



# Reconciliation NSW

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

October 2018

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## About Reconciliation NSW

Reconciliation NSW is the peak body for advancing reconciliation in NSW. We work towards recognition of our nation’s cultural heritage, respect for Australia’s First Peoples and opportunities for self-determination, to bring about a more just, harmonious and equitable society.

We work with reconciliation councils in other states, government agencies and other organisations to continue the work started by the Reconciliation Committee. We are an independent, not-for-profit and non-partisan organisation. Our membership is made up of Reconciliation Groups and individuals across NSW – Aboriginal and Torres Strait Islander and non-Indigenous peoples working together to advance reconciliation in their communities. Twenty-one local reconciliation groups in NSW were co-signatories to our July 2018 submission to the Committee.

Reconciliation NSW actively provide resources and tools to increase the knowledge, understanding and commitment of non-Aboriginal communities to engage in reconciliation. At the grassroots we work with and support an independent network of Local Reconciliation Groups, who host a range of events and activities to engage their local communities with Aboriginal and Torres Strait Islander peoples, histories, cultures and equity.

We work with Aboriginal and Torres Strait Islander stakeholders to advocate and influence policy discussion at all levels of business and government to advance social justice, equity and the self-determination of Aboriginal and Torres Strait Islander peoples in NSW – through partners such as Just Reinvest, Change the Record, and ANTaR.

## Position taken by Reconciliation NSW

Reconciliation NSW believes that Aboriginal and Torres Strait Islander people hold a unique place as the First Australians. We believe that self-determination is key to Aboriginal and Torres Strait Islander equity and that people should have a voice in the matters that affect them.

Reconciliation NSW supports constitutional reform so that our nation’s guiding document acknowledges and affirms the unique rights and position of Aboriginal and Torres Strait Islander peoples in Australia.

Reconciliation NSW supports the Uluru Statement from the Heart and the recommendations of the Referendum Council for specific changes to the Constitution and a constitutionally enshrined Voice, together with associated treaty-making and truth-telling processes.

These recommendations provide a clear and practical path forward for Aboriginal and Torres Strait Islander self-determination in accordance with the United Nations Declaration on the Rights of Indigenous Peoples.

They represent the reasonable aspirations of First Australians following the largest consultation process ever undertaken with Aboriginal and Torres Strait Islander people. The Uluru Statement from the Heart grew out of dialogues around the country and represents a united, national Indigenous position on a constitutional reform agenda. This is historically unprecedented.

Reconciliation NSW is deeply concerned that the Uluru Statement from the Heart was rejected by the federal government only four months after it was gifted to the Australian people by the delegates, with the argument that the Voice amounted to a ‘third chamber’ of the parliament, despite it being proposed as a body without veto power over the functions of Parliament. Rather, a Voice to Parliament would provide a mechanism for First Nations peoples to participate actively in our democracy and address the unmet and pressing need for First Australians to have a voice in the policies and decisions that govern their lives.

Reconciliation NSW also supports both formal agreement making and truth-telling processes through a Makarrata Commission. Truth-telling is critical to raising public awareness of the need for constitutional reform, to improving civic understanding of our nation’s history, and to recognising Aboriginal and Torres Strait Islander self-determination.

We hope that upon the release of the Joint Select Committee’s Final Report in late November, there will be a prompt response from all major parties, with a commitment as to how this reform agenda will progress.

## Issues to consider

The Uluru Statement from the Heart is the continuation of calls over many decades by Aboriginal and Torres Strait Islander peoples to move past Australia’s colonial legacy by being recognised and heard in their own countries, and with the right and capacity to practice self-determination. It follows on from the Australian Aborigines League petition to King George V, presented to the Commonwealth Government in 1937 to the Bark Petitions of 1963, the 1967 referendum legacy, the Barunga Statement of 1988, the 1992 Mabo decision overturning terra nullius, the Eva Valley Statement of 1993, the report on the Social Justice Package by ATSIC in 1995, the AHRC’s Bringing Them Home report in 1997, the Kalkaringi Statement of 1998, and the Kirribilli Statement of 2015 and the Redfern Statement 2017.

Alongside these calls from Aboriginal and Torres Strait Islander peoples are numerous reports over several decades by various government-initiated committees that have continually outlined the case for recognition and rights due to Aboriginal and Torres Strait Islander peoples, and for truth-telling about the history of our nation. These include:

- a 1983 Senate Standing Committee on Constitutional and Legal Affairs;
- a 1988 Constitutional Commission;
- the post-Mabo Social Justice Package of 1992–95;
- the 1998 Constitutional Convention;

- the Council for Aboriginal Reconciliation in 2000;
- the Senate Legal and Constitutional Affairs Committee in 2003;
- a 2008 House of Representatives Standing Committee on Legal and Constitutional Affairs;
- the Expert Panel on Constitutional Recognition of Indigenous Australians 2010;
- the Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples 2013; and
- the Referendum Council 2015.

Despite the considerable advice and proposals from Aboriginal and Torres Strait Islander peoples and a litany of reports, successive governments have made little progress towards a clear path to agreement and a referendum.

