that a statement could be included on two conditions. The first is that it must be a strong statement, not of "acknowledgement", which was seen as an inadequate word, but a statement of "inherent rights" or of "ownership". The second is that it should be included as part of a package of reforms, for instance, that included a change to the head of power and a Voice to Parliament; or a racial non-discrimination clause. One group expressed the view that the statement of acknowledgement should be taken off the table because of uncertainty that it could be a tokenistic gesture, or that it may impact on sovereignty.

There was no consensus view across the groups about whether to delete, change, or leave the races power (section 51(26)). There was a strong view that there needs to be strong ways to prevent the Commonwealth government passing racist laws. The delegates wanted more information about the implications of deleting or changing the power.

While there was strong support in many of the groups for pursuing Treaty negotiations, there was no overall consensus as to how this could be achieved. There were suggestions that this could continue in parallel to pursuing constitutional reform, or that it could be achieved or strengthened through constitutional change,

such as through the inclusion of a Voice in Parliament. Some people stressed the importance of treaties with government at local or community level and also spoke about the possibility of a national one. Treaties with States were also discussed, but it was pointed out that cultural boundaries do not align with State boundaries. People also spoke about the importance of treaties made between first nations.

One group also suggested that dealing with questions of *“truth and justice”* had to be part of the process of constitutional reform.

Some concerns were expressed that if a package was chosen, even though the different options might work together and strengthen each other, the weaker options might be cherry-picked by the politicians, watered down, and the government might pursue a minimalist approach.

Other comments

A number of delegates expressed different concerns about process. There were concerns expressed about the work of the Recognise campaign, for example, that there was lots of money spent on the campaign, and that Recognise will push ahead regardless of the outcome of this regional dialogue process.

Some delegates expressed concern that the process was too rushed, without the ability to consult with traditional owners, elders and communities. Some demands were made that the process be opened to all Aboriginal people. It was said that many people in communities wouldn't understand the concepts that were being talked about, and how important it is to reach out to people in the bush to ensure their voices are captured. Others also explained that government often says they are going to consult with the mob, but that *“who really consults with the mob?”* and that often there are language barriers that prevent this from happening.

Concerns were expressed that there were only two dialogues scheduled in New South Wales, which was not representative of the size of the Aboriginal population in the state. Another delegate expressed concern that there was no dialogue scheduled to be held in the Australian Capital Territory.

The value of holding the Dialogue, with a focus on practical outcomes was highlighted:

“I do want to hear everyone's opinion, whether the Treaty or the Constitution, and which gives better outcomes for Aboriginal people.”

Some people stressed the importance of governments getting the processes right and consistent in defining Aboriginality, because it is used as a basis for designated employment positions, educational opportunities, housing, and other benefits.

A question was raised, if structural constitutional reform were achieved now, how would this be affected by a possible push in the future for a republic?

**STATEMENT OF RECORD
MELBOURNE DIALOGUE, 17-19 March 2017
Referendum Council**

On 17-19 March 2017, a Regional Dialogue was held in Melbourne. This statement of record contains the general comments that were made in the plenary session from day one of the Dialogue, followed by the preferences expressed on day two.

General comments and local perspectives from day one of the dialogue:

People spoke of the mass slaughter of Aboriginal people during colonisation and how genocide had been committed on over 180 clans in Victoria. How instead of 6 or 7 Wurundjeri clans there was now only one left. There was anger that the Stolen Generations represented an example of the many and continued attempts to assimilate people and breed Aboriginality out of people, after the era of frontier killing was over. People also objected to the power non-Aboriginal people exercise now over Aboriginal children, in decision-making about out-of-home care.

Many people spoke of the serious social and economic issues facing Aboriginal families and communities and the desperate need for better living standards and a better quality of life. There are very high rates of child removal and of violence against women and children. There was anger and distress at the rate of youth suicide and a sense of responsibility people feel to look for solutions that can change this terrible situation:

"I want to see youth suicide eradicated in our communities. We are sick of funerals and burying our babies. Where is the support for these people? We have had seven suicides in our community in the last ten years. They got it that bad that they want to take their own lives. We should be standing up for them. We need justice. We need to make it liveable for them. We need to stand up for these young people because they are killing themselves."

The problem of inadequate housing and overcrowding was repeatedly raised. This included discussion of policy change, for example there was a call for 'rent to buy' schemes that would improve our economic situation and also *"give them self esteem, pride in themselves and pride in their communities"*.

"In terms of public housing and Aboriginal housing there are not enough houses. We need jobs outside our own Aboriginal organisations to help us to own our own homes."

Several people spoke of the need to get urgently rid of dealers of the drug ice from Aboriginal communities in Victoria. People said that closing the gap policies had not worked and that accountability was poor because there was little or no evaluation of policies and programs.

Intergenerational trauma was highlighted. There was a belief that our children are affected by the past because the struggle is multi-generational.

This applies even to people who have been educated. The scars are still there and they're raw and red.

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People repeatedly emphasised the need for truth and justice, and for non-Aboriginal Australians to take responsibility for that history and this legacy it has created:

"Government needs to be told truth of how people got to there. They need to admit to that and sort that out."

There was anger that things had not improved and that current policies would make things worse:

"The government keeps our people locked up in prison, they take our kids away, they want to remove essential services in Western Australia and the Northern Territory. They are making welfare cuts and cuts that affect the poorest and the most disadvantaged. Not just Aboriginal people, but we are the poorest and the most disadvantaged. Our elders have already had these discussions. They have answered these questions many times over. Why are we repeating ourselves?"

The group talked about the Treaty discussions now underway in Victoria. For some people the treaty issue was their priority:

"We have had treaty discussions around the State and a huge meeting in Melbourne where 300 people overwhelmingly voted for a treaty. We have already expressed it."

"We want our treaty demands resolved. A treaty is a peacemaking instrument under international law. If you don't do it this way, it is more colonialism. Treaty means justice to me. It will solve this country's human rights issues. A treaty will include all the human rights we don't have here. Treaty is a level playing field."

Other people wanted to talk about the risks or dangers of making treaties. They were critical of the way they have been breached in overseas countries, for example by letting pipelines through on traditional lands, and that some countries with treaties still had appalling conditions amongst their First Nations communities.

Others were interested in the possibility that there might be more than one way to go, in order to empower Aboriginal people and give them influence over their lives, that there might be *"a whole range of layers that empower us. So that we have foundations that we can progress from."* A treaty might, for example, create enduring obligations and sit beside other things including a reformed Constitution:

"Treaty is an agreement, it is a model you sign off on. That would include a Bill of Rights and a mandate. It is never to be changed unless we are wanting it to be changed. That's the difference between the constitution and a treaty. I feel that we should think seriously about having both in order to get that balance. And we can, we are able to have both."

There was discussion of what a treaty could contain, including recognition of sovereignty and reparations for past wrongs. Others picked up the theme of reparations and compensation as

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re-empowering people, rebuilding families and communities and recognising their sovereign connection to the land and its resources. There were comments about the campaign to 'pay the rent':

"This government and the previous government and the previous one and the colonial governments before them have been pulling resources out of the ground and they are still doing it. Trillions of dollars, how many zeros I dunno. We want to talk about sovereignty. If we talk about 'pay the rent' how about all these multinational corporations start to give us 1%, 2%, 5%. It's about time they started paying the rent. How about an open cheque book so we can take back our children and do what we have to do with education and health, and so our elders can be placed in a proper home. The backbone of a strong society is the family unit."

One of the concerns expressed was that putting Aboriginal people into the Constitution would endanger Aboriginal sovereignty. Others were concerned that anything in the Constitution would be left to politicians to interpret and they had shown they could not be trusted in the past – for example the Racial Discrimination Act has been suspended three times by the federal parliament. There was concern that constitutional recognition would be too superficial and that the 1967 referendum had not delivered on its promise:

"We are hearing about these meetings about changing the Constitution. Is it for our benefit? In 1967 people were marching for rights. But in actual fact what they got was being counted in the population and also the Commonwealth making laws for Aboriginal people rather than the states. We were a bit conned there because we didn't get rights out of that. This far down the track we are still asking for recognition? For what? We know we are sovereign owners for this country."

One person raised the idea that Aboriginal people need to put up a list of demands – a timeline for our liberation, to be completed by 2020. This would include international scrutiny and accountability for the Australian government.

Political empowerment was a major priority:

"If we are going to have a political approach then let's have our political voice heard."

"I want Aboriginal people to have a voice. I don't know how we're going to do that, whether it is part of this constitution or a treaty, but we have to get serious about something. Because our future in this country is to be recognised as First Peoples, proud descendants of those who they murdered, raped and tried to assimilate out. We are resilient, still fighting the fight. But no one is listening to us."

There was also discussion of how, in a different and more empowered situation, Aboriginal people would need to impose high standards on themselves and their own organisations, for example ensuring inclusive membership as a condition of receiving funding. One person emphasised that strong leadership, selected by the people and based on principles that come from the people, is essential.

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Some people advocated establishing an Aboriginal political party.

Why haven't we got a political party? ATSIC was supposed to be management by Aboriginal people but it as managed by government. When are we going to say, 'we're going to tell you how things are going to happen'?... We'll tell them what our rights are, what we want.

Regaining control of funding that comes into Victoria for spending on Aboriginal affairs was a major concern for some people. They talked of how little money actually reached people in communities that needed it, after non-Aboriginal bureaucracies had taken repeated bites out of the funding along the way. They spoke of how Aboriginal-controlled organisations had been stripped of funding, how that created unemployment amongst Aboriginal people and reduced services in regional communities and as a result how young people got into trouble.

The group emphasised the importance of social and economic empowerment for Aboriginal people, as well as proper recognition of Aboriginal culture and history:

"I want to see our mob valued and determine their future. I want to see our culture authentically valued and embedded in every day of our lives."

"I'd like to see training facilities for our young people to skill them up."

"All of our history, our milestones need to be acknowledged name by name and in our schools. It is well overdue."

Preferences for reform:

On the afternoon of Day 2, a group gathered to discuss their preferences around the possible options for constitutional reform. This group began by considering a fundamental starting question: "What would be the one that we think would give us the most power?"

The group discussed a possible package of reform, identifying a number of possible linkages between the different elements that were proposed.

There was strong agreement that the group would reject any minimalist model for constitutional recognition. *We will work hard to get a successful result that all Australians can celebrate, but we will say no if a minimalist model is a done deal."*

The most supported package was for a Voice to Parliament and agreement making. There was support for a statement, that would underpin and strengthen a Voice to Parliament, which would progress and protect a treaty process. This statement should not be simply of "acknowledgement", but should contain a statement of "intent" and a statement of the "inherent rights of the First Peoples". The statement might refer to Australia's international

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obligations, such as UNDRIP. The statement could also acknowledge the sovereign position of Australia's First Peoples and the crimes committed against humanity.

"The statement would be a way to reorganize the way we unite socially and culturally."

The Voice to Parliament was important to increase political power and authority, and it is important for it to be enshrined in the Constitution. There was a concern however that the body might become a tokenistic process: *"I don't want to see tokenism continued and continued and continued."* The body must be more than advisory or consultative. It would need powers of compliance and to be able to hold Parliament to account against the standards in the UNDRIP. The statement could also inform the mandate of the Voice to Parliament.

The group also believed that there needed to be a truth and reconciliation process as part of the larger process.

"Our truth has to be told before we can move from that."

The group also said that constitutional reform could be pursued in the form of a Bill of Rights, which would represent a broader reform for the country that could be presented as a *"gift"* to the wider community.

The group also considered the strategy in the lead up to Uluru and the post-Uluru process. The group agreed that language was going to be important, and that at Uluru a statement could be drafted to assist in uniting Aboriginal and non-Aboriginal people in the process. Choosing the most meaningful and powerful words would be important. There was a suggestion that the statement could be in language.

The group thought that Uluru was going to be a critical event, and it would be very important to clearly articulate the next steps after Uluru, and seek the necessary resources to support this. Possible timelines were discussed. One suggestion was to achieve change by 2020, with a truth and reconciliation commission to occur during that time, and a checkpoint in 2018.

The group discussed that at Uluru a possible treaty between First Peoples could be negotiated or initiated. It would also be important not just to hand over the recommendations to the government.

"It is important to continue this conversation, it can't just stop at Uluru."

When the recommendations are handed over there should be a binding commitment from the government to take certain steps; to hand the recommendations over with minimum conditions. There was also a suggestion that after Uluru, national and international communities could be mobilised through social media.

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A second group formed at the dialogue. Their statement was as follows:

"We as the sovereign First Peoples demand a Sovereign Treaty and a Sovereign Treaty Commission.

Moved by Elders

s47F

Seconded: s47F

Temporary until authorised:

1. s47F
2. s47F
3. s47F
4. s47F
5. s47F
6. s47F
7. s47F
8. s47F
9. s47F
10. s47F

Role and Responsibilities:

1. *Resources to properly consult our people*
2. *LORE responsibility – authorised by clan/country*

Support from our people/clans.

Terms of Reference:

- *Have to be in attendance for three days of this meeting*
- *Have to be supported by clan/country*
- *Clan to be balanced, gender balanced*

Reason for low attendance at this dialogue and the Victorian Sovereign Treaty consultations is dismembership of active membership from Aboriginal organisations and Native Title corporations. A sovereign treaty must address the issue of inclusiveness, accountability and community control.

We are not just a number for funding purposes.

**STATEMENT OF RECORD
CAIRNS DIALOGUE, 24-26 March 2017
Referendum Council**

On 24-26 March 2017, a meeting was held in Cairns to discuss possible constitutional reform. The meeting was held on Rainforest Aboriginal peoples' Country and included representatives from the Cape, Gulf, the West, through to the Tropic of Capricorn. This footprint captures the unique experience of people across a geographical area that has the greatest number of RNTBCs/PBCs (Registered Native Title Body Corporates/Prescribed Body Corporates) in Australia, resulting in the greatest number of ILUAs (quasi local "treaties"). Further, this area has the highest concentration of combined Aboriginal and Torres Strait Islander population across the myriad remote, rural and urban settings, and notably comprises more than a third of the footprint of Northern Australia.

Day one: local issues and vision for the future

On day one, the meeting reflected on what changes people would like to see reform achieve in their communities. They were asked what was their vision for the future.

The burning of Mapoon in 1963 was remembered. The Queensland government had removed the people at gunpoint and forced them onto the boat to be moved to the NPA, to the place they called New Mapoon. The meeting was reminded that 1963 was not that long ago:

"Mapoon people have remained strong, we are still living at Mapoon. Mapoon still exists in western Cape York but a lot of our grandfathers have died at New Mapoon. That isn't where their spirits need to be."

Similarly, the presentation showing the history of petitions reminded about the nationally significant Palm Island Strike. So many people from this region had been removed from Country to the "penal settlement" of Palm Island since its establishment in 1916. The Strike was also sparked by a petition, this time from seven Aboriginal men demanding improved wages, health, housing and working conditions, being ignored by the superintendent. We commemorate 60 years of the Strike in June 2017.

The meeting reflected on how their history and the effects of a lifetime of racism and abuse could lead to anger and depression. Some of the stories of this history and abuse included family members being flogged while away working during the Protection era, and racism from teachers in their classroom. This history and the suffering needed to be acknowledged before progress could be made with constitutional reform. The acknowledgement should include the suffering that had been endured by Aboriginal and Torres Strait Islander peoples from the forced taking of children and young people from their families and communities to work in the cattle industry, and the impact of that suffering on those people and those communities.

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Constitutional change that recognised Aboriginal and Torres Strait Islander peoples as the First Peoples or First nations could be achieved only if it came from a place of strength that linked together all the Aboriginal and Torres Strait Islander communities and people from across Australia:

"When you go fishing or you go drag a net, you need a full strength net, with all the holes all patched up, every little inch of the net has to be strengthened, and the way it's strengthened is every piece is connected to the other. All of our communities around Australia, they are little strength bases."

The meeting spoke of the importance of unity among Aboriginal and Torres Strait Islander peoples. They also spoke of the importance of hope, especially for children and young people who risked losing their way given the alarmingly high levels of youth suicide. It is important to bring up our children and grandchildren to be strong and positive about the future:

"We need to be able to move forward. Find a position that empowers our local groups and our younger generation. There are too many members of our younger generation who are just lost."

The meeting spoke of the importance of self-determination, frustrated by the current government's policies and practices that block people's ability to exercise responsibility for their own affairs.

The lack of employment was also raised, and the fact that in many communities, white people are brought in for some of the most important jobs in communities.

The group spoke of their belief in the sovereignty of Aboriginal and Torres Strait Islander people.

"No one gives you sovereignty, you go out there and practice it and go out there and enforce it. But we are in a position that there are certain laws that mean we can't go out and practise our sovereignty."

People spoke of their frustration about lack of authority and ownership over their land, and how they had to go through government and third parties before making decisions about their land.

"Why should we go through a third party to do something on our land? Government tells us how to manage our national parks. What we can build, what we can't build, who we can employ, they give us a job description for our rangers."

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"I'm talking to a ranger out in the National Park. He says in one breath we want to support the traditional owners, and in the next breath says, oh, I don't know if you can do that."

One person asked that her community of Yarrabah's kingship be recognised as part of constitutional reform, that this was part of bringing together all the small but powerful communities. Another person spoke of the lack of acknowledgement of the names of Aboriginal and Torres Strait Islander people in place names.

"The names of our people. We've got nothing that bears the names of our ancestors."

While some noted the gains made under native title, however imperfect, others emphasised how it had created divisions within communities and amongst families.

"This watering down of the Native Title Act, it's killing our communities."

The meeting emphasised how important it was to fight for reform that would deliver self-determination through economic empowerment for future generations. One speaker noted how Australia had already established two sovereign wealth funds, the Future Fund established by Peter Costello when he was Treasurer, and the Western Australian government's Future Fund through the Royalties for Regions program. It is important that Aboriginal and Torres Strait Islander people are able to access the wealth of the nation being extracted from their lands. Other suggestions included securing economic independence through land tax, tariffs, or other forms of monies levied from people going onto country.

"This is more than fighting for land rights, it's about fighting for something our children can take hold of. ... We need to think what inheritance are we leaving our children. We need to be thinking about our own sovereign wealth."

"We've got nothing, us rainforest Murrumbidgee up there. Everything the government wants to do with us is a program. A program for this and a program for that. When we start talking about financial independence, blackfellas looking after their own affairs, they do a backflip."

The meeting discussed whether constitutional recognition could limit the powers of government to deal with Aboriginal and Torres Strait Islander people in a "discretionary" way, that is, to cut Aboriginal and Torres Strait Islander public service positions and programs whenever the government needed to save money. People recalled how governments had cut health services, public service

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positions in ATSIC, Aboriginal and Torres Strait Islander programs and welfare payments.

It was suggested that constitutional reform could empower local communities to govern themselves, rather than to have to rely on bureaucracies at the local and state level to address issues within communities. There was a repeated emphasis on State legislation. Outside of the *Wet Tropics (World Heritage) Act*, it was said there was little regard to traditional laws and customs in Queensland legislation, despite the references to it in the *Legislative Standards Act*. People wanted to know what difference constitutional change could have in terms of State laws that get in people's way.

People repeatedly emphasised that they wanted to know whether constitutional reform will translate to changes "on the ground".

"How will it translate for us on the ground? At local level? At rainforest level? For the Torres Strait Islander people in Northern Queensland? What does it mean for the latest frontier, the Northern Australia Strategy?"

A question was raised as to whether the changes even needed constitutional reform, or whether they could be achieved through the legislative and legal framework that it is in place now.

Other ideas also came forward in this initial discussion including the idea of a seventh state and a treaty. Some people expressed skepticism that constitutional change would achieve anything on the ground, and that treaty should be pursued instead. It was remembered that part of the Council for Aboriginal Reconciliation Report that was given to John Howard was a recommendation for a Treaty. One participant said *"I'm a Treaty man ... I'm a T man not an R man."*

The connection between constitutional reform that recognised Aboriginal and Torres Strait Islander peoples and the struggle for the bigger concept of human rights was raised. Australia had been at the forefront in the 1980s in negotiating the first international instrument protecting Indigenous rights, in ILO 169 and the UNDRIP. The recent honouring of the river in New Zealand was highlighted. For Aboriginal and Torres Strait Islander peoples, it was said, rights are not just about human rights, but about country and the spirit of their land.

Delegates expressed that there was confusion about the role of the Recognise campaign, which has lead to confusion about constitutional reform generally.

Preferences for reform: On the afternoon of day two, the meeting was asked to evaluate the different options for reform and discuss their preferences for reform.

"We need to be able to thread ourselves through the Constitution."

**STATEMENT OF RECORD
CAIRNS DIALOGUE, 24-26 March 2017
Referendum Council**

There was strong agreement across the groups that the voice to parliament would be an important priority. There was support for it to be constitutionally protected, so it couldn't be abolished like ATSIC had been. The voice could be used to pursue economic developments, and to pursue the negotiation of treaties with government.

Many groups included the voice to parliament as part of a wider package of reform. It was thought that many of the other options could flow from a strong and effective voice in parliament. One group thought this package could be a voice to parliament, that would be used to negotiate agreements/treaties, and the voice would also guide any use of the head of power.

A number of groups suggested that the voice to parliament could be drawn from an Assembly of First Nations, which could be established through a series of treaties among nations. It was emphasised that the voice to parliament needed to be elected by communities, and have grassroots peoples at the top, not at the bottom.

"What can we do with our existing intellects, spirits. We can't go wrong if we rely on our true identity. We take the one song and go into gammin parliament. We've got spirit, identity, and truth."

There was strong support for treaty, although there was not clear consensus as to when a treaty should be pursued. One group suggested that it should be scrutinised under international law standards, and also warned that any such treaty shouldn't cancel out existing agreements.

One group had a very strong view that the head of power was valuable and that for example in the future it could be used more effectively to secure economic development. But the group identified a risk that the power could be used for bad laws, and therefore it needed to be controlled by a new prohibition on racial discrimination (section 116A).

Some groups were concerned that a statement of acknowledgement could be a weak or tokenistic form of recognition. One group had consensus that a statement of acknowledgment was unacceptable. Other groups thought it could form an important part of a bigger package of reform, provided it was drafted very carefully to facilitate rights around economic development, cultural and heritage rights, traditional knowledge, human rights, and dispelling the lie of terra nullius.

Some groups also considered what other reforms could be achieved outside of the Constitution. Two groups suggested a national declaration instead of a statement of acknowledgement. This declaration would sit outside the Constitution, but could be used:

- to unify the Aboriginal and Torres Strait Islander peoples;
- to provide a focus point for the wider community;

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- to inform the work of a voice to parliament; and
- to provide guiding principles for treaty negotiation.

Other suggestions for reform outside of the Constitution included a bill of rights, establishing a lobby group and ratifying ILO 169.

"Constitutional reform is important but it's not the be all and end all of improving our position."

One group said that it was important that there was a voice established to take the message from Uluru to the referendum. A number of groups emphasised the need to get the message out to the mob, back to communities.

STATEMENT OF RECORD
ROSS RIVER DIALOGUE, 31 March – 2 April 2017
Referendum Council

From 31 March to 2 April 2017, a meeting was held in Ross River to discuss constitutional reform.

Day one: local issues and vision for the future

The meeting recalled the Coniston massacre, and the many other massacres throughout the region. The meeting remembered the Aboriginal people who had been involved in fighting in the frontier wars. They also spoke of the Aboriginal people who fought in the wars, such as in the Vietnam war, but have not been recognised. If the government want to speak about 'recognition' they need to recognise the true history, recognise the frontier wars. They need to recognise the atrocity of Maralinga.

"People talk about ANZAC day, but what about our people? Recognise our people have been fighting. Our people have been pushed away from the land."

"They don't teach about Maralinga. They talk about Japan and the atomic bomb. But we had it in our own backyard."

The connection between language, the culture, the land and the enduring nature of Aboriginal law was fundamental to any consideration of constitutional recognition. The group spoke of the power of their languages, speaking their languages and the devastating impact of the loss of language. The group explained some of the reasons for the loss of language:

"Some of us we can't speak our language. Some of us went to school and it was bashed out of us. There are psychological reasons why we can't speak our language."

People want the government to support the preservation, maintenance and continued use of language for generations to come. Aboriginal people should not have to fight for funding because language is fundamental to identity, Aboriginal culture and well-being. The government can't recognise Aboriginal people's culture in the constitution and not resource languages in schools and communities. Otherwise how is it 'recognition' of Aboriginal peoples and our connection to our culture and the land? Some of the former language teachers and interpreters queried how many more language teachers have come through to maintain the language, take the language forward and teach it to our children? Resourcing languages teachers and interpreters is critical to culture:

"It's the most beautiful social structure in the world when you belong to your cultural identity."

"Our Traditional Laws (Altyerre, Jukurrpa & Tjukurpa) are strong and should sit above the Constitution."

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"The amazing thing that separates us from white people is our tribal name, our skin name. Our songmen and songwomen need to sit above everything."

The importance of education was emphasised as a way of giving Aboriginal people strength and courage. People spoke of 'two ways' and the need to learn in two ways so that young people can operate in two worlds: in their own culture and the white man's world.

"Education is really important to me because it gives me strength and courage to have a voice, and a strong voice ..."

The meeting spoke of the importance of educating the next generation in language and culture and about the land, and of having Aboriginal history and culture taught in the curriculum. People spoke of the funding cuts to education, which had cut employment for Aboriginal people in schools but especially interpreters and the teaching of language. People spoke of the need for education to be "two way learning", for Aboriginal and non-Aboriginal children.

"I want to take all our kids out bush so they can know their country, their great grandfather's land."

"I know a lot of money has been cut off there, that's why our children don't have our language taught in schools. I'd like to see that come up again."

"Why haven't we got 50:50 curriculum out in the bush. Our kids need to learn language, and our trees, plants, everything."

"I know what's going on in our schools. Teachers are struggling. Kids are struggling. Most kids are at year 3 level, when they are supposed to be at year 8. We need to talk about language and culture. Even for ourselves as adults, so we can teach our children, learn from our elders."

People were tired of not being spoken to face to face on policy decisions about their lives and communities. They were angry about decisions and policies being imposed on them by the government without proper consultation. People mentioned examples such as the Commonwealth intervention into the Northern Territory and the introduction of shire councils (NT Law).

The removal of the CDEP without consultation left people reliant on Centrelink, without enough money and the removal of jobs through the abolishment of CDEP. *Itne ahetye-aneme CDEP akngetyelpetyeke apmere (community) itnekenhe-werne itne warreke irreyenhenge*. People spoke of how difficult it is, especially in remote communities and outstations, to travel into town to do things like go shopping and go to Centrelink. *Apmere (outstation-ke) anwerne miss out-irreme*. The cost of fresh food in communities was raised, and how the cashless welfare card restricts access to money for goods and services.

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"CDEP was taken away with no consultation from all the communities. We've got a town full of people with no work, no money, always travelling."

"Centrelink is a drama; you can die waiting for the money to get into your hands. They ask, 'are you looking for a job?' You just come from the out station..."

People spoke about government funding systems that require organisations to compete for buckets of funding, and how this often causes conflict between groups. Delegates feel that money is wasted on trialing and inventing new programs when there are existing programs that have worked extremely well.

"Every time we reinvent the wheel. We have programs that have worked."

The importance of government organisations and employers accommodating sorry business was raised.

"I'd like to see government organisations respect sorry business. ... They've got to understand. We suffer because we can't go and attend to our duties. They've got to put our law into their laws."

The meeting spoke about the important symbolism of the flag, and how the Australian flag symbolised the injustices of colonisation.

"Remember the day when Cathy Freeman ran with the flag. That flag was not recognised. It's time to change the flag too."

The meeting also talked about the distress other symbolic gestures are having to our people. Participants expressed disgust about a statue of John McDowell Stuart being erected in Alice Springs following the 150th anniversary of his successful attempt to reach the top end. This expedition led to the opening up of the 'South Australian frontier' which led to massacres as the telegraph line was established and white settlers moved into the region. People feel sad whenever they see the statue; its presence and the fact that Stuart is holding a gun is disrespectful to the Aboriginal community who are descendants of the families slaughtered during the massacres throughout central Australia.

The meeting observed that they were considering constitutional reform in the year of the tenth anniversary of the Northern Territory Intervention on Aboriginal communities. They spoke of the devastating and humiliating impact of the Northern Territory Intervention on Aboriginal communities and the ongoing discriminatory effects of the intervention in communities.

"This year marks 10 years of the intervention. ... They said that we had 'rivers of grog' flowing into our communities. They said pedophiles were in our communities. But look at what they are doing to our kids, they are filling up the gaols in the Territory. We have no languages in school, loss of

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jobs, no teachers, I've just heard this week they are getting rid of the health workers ..."

"Today, we still have the intervention. Being on that land, being told that our rights were taken away, that we were nothing, that we were, and we are still today. ... Let's not forget the intervention, because we cannot move forward until we do something about the intervention. The only we can empower ourselves is to go and get a voice."

The meeting spoke about the lack of meaningful employment opportunities on their country. People spoke of the injustice of employment opportunities going to non-Aboriginal people and how resources were being taken from the land by mining companies.

People called for the work that interpreters do in hospitals, health and education to be given greater recognition and better pay.

The group spoke of the social and economic difficulties faced by their people, the high levels of suicide, the continued removal of children, and of the damage that had been caused by alcohol and drugs.

"Our suicide rates for our Indigenous males are shocking. We have people dying all the time."

"Our children are being taken from their families at a greater rate than the Stolen Generations. Why are they keeping with other families so they can learn language and culture."

People talked about the need to build strength from coming together and taking responsibility, to move forward for the next generation. *Anyu lunu wilyantirri anyula jani wilya yamtarnpa*. People saw constitutional reform as an opportunity to reinstate self-determination:

"We are a people who know the answer to our own problems. Let's work it out together as one."

Reform options

The meeting considered the priorities for achieving reform. People had questions about each option and the bigger picture going forward. The meeting wanted more information about Recognise and its relationship to the Referendum Council. The delegates also spoke about the various existing international treaties and the success and challenges of those treaties. These treaties are in other countries colonized by the Great Britain and Australia is yet to put a treaty on the table.

A strong view was that Aboriginal people should pursue strong constitutional reform to ensure that they are embedded in the Constitution.

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"Having a preamble is just like a good story. The government says we tell a good story about you. What we want is to be embedded in the Constitution, embedded forever. Get Constitutional reform first then talk about sovereignty and Treaty."

Delegates were not interested in symbolism or poetry *"That's just telling a good story about our people, but that's not what we want"*.

Day three – preferences and priorities

The meeting discussed the importance of the different options and which options they thought were the most important.

The group felt strongly that the Constitution needed to recognise the traditional way of life for Aboriginal people. The group thought that the statement of acknowledgment needed to recognise the sovereignty of Aboriginal people – as "sovereign men, women and children of this land", and their traditional ways, including language and culture and law, and traditional governance systems through kinship *Apmereke-artyeeye* and *Kwertengerle*. It would have to acknowledge the *"Tjukurrpa"* – "our own Constitution", which is what connects Aboriginal people to their creation and gives them authority. A statement must acknowledge the genocides of the past so that this could be part of the healing.

"Aboriginal People have always had a structural governance, what we have to do is put it alongside the governance of mainstream."

While a strong statement of acknowledgement was considered very important, the group also thought it needed to be linked into other changes. The group saw the importance of the head of power and the possibility of building on it. But they stressed the need to limit the power of the Parliament over Aboriginal people, particularly in the Northern Territory, where the Parliament has stronger powers. The meeting felt strongly that the Intervention must not be able to happen again.

Some people thought that the Parliament's power should be fenced in by a racial non-discrimination clause, and this would limit the Parliament's power to pass discriminatory laws, such as the Intervention.

Other people thought that the best way of achieving this was by embedding a representative body for Aboriginal people in the Constitution. The group discussed that this body must be representative for communities across Australia, and have legitimacy in remote as well as rural and urban areas. It must be a *"land-based representative body that represents us nationally."* There was a suggestion that the voice needed to include representatives across generations, with young representatives as well as older leaders. From the representative body, other changes could be achieved: policy changes, and the pursuit of treaty. It was suggested that this reform would be pursued alongside treaty discussions with the Northern Territory government.

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"Our voice is not being heard. ... There needs to be someone there, listening and talking to the government and telling them about our needs."

"Since the demise of ATSIC, we've had no say. If it's embedded in the Constitution, it's hard to get rid of. If there was a voice to parliament when they designed the intervention, we would have had a say."

One person asked the question whether the changes people want could be achieved through a Treaty. A Treaty could include a prohibition on racial non-discrimination, an acknowledgement, and a guarantee of a voice to Parliament.

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On 7-9 April 2017, a meeting was held in Adelaide to discuss possible constitutional reform.

Day one: local issues and vision for the future

On day one, the meeting reflected on what changes people would like to see reform achieve in their communities. They were asked what was their vision for the future.

There was frustration at the continued state of disadvantage experienced by Aboriginal people despite generations of activism advocating for rights. People feel that now is the time for action; that we stop walking around cap in hand, because this is our country. People want the truth of the history acknowledged, that the British were not colonisers, they were invaders, murderers, and rapists. Those who came before us marched and died for us and now it's time to achieve what we've been fighting for since invasion, self-determination:

"I want to walk down the street and know that I can make decisions about my own life."

The meeting looked to international human rights law as a way of securing rights because of the lack of Indigenous rights in Australia and the fact that any gains made are constantly eroded. There was discussion about Australia ratifying and implementing into domestic law the International Labour Organization ('ILO') Convention C 169 ('ILO-169', or Indigenous and Tribal Peoples Convention 1989, which provides for a duty of consultation as well as the United Nations Declaration of the Rights of Indigenous Peoples; the collective expression of self-determination recognised in the two Covenants.

"The only rights we have are international rights."

"They [governments] are signatories but they haven't incorporated them into Australian law."

Land rights and water rights and economic development were emphasised. It was said that Aboriginal land held in trust should be fully returned to traditional owners and groups that have achieved native title recognition.

"If we haven't got economic development, we are not going to go forward."

"It is about time we moved forward knowing we have really robust Aboriginal communities with native title determinations with a great sense of economic development in position to take control of their own lands and waters."

There was distress about the the circumstances in which many Aboriginal people lived and support was expressed for laws that provide "targeted support for Aboriginal communities to help escape from third world conditions and a cycle of dysfunction and poverty."

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People stressed the urgency of doing something to turn around terrible incarceration rates, with Aboriginal people making up 25% of the male prison population, 30% of the female prison population and 50% of children in juvenile detention. Aboriginal children also make up 30% of those in out of home care.

"Twenty five years on, the incarceration rate is worse than it was with the Royal Commission into Aboriginal Deaths in Custody."

"Over 11,000 of the kids taken away have been placed with a non-Aboriginal family."

The crisis of Aboriginal children and young people in out of home care was raised. It was suggested that in addition to a stronger investment in Aboriginal community controlled services, and Aboriginal user choice in service delivery. The government needs to look at the models for individualised funding and consumer directed care that are emerging in the NDIS and aged care.

"We need to be in control of what we want, not them being in control of what they think we need."

The meeting was told about the most recent statistics from the Reconciliation Barometer. In response to the question whether Australia is a racist country, 57% of Aboriginal and Torres Strait Islander respondents said yes in 2016, compared to 48% in 2014, and 39% of Australians in the general community agreed, compared to 35% in 2014:

"Why isn't the government taking it on board when both sides are saying it. These statistics need to be taken seriously."

Several people emphasised the power of education. They wanted the history of Aboriginal people taught in schools, including the truth about murders and the theft of land, Maralinga, and the Stolen Generations, as well the the story of all the Aboriginal fighters for reform. Healing can only begin when this true history is taught. They also stressed the importance of growing healthy and strong Aboriginal children through literacies, culture, spirituality, language, and heritage: teaching Aboriginal languages in schools and of spreading bilingual education across the country from the few places that have it now.

"I want to see our history being taught in schools and what has happened with the Stolen Generations and Maralinga, things that happened in our backyard that kids are not aware of, in Indigenous and non-Indigenous schools."

People talked of their anger and frustration at the way governments run Aboriginal affairs, disempowering communities, breaking up the family unit and leaving people in the dark. Particular focus was put on the detrimental affects of the Indigenous Advancement Strategy further diminishing community control of services and the Aboriginal community voice.

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"Out in the communities, they are the last people to be informed about what is going on. All of a sudden, legislation or something else is happening and they just don't know anything about it."

"I'd like to see all the money to set up the industry called Aboriginal Affairs captured for us to actually enable our own economic development and future."

"I want to see compensation because the government seems to think the IAS is a panacea. But the IAS has been a travesty for Aboriginal communities that has undermined the very organisations that provided a source of employment for many Aboriginal people, the voice for many Aboriginal people. It is time the government was challenged about these reforms. They have instituted administrative confusion and very little outcomes, despite the whole Closing the Gap scheme."

People stressed the constant problem of being a minority outnumbered by the majority. This reflected a frustration with the lack of self-determination for Aboriginal people and communities and subsequent feelings of powerlessness.

"Our people can run for Parliament but because we are only 3% of the population we can't get them in. That voice needs to be in Parliament, and by having designated seats that voice is going to be heard."

Many people referred to the unique way the British set up the colony of South Australia through the Letters Patent of 1836, the proclamation of South Australia, Magna Carta and other Imperial documents, and said that these contained powerful legal obligations that need to be honoured in Australian law. One participant made reference to the Australian constitution being a colonial relic.

"We were already recognised through the Letters Patent and the Imperial statutes that should be adhered to under their law. Because it's their law."

"How are we going to make them obey their own law that already exists."

"It's like if you're charged with stealing a car... and you say I'm not pleading guilty to theft, I'm pleading guilty to dispossession. Theft is theft."

"Unless we are able to come to an agreement as equals, we should avoid the government of Australia and address our concerns with the Queen while she's still alive"

People said there is a lot of Unfinished Business in Australia and specifically in South Australia.

"I want to see us continue the decolonisation of Australia."

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"We want Australia to take a giant leap in humanity. This is about truth-telling. Whether it is constitutional change or Treaty. It is not about colour. It is about truth-telling and justice."

The Dialogue took place soon after the release of a consultation paper for a Treaty or Treaties in South Australia and people expressed different views about that State Treaty process and how it related to changing the federal Constitution. The Treaty discussion included the possibility of a framework agreement being done first to set up the Treaty and other reforms, the different kinds of communities that need to be catered for, the need to avoid rushing a treaty process and the importance of making a Treaty legally very strong so it couldn't be broken.

"When it comes to signing a treaty, we need a treaty that can't be broken. Why sign a treaty with a country that can still pass racist laws. It's like signing a contract with a person who has two fingers crossed behind their back."

In addition to interest in a Treaty, on this first day of the Dialogue, people put forward a range of other ideas for change, including reserved seats in parliament, an Aboriginal Assembly or Parliament across Australia, Aboriginal self-government, a Charter of Rights and Freedoms or a Bill of Rights, limits on federal law-making to guard against racist or detrimental legislation, a provision that protects Aboriginal rights like section 35 of the Canadian Constitution, and the Aboriginal flag in the corner of the Australian flag.

"It's a biased piece of paper they've got, and it's the strongest piece of paper they've got...We want a bit of blackness in that document. And this is our chance."

"We can't continue to live under the thumb of another nation and expect better outcomes. It's never gonna happen."

There was skepticism expressed about "recognition" in state-based Constitutions and symbolic change:

"Jay Weatherill put us into the Constitution. What did we get? Nothing."

People spoke of the need for ambition, energy and activism in the fight for reform. They stressed the importance of reaching out to people in communities and finding creative ways to attract young people to the discussion of these important issues. It was said that young people need to be on the boards of the representative organisations. People also praised the leadership of elders and freedom fighters (past and present) for reform who had gone before them and acknowledged their own responsibility to step up, unify and make change happen:

"[translated] We always seem to be behind the government. We are the people we should be in front."

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"We gotta let the whole world know. Not just the Australian people. Let's shut the gate together at Uluru (with the approval of traditional owners) and let the whole world know what we are doing."

People stressed that government attempts to divide and conquer the community need to be met with unity from Aboriginal people moving forward. This process needs to be driven by people power because it will determine the success of the movement.

Finally, several people said that focusing on the Constitution is important because unless change is embedded deep in the system, structural change, governments will keep changing their minds and undoing reforms.

"ATSIC was our peak representative body and so many people put so much effort into getting self-determination, only to have the rug pulled out from under us. Where does that come from? The Constitution."

"What I'd like to see changed is our rights enshrined and protected. We have legislation that is constantly moved and changed to other people's benefit. Anything put in place has to be locked down."

There was some confusion about the Recognise campaign and the Referendum Council. It was explained that Recognise is a taxpayer funded awareness or education campaign and has nothing to do with the options for constitutional change and cannot exercise any influence over the reforms and have no role in the Aboriginal and Torres Strait Islander leadership on reforms.

Day two: Preferences

Most groups agree that no option is appropriate on its own. They agreed that the symbolic form or weak form of recognition like a statement of acknowledgement must always be accompanied by substantive reforms otherwise constitutional recognition is not worth pursuing. There was some support for the idea that such a statement of recognition should sit in an additional chapter that recognises the rights of Aboriginal people.

"If we go for a weak option, we will never have another go in this lifetime"

It was also said that the minimalist model "recognition in, racism out" or deleting the word 'race' did not address the legal challenges faced by Aboriginal people in South Australia.

It was strongly suggested by participants that a body elected by the Aboriginal population act as a strong Aboriginal Voice to Parliament as a new public institution structurally entrenched in the Australian political system. There was a general belief that there is no need to reinvent the wheel and that the ATSIC model might be suitable. Some chose to package it with Agreement Making because they felt the agreement making process would be enhanced by the involvement of the Aboriginal Voice. The Aboriginal Voice could

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supervise the use of the head of power in section 51. The Aboriginal Voice could be drawn from the First Nations and reflect the song lines of the country.

Substantive reform was preferred by all, with many refusing to settle for minimalism. A guarantee against racial discrimination was preferred by some and a constitutional Bill of Rights was raised as a way of enshrining the rights of Aboriginal people in a way which cannot be amended at the behest of any particular government. Further, people are interested in talking to government about constitutional reform and an Aboriginal voice to parliament however, all this would be subject to proper constitutional legal advice regarding the impact of the wording on interpretation. For example, the definitions of wording within the constitution may need to be explored as they may carry specific legal meaning.

There was strong support for Agreement Making as a vehicle for implementing policies such as a truth and reconciliation commission, designated seats in parliament, self-determination policies, and economic measures like seeking a percentage of Gross Domestic Product (GDP). A Truth Commission is regarded as a way of correcting the reconciliation process, which skipped truth telling and went straight to reconciling before the healing.

Self-determination remained a priority for all groups. There was strong support for a mechanism that would seek agreement for a percentage of GDP to be allocated to and administered by First Nations.

Finally, it was accepted that to achieve reform there must be a process and a struggle after the meeting at Uluru:

We need to remember that "if there is no struggle there is no progress (Frederick Douglas)"

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BRISBANE DIALOGUE, 21-23 April 2017
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On 21-23 April 2017, a meeting was held in Brisbane to discuss possible constitutional reform.

Local issues and vision for the future: On day one, the meeting reflected on what changes people would like to see reform achieve in their communities. They were asked what was their vision for the future.

The dialogue emphasised the unique political activism in Queensland, in particular the South East region. This history reflects the indelible relationship between Aboriginal and Torres Strait Islander Peoples in the struggle, with and for each other. It is important that this special relationship, based on our old peoples leadership, is recognized and continued.

Spirituality is at the core of Aboriginal and Torres Strait Islander Peoples' culture. Aboriginal and Torres Strait Islander Peoples have a connection to country that is deeper than modern Australia can understand. Songlines and stories connect people across Australia. Recognition of Aboriginal and Torres Strait Islander Peoples means that non-Aboriginal and Torres Strait Islander Australians must accept that they stand on the land of Aboriginal and Torres Strait Islander Peoples.

"The thing that separates us from everyone else is that we come from a deep, deep spirit."

"It is important to reconnect our song lines, to reawaken our ceremonies. We all sing the same song, but along that path, every mob has their own verse in their own language."

There are urgent social challenges in communities, including the incarceration of men, women and young people in the prison system, poor levels of education, poverty, high morbidity, the terrible rate of youth suicide, people living in shocking housing, low employment, and abuse of drugs and alcohol.

"At the rate we're going, it will take 495 years to close the gap. Isn't that woeful for a country as rich and brilliant as ours. We've got to get it together."

People spoke of these issues as symptoms of intergenerational trauma caused by the "protection era", the lengthy period of compulsory racial segregation in Queensland including the Stolen Generations, loss of culture, the moving of people onto reserves and missions including Palm Island and Cherbourg, and other injustices.

The idea of 'sovereign debt' was raised, to pay for the debts of dispossession and colonialism. Another suggestion for reparation was relief from land tax for Aboriginal and Torres Strait Islander Peoples' businesses so they can employ and train more Aboriginal and Torres Strait Islander Peoples. The group spoke about the compounding of trauma by the media, which often misrepresents Aboriginal and Torres Strait Islander Affairs and the real statistics, and do not tell the positive stories, of people doing good things in communities.

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"Australia got a whole country for nothing, they haven't even begun to pay for it."

"One of the greatest things we haven't dealt with is the theft of this land."

People want the state to be accountable. The billions of dollars of funding that are allocated for Aboriginal and Torres Strait Islander affairs are not reaching the grassroots in Aboriginal and Torres Strait Islander communities, they are being spent on government administration, or given to non-Aboriginal and Torres Strait Islander organisations. Whenever government changes, the first things that get cut are the Aboriginal and Torres Strait Island Peoples' programs.

"With deaths in custody money they made great big police stations."

Aboriginal and Torres Strait Islander Peoples' funding needs to go directly to Aboriginal and Torres Strait Islander Peoples and organisations, and needs to be provided on a more stable basis. Aboriginal and Torres Strait Islander Peoples' money has been directed away from grassroots and community controlled Aboriginal and Torres Strait Islander Peoples' organisations to non-Aboriginal and Torres Strait Islander organisations under the Indigenous Advancement Strategy: *"That's gotta stop because what does that show for our self-determination and our rights as Aboriginal and Torres Strait Islander Peoples?"*

The group spoke of the need for Aboriginal and Torres Strait Islander People-led solutions to problems, designed and run by Aboriginal and Torres Strait Islander Peoples. Recognition needs to go beyond a narrow definition – recognising Aboriginal and Torres Strait Islander People's presence, and the awful things that were done to us – and broaden the definition to recognise Aboriginal and Torres Strait Islander Peoples' right to self-governance.

The meeting recalled how the Aboriginal and Torres Strait Islander Commission (ATSIC) had been an important voice for Aboriginal and Torres Strait Islander Peoples, and how it was abolished by the politicians in Canberra.

"We lost ATSIC at the stroke of a pen. Would you abolish Westpac Bank if two or three of its directors were not doing the right thing? I don't think so."

"For 200 years we've been excluded economically, culturally and politically. We've had no political representation in this country."

It was suggested that Aboriginal and Torres Strait Islander Peoples in Australia could create their own constitution and their own parliament. The group spoke about the Sami Parliaments that had been created by the Sami people in Finland, Norway and Sweden.

"We need to be looking at our own parliament. Not reinventing the wheel. The Sami people have it already."

One suggestion for constitutional reform was to abolish existing state and local governments, and create regional administrative units based on the cultural boundaries

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of Aboriginal and Torres Strait Islander nations: *"that way, each nation is naturally in the thoughts of governments in those areas."*

People also spoke about how they see the relationship between Aboriginal and Torres Strait Islander communities and governments.

"We want an authentic partnership, a real partnership. A practical thing, almost like a trade agreement: we promise to do this, you will promise to do that."

Many people at the meeting spoke about the division that native title legislation had created in communities. People spoke of changing native title so that it was inclusive and not divisive. One suggestion was that the funds that are generated through native title should be distributed more broadly to Aboriginal and Torres Strait Islander Peoples.

"I see the jubilation but I also see the misery and fragmentation caused by native title. It's trying to push people through a cookie cutter, which is the white man's construct. It does fragment the community... We need to acknowledge the shortcomings of native title, but also leverage it."

The meeting spoke about the lack of protection of water rights, the taking of water from Fraser Island and Stradbroke Island to the mainland, and water being taken from the bores in desert country. There is a lack of protection for cultural heritage, yet the government will fund the infrastructure and low interest loans for the Adani coal mine.

People shared stories of institutional racism. The meeting spoke of the importance of education, and the teaching of culture and the issues around constitutional recognition in universities, schools and teachers' colleges.

"I did a PhD, but I experienced so much racism in academia. Being a black woman, they don't see my qualifications, all they see is my colour, they treat me like I'm the rubbish collector."

Funding is needed to give free access for Aboriginal and Torres Strait Islander Peoples to sports and recreation and for community run camps that provide young people with connection to culture and family.

"If our young people have the option to participate in sport, without hardship and the second-hand gear that everyone works with, their lifestyle will change and it will take pressure off our medical services ... We need more money pumped into programs, culturally based only, to help our young men and young women to regain their status as warriors."

Aboriginal names for places and things across Australia should be the norm, and used by wider society.

We should be using the proper names. It took years to get Ayers Rock changed back to Uluru. Every place in Australia should carry our names; that's the way we get our identity back. I say that I'm Gubbi Gubbi. If I say I'm Aboriginal I disappear."

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It was suggested that recognition in the preamble would have no effect, and that it needed to be pursued in the Constitution itself.

"Where are our rights in this? If we go in the Preamble, we may as well stay as a footnote. It's the same thing."

People talked about treaties.

"I really do appreciate the need for trilateralism between Aboriginal and Torres Strait Islander Peoples, the State and the Commonwealth – that's where you get treaties from."

Questions were raised about whether it was best to pursue treaty or treaties first before constitutional recognition. There was a suggestion of a system of confederated local treaties across the regions between Aboriginal and Torres Strait Islander Peoples in order to collectively protect culture.

The meeting emphasised the need to continue a discussion and negotiation with the government after the Uluru convention. People said there has been a history of government consultation where Aboriginal and Torres Strait Islander Peoples say what they want, and then the government tells them what they can have.

"We have this tradition of governments asking us what we want, and then them telling us what we're going to get."

Working groups on the options

Statement of Acknowledgement

The group was in favour of a statement of acknowledgment. Although it might be perceived to be symbolic and lacking legal force, the statement of acknowledgment could be a very important step in the road map. It will make a difference to our way of thinking and feeling. All people can learn from symbolism. The statement of acknowledgment will inform non-Indigenous Australians about our history, and make them realise that this history belongs to them too.

The group thought that the statement should be called a 'statement of standing' or 'statement of acceptance'; both of which are more powerful than the words, 'statement of acknowledgment'. The statement should be included in the Constitution, and expressed a preference for it to be in the Preamble.

The group discussed the text of the statement of acknowledgment created by the Expert Panel. Delegates considered that the use of the word 'occupied' is not appropriate. We

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never arrived here from somewhere else. It is important to acknowledge us as being here from the time of creation. Furthermore, the word 'Indigenous' is not to be used. We are to be referred to as 'Aboriginal' and 'Torres Strait Islander'.

In addition to the statement of acknowledgment there should be a declaration that will sit outside of the Constitution. The declaration would be more detailed than the statement of acknowledgment, and it would take a holistic approach to unpacking what acknowledgment means to Aboriginal and Torres Strait Islander people. The declaration must contain statements of truth. In the declaration there must be a reference to us being here at the time of creation. Furthermore, it must acknowledge our ancestors and everything that they fought for. The declaration could be a blueprint of discussion for a future treaty.

Head of Power

There was consensus from the group that the Races Power should have its application limited to beneficial use. However, there were differing opinions about the best way to limit use of the power.

Largely, the discussion about suggested changes to the s51(xxvi) centred around the risks associated with giving non-Aboriginal people the power to determine what is and is not 'beneficial' for Aboriginal people. Aboriginal people are understandably cautious about chosen wording because historically we've been subject to paternalistic racism in the form of legislation and policies claiming to be for our benefit, like child removal policies. While 51A garnered some support, it was acknowledged that it didn't provide the strongest form of protection against negative use of the power.

The involvement of Aboriginal legal professionals in the High Court was raised, including having Aboriginal lawyers available to have input on High Court decision-making on Aboriginal cases. The Voice to parliament was discussed as a possible model for influencing parliament decision-making on use of the power.

Prohibition on Racial Discrimination

Members of this group recognised that putting a ban on racial discrimination into the Constitution could deliver some practical benefits for Aboriginal and Torres Strait Islander people. If the Federal Parliament tried to discriminate against Aboriginal and Torres Strait Islander people, a new s 116A would give the High Court a power of veto to stop that discrimination from occurring. Section 116A, along with other options for constitutional change, could create a space for Aboriginal and Torres Strait Islander peoples within the Constitution, like the Sami people in Scandinavia have obtained in getting their own parliaments. These changes could be valuable in putting forward a

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positive statement about who Aboriginal and Torres Strait Islander people are. There was support for adopting package of reforms to make the change stronger and more meaningful.

But the group also recognised the need to take seriously the limitations of a constitutional ban on racial discrimination. By focusing on discrimination, this option for change creates a negative deficit narrative around Aboriginal and Torres Strait Islander people; it fixates on 'sorry business' and neglects 'good corroboree' – the incredible successes that Aboriginal and Torres Strait Islander have had. Also, there's a risk that the High Court might not listen to Aboriginal and Torres Strait Islander people when deciding what amounts to racial discrimination, but instead just listen to the government. If power is devolved to Aboriginal and Torres Strait Islander people themselves, as in Indigenous parliaments, that means that it comes from a higher Western authority, and makes Aboriginal and Torres Strait Islander people accountable to that system.

More fundamentally, the ideas of non-discrimination and equality in this proposal are deeply embedded in a Western cultural framework of liberalism: 'This idea of equality is only based on a white benchmark.' There was criticism that this framework, and the pursuit of constitutional change more generally, can only position Aboriginal and Torres Strait Islander people as Australian citizens, and that this doesn't properly recognise who Aboriginal and Torres Strait Islander people are. Under a constitutional ban on racial discrimination, no court would say that the British dispossession of Aboriginal and Torres Strait Islander people was racially discriminatory or recognise Aboriginal and Torres Strait Islander people's jurisdiction to determine who comes onto their country.

Within this whole process of constitutional change, Aboriginal and Torres Strait Islander people need to have control in defining their own identity. 'It's not up to white Australians and governments to say who we are.' Belonging to country and spirituality are central to Aboriginal and Torres Strait Islander identity, and these need to be the basis for far-reaching structural change. Other migrant groups come to this country and get what they want, like their own churches, but Aboriginal and Torres Strait Islander people, the First Peoples, are told to sit down and wait.

Members of the group felt that, in order for meaningful change to happen, Australian society generally needs to 'work on itself' and to know the truth of its own history. 'They see us as disadvantaged, but the white people are more disadvantaged because they live in a country that is not their own. They're living a lie.' The group spoke about their own family histories of being discriminated against by Australian governments and society – aunts and uncles denied access to pubs, people being forced away from their people onto settlements at Woorabinda and Cherbourg. Bringing these historical truths to light must be embedded in any process in which Aboriginal and Torres Strait Islander people and the rest of Australia work together to change their relationship.

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In terms of strategy, the group was aware of a basic tension in achieving the structural changes they want in the relationship between Australian government and Aboriginal and Torres Strait Islander people. On the one hand, playing the game of the white system could be a necessary strategy to deliver reforms that people want. On the other hand, Aboriginal and Torres Strait Islander people should not compromise who they are and what they want in the process. 'We've got to negotiate with whitefellas through our own frames of reference, with our own voice, not by parroting whitefellas.'

Voice to Parliament

Aboriginal people do not have a voice. Government continues to impose everything on them. A Voice to Parliament could be a way to achieve other reforms and changes on the group. ATSIC was a voice that was representative, but it was taken away.

"If a hospital administration is bad, you don't abolish the hospital."

The group discussed four aspects of the Indigenous body proposal:

- (1) The body needs to be constitutionally entrenched, so it can't be abolished by future governments.
- (2) The body needs to be representative of grassroots. Not a handpicked organisation like the Indigenous Advisory Council. It needs to be elected by grassroots and consult back with the community. One suggestion was that it could be made up of representative bodies from each homeland. An important part of this reform would be ensuring that Aboriginal people vote. The structure of the body needs to respect Aboriginal cultural heritage – the "oldest governance structure on the planet." The model could rebuild and refine the old ATSIC model, and also build on the TSRA. People working for the body needed to be independent, and not public servants accountable to government.
- (3) The body needs to have guaranteed funding. One way of guaranteeing funding that was discussed was through a percentage of taxes (land taxes, water taxes). Funding for the body and programs should be linked to reparations for theft of land. It was also suggested that the body could takeover responsibility for the funding that had been allocated to the IAS.
- (4) The body needs to be more than just advisory. It needed to be able to provide free and informed prior consent that is binding on the government. There was some concern that an ineffective body put into the Constitution would undermine the ability to pursue more effective reforms later.

The group also discussed other ways of achieving political representation. This might be achieved through designated seats, to represent Aboriginal and Torres Strait Islander

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people, and not their electorates. These MPs could be answerable to the community through the representative body. It was suggested that there needed to be more than just 2 seats, but 2 seats in each State to ensure the voice was strong enough to be heard in the Parliament.

Another option was the creation of an Aboriginal and Torres Strait Islander Parliament – “our own Parliament” – outside of the Constitution. This would give full control over governance to the Aboriginal and Torres Strait Islander people. It could be funded by an independent trust-fund, contributed to by grassroots donations, but also met with equivalent government funding. This option might be able to achieve true empowerment and proper sovereignty.

Another option discussed was the creation of a new Pan-Aboriginal state under Chapter 6 of the Constitution, which could have seats in the House of Representatives and the Senate.

Agreement-making/Treaty

There was strong interest and support for the idea of treaties. Several people said they have supported and fought for a treaty for a long time. People saw the value of a treaty in terms of empowerment, and also stability and certainty (as opposed to things changing every time there is a new Prime Minister or a new party in power). But an important point made was that a treaty process will only be worth the effort if its effects and benefits can filter down to the grassroots and make a difference to people in their daily lives.

Talking about a treaty brought out what one person called the elephant in the room that politicians never want to discuss or acknowledge, which is sovereignty. It also put Aboriginal governance centre stage - that is one of the aspirations that people would want to achieve through a treaty process.

The group discussed overseas examples of treaty-making, such as Canada and the United States. That brought to the fore some of the pros but also the cons of having treaties, especially if governments do not honour the agreements. Another reaction to the discussion of overseas examples by one person was to emphasise the home-grown talent, ideas and strengths that exists here in communities in Australia to find the right way forward.

One person said one of the big challenges in pursuing a treaty process is the residue of terra nullius – the attitudes that are still there just below the surface that make non-Aboriginal people defensive and fearful of a treaty. But it was accepted that a treaty process may also be the, or a, vehicle for trying to undo some of those attitudes.

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At the outset, it was said that it is very important that it is Aboriginal and Torres Strait Islander people who decide their own status and who sits down at the table to negotiate. That is not for governments to decide.

People emphasised the importance of local agreements because local people know the problems and solutions. If there is to be a national framework negotiated for a treaty process (and there was interest in that idea) it would have to be very careful to preserve the space for local agreements and the local societal system (its laws, structures, systems for resolving disputes etc).

There was a lot of discussion about what is needed on the Aboriginal and Torres Strait Islander side of the table – the need to sort out internal governance and other internal issues. On the government side there was interest in having agreements with all three tiers of government – local, State and federal – because each of them have different responsibilities that affect the lives of Aboriginal and Torres Strait Islander people.

In terms of the content of a treaty, people said a treaty should look to the international agreements Australia has signed and make the Australian government honour the commitments it has made – for example, the UN Declaration on the Rights of Indigenous Peoples, the two major UN human rights treaties and the ILO Conventions relevant to Indigenous peoples. Another person suggested that the separation of powers needs to be considered and because interpretation is so important, there should be a requirement for an Aboriginal person or people to be sitting next to the High Court judges when decisions are made on Aboriginal issues. Another idea related to strong feelings about the way in which other people and often foreign companies have made so much money from the traditional knowledge and the resources on Aboriginal land – the suggestion was that a treaty should ensure better intellectual property protection for all Indigenous products.

Preferences for reform: On the afternoon of day two, the meeting was asked to evaluate the different options for reform and discuss their preferences for reform.

The dialogue was generally supportive of all of the options but only as a negotiated package. Each of the reform options are inextricably linked and should not be cherry picked by the politicians to suit their aspirations for a minimalist reform.

The dialogue responded to each of the options in the following way:

Statement of acknowledgement

Aboriginal and Torres Strait Islander Peoples understand the importance of symbols and symbolism and therefore appreciate the importance of a statement of fact in the Constitution. The statement of acknowledgement should not be done on its own without substantive reforms. Aboriginal and Torres Strait Islander Peoples need to agree with the

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wording of the acknowledgement. As the wording is complex and may have unintended consequences many preferred the statement to be in a Declaration outside the Constitution or a combination of both

Head of power

Section 51 (26) represents a complex legal challenge. Some thought it should be amended to delete the word "race" and insert the words "Aboriginal and Torres Strait Islander Peoples" however this is not a substantial reform as the dialogue understood this change does not address racial discrimination. The dialogue discussed that discrimination can be positive and negative. In the case of the race power we are referring to negative discrimination not substantive discrimination. There was much apprehension about amending the head of power at all because of unintended consequences such as legal drafting and High Court interpretation. The dialogue was apprehensive about changing the power because they do not want that responsibility to determine what is a "good" or "bad" law to fall to non-Aboriginal and Torres Strait Islander judges on the High Court.

A prohibition on racial discrimination

The expert panel proposal for a section 116A was discussed as part of the negotiated package. One group suggested that a prohibition on racial discrimination, coupled with an amended Head of Power and Statement of Standing/Acknowledgement would act a 'shield' or 'safety net' against adverse or discriminatory laws and decisions being made. This 'shield' could be wielded together with a 'spear' of advocacy consisting of the Voice to Parliament and Agreement Making.

Agreement making

Treaty/ agreement remains a primary aspiration for the region but was was not ranked as the main priority of reform. It was suggested that a national framework for a treaty be developed that creates an umbrella for treaties to be established, between Aboriginal and Torres Strait Islander nations as well as with governments.

A voice to Parliament

The voice to the Parliament was a well supported option because it provides Aboriginal and Torres Strait Islander Peoples with a place in the democratic structure that can't be abolished by politicians in Canberra. The broad support is subject to details being agreed on the model which Aboriginal and Torres Strait Islander communities must be consulted on.

Statement of Identity

It was also suggested that a statement akin to a terms of reference to define who we are as Aboriginal and Torres Strait Islander Peoples. It is most important that that definition is decided by Aboriginal and Torres Strait Islander Peoples themselves, in accordance

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with their own lore. This statement would also acknowledge our neighboring clans and make it clear to all Australians who we are.

**STATEMENT OF RECORD
TORRES STRAIT DIALOGUE, 5-7 MAY 2017
Referendum Council**

On 5-7 May 2017, a meeting was held on Thursday Island to discuss possible constitutional reform.

The meeting was opened with a prayer, an Island hymn, and a welcome to country by Kaurareg elder s47F. He remembered the massacres of the Kaurareg nation, and that the hurt and pain this had continues to this day, unresolved. The Kaurareg people are not recognised as the custodians of the land. He spoke of the importance of language, culture and practices. The Kaurareg people have a culture, heritage and language from where they belong. He explained the relationship between Kaurareg people and their land:

"We Kaurareg people, we don't own the land, the land does not own us. We are the land. We are the sea. We are the airspace. The birds, the trees the rocks, we are everything of the land."

s47F welcomed the delegates on behalf of Gur A Baradharaw Kod Torres Strait Sea and Land Council.

"Wanem man makem man can brokem.

Wanem man can brokem.

Man can fixem."

"We wande start somap the kloss solong e fit wen we werem!

Plenty time sambadi else e somap dem klos, and we sabe from before time dem klos e too tite,

E restrict yumi from move freely!"

- Elder Statesman George Mye OAM MBE

Throughout the meeting, people often expressed themselves in language. It was said that when people have to speak in English, much of the meaning of the Lore and principles is lost in translation.

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TORRES STRAIT DIALOGUE, 5-7 MAY 2017
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Local issues and vision for the future: On day one, the meeting reflected on what changes people would like to see reform achieve in their communities. They were asked what was their vision for the future.

Torres Strait Islanders have a distinctive identity and history, and a deep culture. They have been living in the Torres Strait for thousands of years, hunting dugongs and fish, and trading commercially. They are a seafaring nation and always have been. It was remembered that Captain Cook did not “discover” the Torres Strait, but that they saw him.

“Cook did not discover us, because we saw him. We were telling each other with smoke, yet in his diary, he said ‘discovered’.”

Torres Strait Islander peoples want a greater degree of autonomy. Communities here should be in control of their own affairs. This is not a new concept. People in the Torres Strait did so for thousands of years prior to invasion. Strong and continued cultural custom and structure should be the guiding principles for communities to run their own affairs. The right to self-determination for Indigenous peoples is reflected in the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). Governments continue to deny us this right, and maintain community reliance on government services as our people continue to live in poverty.

“Australia has to accept our sovereign independence. We have got to have our own government.”

“We need somebody in the Australian Parliament, an Indigenous voice making decisions. When I look at Ministers making decisions for Aboriginal and Torres Strait Islander peoples it is a white person. We should have our own people and not have non-Indigenous people talking to Parliament on our behalf, we should be talking for ourselves.”

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Self-determination was fought for in the 80s and 90s, and the response was to create ATSIC and the TSRA, but these were “self-management” and not “self-determination” in that they were still under the control of the government: *“still subservient to a higher power.”*

“More or less, it [self determination] has died a silent death since then. I personally believe that the only thing holding us back as Torres Strait Islanders is the recognition of our right to self-determination. That, as part of the main body of the Constitution, to me that would reflect to the rest of Australia that we as First Nations People have a right to self-determination.”

Torres Strait Islanders have a long history of self-government. The civic local government was established in the late 1800’s, and in the 1930s after the maritime strikes, local councils were created, and in the 1990s, the TSRA. The Torres Strait Islander peoples also have rights under the Torres Strait Treaty.

“Torres Strait History is not represented properly ... We have governed ourselves from then to now, we are not starting from scratch.”

Torres Strait Islander communities are flooded with government services – there are 37 on Thursday Island. Communities are serviced by fly-in fly-out workers doing jobs that could be done by locals. Unemployment, and a lack of business and administration opportunities for Torres Strait Islander people continue while money is wasted on bureaucracy and red tape. The government needs to consult and work directly with Torres Strait Islander communities, and not through the “middle man”.

“Walking down George Street, seeing all the state departments in the skyscrapers, they are in charge of administering our affairs by remote control. Our communities are being serviced by fly-in and fly-out arrangements, it’s a mockery of us. They are doing jobs that don’t require a degree qualification. While that is happening, our people don’t have jobs.”

“Government comes into our communities and live the great Australian dream. With subsidised rent, they live cheaply. Meanwhile we are suffering.”

**STATEMENT OF RECORD
TORRES STRAIT DIALOGUE, 5-7 MAY 2017
Referendum Council**

"My vision is to reduce government services, in our communities, and then develop our own code, based on our own culture and structure, so that we design our own policies, services, that is with our culture. ... Give us the opportunity to run our own affairs and do our own thing."

The meeting spoke about how, as a very small percentage of the Australian people, the voices of Torres Strait Islander peoples are not fairly heard in elections.

There was also discussion about the need for reform of the system of governance for the Torres Strait, to reduce the numbers of governing organisations in the region.

"Whilst we blame the States and the Commonwealth in regards to the tiers of government, layers of bureaucracies, we have that many organisations in this region, it's not funny. Too many chiefs and not enough Indians."

The meeting talked about rights to land and sea, and how the native title system was imperfect. Even after a determination, there is nothing to show, but there are plenty of non-Indigenous people still making money from the land and waters.

"What have we got to show for native title? We have owned the land and the sea since time immemorial but we control nothing."

Torres Strait Islanders need to be recognised as a people and not a region. The great majority of Torres Strait Islanders are living on the mainland. They are often classified as "Indigenous" on the mainland, and their distinct identity as Torres Strait Islanders is lost. The meeting acknowledged that issues were faced by those living on their homelands in the Torres Strait and also on the mainland. On the mainland, since the abolition of ATSIC, mainland Torres Strait Islanders came under the responsibility of the Department of Indigenous Affairs, but even this is now taken over by PMC. There is no representation. Torres Strait Islanders on the mainland have lost their voice and have become like dispossessed people.

**STATEMENT OF RECORD
TORRES STRAIT DIALOGUE, 5-7 MAY 2017
Referendum Council**

"How is the Constitutional [reform] going to benefit Torres Strait Islander people living on the mainland?"

People in the meeting remembered injustices and violence committed during colonisation. The meeting also remembered the effect of the stolen generations. People drew attention to the serious issues still confronting communities, including the high youth suicide rate, lack of employment opportunities, and poverty in communities. Young people are often sent to the mainland for education, where it is important that they excel not just in sport and arts but also academically so they are empowered to speak up and fight for their people.

The meeting also spoke about the need to preserve the Torres Strait culture and identity through education, for Indigenous and non-Indigenous people across Australia.

People spoke of the opportunity that was presented by the regional dialogues and Uluru process and the importance of having a vision for young people as part of the future.

"We've got one chance for the future, we can't change the wind but you can adjust the sail to reach your destination."

Reform must be more than just symbolic, but be meaningful, practical and make a difference on the ground for communities. The meeting was clear that simply acknowledgement, for example in a preamble, would not be enough, that it would not achieve meaningful reform. Reform needs to recognise, in the body of the Constitution, the right to self-determination.

"We need to be practical, talk about practical reform."

"I want it to be more than recognition. We want more. I want the practical stuff."

"A preamble would only mention that Aboriginal and Torres Strait Islander people own this country but it wouldn't do anything about it. We want something good, something constructive."

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"Is that enough? What are you going to achieve out of that? Let's be frank. The preamble, to me, that's pretty much symbolic. We need to make sure the model is what we want and it is going to deliver what we need."

"The constitutional power of the Parliament to make laws in section 51(26) needs to be limited so that the Parliament can only make laws that are looking after us, are addressing our needs, for the positive."

The meeting recognised that there were limits to what constitutional reform could achieve.

"With those sovereignty issues, is that we don't put our sovereign rights into the referendum process. It is asking white people to decide whether our sovereignty is part and parcel of our life in this country."

The meeting also discussed other avenues through which meaningful reform could be achieved, including through the political process, changes to policy and legislation, challenges in the court, and at the level of administration.

There was support for negotiating a treaty that would recognise and protect sovereign rights, and have practical milestones that would achieve meaningful change.

"The conversation around treaty should be really real, a treaty with real milestones... We need really clear objectives, articulated by us and designed by us."

Another option that was discussed was the possibility of establishing the Torres Strait region as a Territory under the Constitution, with greater autonomy from the government.

The group spoke about the need to be involved after Uluru, as the process continues, to make sure that control is not taken away.

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TORRES STRAIT DIALOGUE, 5-7 MAY 2017
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Summary of preferences among the options:

The Torres Strait Dialogue represented by delegates from all the first nations groups, Kemer Kemer Meriam (Eastern Islands), Kulkalgal (Central Islands), Kaiwalagal (Inner Islands), Maluyulgal (Lower Western Islands) and Guda Maluyulgal (Top Western Islands) reaffirmed their long term aspiration for greater autonomy, expressed through different models, such as Territory status, a regional assembly or free association.

This representative dialogue also absolutely supported the need for a form of substantial reform and rejected symbolic words that deliver nothing of substance.

Entrenching a voice for Torres Strait Islander peoples and Aboriginal peoples in the Constitution was a very high priority for all the groups in the meeting. This would give Torres Strait Islander peoples power in decision-making processes that give them control over their own affairs. The Voice to the Parliament would provide an “engine room” for change, as well as a way of realising the right to self-determination. The parliamentary voice would be able to temper and influence the making of discriminatory laws by the Commonwealth Parliament. It could also support and promote a treaty-making process. The body could be a way of achieving representation internationally (at the UN) and also connecting with other First Nations people internationally.

The voice could draw support from a constitutional statement of acknowledgement for a more detailed and expressive statutory declaration. Either option would need to respect the position of First Nations peoples as well as being clear about the distinct identity, culture and principles of Torres Strait Islander peoples.

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There was strong support in the group for the pursuit of a treaty that would give Torres Strait Islander peoples self-determination, autonomy and self-government. There was much detail to be worked out before pursuing a treaty, including who has authority to enter into a Treaty or treaties and the content of a Treaty or treaties. Many groups thought that a Treaty or treaties would be able to be achieved through a voice to parliament.

There was support for a prohibition on racial discrimination in some of the groups, although there was an acceptance that there was a large amount of political opposition to this option.

A change to the wording of the head of power was not supported by many in the group. The group expressed strongly that the words have to be very precise so that the head of power be used for the betterment of all Aboriginal and Torres Strait Islander peoples. Preference was expressed for a statement of acknowledgment as a preamble to a new head of power.

In addition there was a preference for a stand alone declaration that sits outside the Constitution that must capture the essence of Aboriginal and Torres Strait Islander peoples' identity, culture and law.

**RECORD OF MEETING
CANBERRA MEETING, 10 May 2017
Referendum Council**

On 10 May 2017, a meeting was held in Canberra to discuss constitutional reform.

Reflecting on the continued struggle...

The meeting began by reflecting on the activism of the past, and our role in the continued struggle. People remembered having marched in the past despite knowing that they'd be met with police brutality and unwarranted arrests. The continuing need for change and rights protection raised two dominant questions: How do we mobilize the next generation? And what are we doing wrong – why aren't the government listening to the demands of Aboriginal and Torres Strait Islander peoples?

I've still got my father-in-law's dog tags... we have to ignite the fire inside our young people to protest like we did in the past.

The skepticism that many people feel towards the Recognise campaign was explored. People feel unable to trust the government because of past policies, continued oppression, and disregard for the needs and demands of the country's first peoples.

The government are the ones in the wrong. Aboriginal people have done nothing wrong. How do we move forward protecting our lands, culture, songlines, and rights?

People reflected on the 1967 referendum and how we can learn from it in this process. The support we received from the Jewish community during the '67 campaign was celebrated as a key alliance that substantially contributed to its success. Engaging with other minority communities who support our struggle is regarded as a smart strategy moving forward.

'67 took away the oppressive regimes of state governments but that just transferred to the federal government. We need to concentrate on what we need to do to get a better outcome.

Sovereignty was central to the discussion and is central to our being. Aboriginal and Torres Strait Islander peoples have never ceded sovereignty and will not support reforms that might put this into question. However, it was noted that having input into how the constitution and Australian law affects us is important because of its impacts on our daily lives and the state of our communities.

Unity was a theme throughout the discussion because it is clear that the government never give us anything voluntarily. *We've got to move to make this stuff happen. They don't give us anything.* Divided we fall.

Whether Australia should become a republic was also raised. It was suggested that creating a completely new constitution and removing ourselves from the commonwealth should be the way forward.

**RECORD OF MEETING
CANBERRA MEETING, 10 May 2017
Referendum Council**

Why aren't we looking at dissolving the constitution. I don't want to be bound as a subject of the crown.

Aboriginal and Torres Strait Islander people in the ACT also realise that they're affected by the Territories Power – section 122 of the Constitution. The power of the federal parliament to overrule laws of the territory parliament, and to affect the people of Jervis Bay is something that needs to be considered when talking about the best way forward in constitutional reform.

Preferences for reform...

A minimalist model – a statement of acknowledgment in the constitution was rejected by the meeting.

I don't think a preamble will provide strong substance.

We want substantial change, but we're advocating from a minority position.

Sovereignty was a dominant point of discussion. It gives Aboriginal people control over our future and self-management. The continued assertion of our sovereign status was agreed upon by all.

There was strong support for First Nations representation in parliament ensuring that our voices are heard.

People want the constitution to protect our hunting and gathering rights, continuing cultural practices, our roles and responsibilities, and our identity. Reform needs to stop things like the Northern Territory intervention. Those things *need* to be dealt with.

Comments on process to Uluru and beyond...

There was concern expressed that not enough time or resources have been dedicated to this process, and definitely not enough to constitute free, prior, and informed consent. People worry about our community and the local people who live day-to-day and don't worry about referendums. Implications for future generations are the forefront of our minds. The message should be coming from us that the meeting in Uluru isn't us giving the government consent to hold a referendum. We need to be able to go back to our mob afterward and talk to them about what's decided. Communities are not ready to make decisions about reform yet, but the discussion should be part of a broader strategic direction for the future of Aboriginal and Torres Strait Islander peoples.

The groundswell of grassroots movements was congratulated, and the various positions on constitutional recognition were discussed. The idea was raised that

**RECORD OF MEETING
CANBERRA MEETING, 10 May 2017
Referendum Council**

Uluru should be as transparent as possible, with media access and possibly having it broadcast, because it will help the community to feel more comfortable about the process.

The continued criticism of the Recognise campaign was discussed at length. It was argued that fair and open discussions with communities will not happen as long as the Recognise campaign exists.

There was a suggestion that in moving forward we can not do this alone. We seek support in moving forward from International Human Rights Lawyers and other international agencies – especially for lessons learnt on how they were successful in representation and to place international pressure on Australian Government.

There's a lot of spin doctoring that can't necessarily be seen through by everyone.

There was a suggestion that a statement come out of Uluru stating that Aboriginal and Torres Strait Islander people have not been fully consulted and so we're not in a position to say anything other than, we do not recognise Recognise.

It was also made clear that the Wreck Bay Community want to be recognised as separate from the ACT and having a voice as people of Jervis Bay Territory.

Jervis Bay Territory

For the Wreck Bay community it's difficult for to make a determination of what suits them best because of the unique position of the Jervis Bay Territory. The territory doesn't have a government. Wreck Bay community own most of the property in Jervis Bay and we want to know how the constitution can provide us with security long term. Currently ACT laws apply in Jervis Bay – but the Community is currently challenging this in Supreme Court. The fear of the community is that if we continue along this legal path, the federal government will repeal our legislation leaving us stateless and removing our autonomy. If the community can't self-determine and make decisions for our own community regarding economic and social development then we can't be confident about the future for our children.