The Uluru Statement from the Heart, based on the direction of the 12 First Nations Regional Dialogues, rejects symbolic recognition in the Constitution in favour of a reform agenda that can achieve the outcomes required of a fully reconciled and fair Australia. It outlines a series of reforms – Voice, Treaty, Truth - where a constitutionally enshrined Voice to Parliament is supported a Makarrata Commission to supervise a process for both agreement making between governments and First Nations, and a historical truth-telling.<sup>i</sup>

The Uluru Statement, which outlined the nature of reforms, was the introduction to the Referendum Council’s final report which provides greater detail behind the guiding principles developed from the Regional Dialogues and incorporated into the Uluru Statement. These guiding principles to proposals are that reform:

- Does not diminish Aboriginal sovereignty and Torres Strait Islander sovereignty;
- Involves substantive, structural reform;
- Advances self-determination and the standards established under the United Nations Declaration on the Rights of Indigenous Peoples;
- 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; and
- Does not interfere with positive legal arrangements.<sup>ii</sup>

### The Voice and self-determination

For Australia to work together to renew and re-build relationships between Aboriginal and Torres Strait Islander and non-Indigenous Australians, we must move past the colonial legacy and truly reconcile. Self-determination, as acknowledged in the UN Declaration on the Rights of Indigenous Peoples, is integral to this. Without it the other rights outlined in the UN Declaration on the Rights of Indigenous Peoples cannot be fully realised.

The aspirations outlined in the Uluru Statement of the Heart present a roadmap by which First Nations peoples are able to join with other Australians on mutually agreed-upon and just terms after many years of separation and exclusion, and to remedy the ongoing violation of Aboriginal and Torres Strait Islander peoples’ right to self-determination in Australia.

Self-determination will necessarily be exercised differently among Aboriginal and Torres Strait Islander peoples according to their own needs and aspirations. Former UN Special Rapporteur, James Anaya

provides one broad concept of self-determination: *“Understood as a human right, the essential idea of self-determination is that human beings, individually and as groups, are equally entitled to be in control of their own destinies, and to live within governing institutional orders that are devised accordingly”*.<sup>iii</sup>

A constitutionally guaranteed Voice is important for permanency and endurance. The demise of Indigenous bodies set up in legislation such as ATSIC and the more recent establishment and then defunding of the National Congress of Australia’s First Peoples as political priorities change illustrate this point. The National Congress of Australia’s First Peoples, with its membership structures and representation through election processes, was essentially set up to act as a Voice to parliament. Reconciliation NSW believes Congress has an important role in the structure and role of any future Voice, and should be appropriately resourced to do it.

Professor Davis notes that while the way representatives are selected or elected to represent communities through the Voice has not been determined definitively, “the process must be driven by the principle of self-determination; it is up to the First Nations to determine how they are represented”.<sup>iv</sup>

### Agreement making

While it is noted that treaty and agreement making does not require Constitutional reform, Professor Davis notes that the Voice should precede agreement making or treaty:

The sequencing of the reform is that the Voice would supervise the process of agreement making or treaty. One of the issues ventilated by the regions on Day One was the destruction wrought by the native title process. There was deep hurt that the native title process has torn communities and families apart. Many regions differed in terms of their land ownership and leverage to fairly enter into agreements. For that reason, it was thought many will need help and resources to even contemplate agreement making. There is no one size fits all.

There is much healing to be done in many communities, and dispute-resolution services would be required before agreement making is contemplated, and this in part is why Voice precedes Treaty. While negotiating a treaty is a long-time aspiration for Aboriginal people, there are political realities about living in a federation where, post-1967, the Commonwealth and the states have engaged in cost shifting and passing of blame. One of the drivers of our disadvantage is our structural powerlessness. As the Uluru Statement notes:

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

Treaty is a nation-to-nation process that requires leverage and resources. The state-based processes, and especially the territories, are extremely vulnerable to Commonwealth power in a variety of ways. The Voice is a structural reform that compels the state to listen to Aboriginal and Torres Strait Islander Peoples in policy and decision-making.<sup>v</sup>

Reconciliation NSW notes that there are some promising existing and developing models to ensure that Aboriginal and Torres Strait Islander communities have a genuine voice in determining what and how services are delivered to their communities. While some are still in early stages, elements of these models may provide a potential template for negotiations with Aboriginal and Torres Strait Islander peoples throughout Australia.

For example, Local Decision Making, a key initiative of *OCHRE* is a model seen by some as a progressive and developing expression of self-determination<sup>vi</sup>. Local Decision Making represents a fundamental change in the relationship between government and Aboriginal and Torres Strait Islander communities, underpinned by the principle of self-determination. Local Decision Making “places Aboriginal people at the centre of service design, planning and delivery, enabling the staged devolution of decision making and accountability to the local level”. It provides a mechanism for ongoing open dialogue between Aboriginal communities and government and recognises that there is no one solution that will work for all Aboriginal and Torres Strait Islander peoples.<sup>vii</sup>

The NSW Aboriginal Land Council (NSWALC) and more recently the Murdi Paaki Regional Assembly are two of the most established representative structures in NSW. Established under the *Aboriginal Land Rights Act 1983*, NSWALC is the peak representative body in NSW representing Local Aboriginal Land Councils. They act as an advisor to and negotiate with governments and other stakeholders to ensure the preservation of Aboriginal land rights in NSW.

Murdi Paaki is the peak representative structure across 16 communities across Western NSW and is built on a membership base of Community Working Parties that form the governance framework that provides strategic engagement and co-ordination from federal and state governments and service providers for the delivery of services and programs agreed by Aboriginal people through a comprehensive planning process. Murdi Paaki grew out of the former ATSIC Regional Council and has been operating for over two decades.

### Truth-telling

Reconciliation NSW believes the fundamental importance of addressing truth-telling for Australia to be reconciled. Senator Patrick Dodson in his forward to the 2016 State of Reconciliation in Australia report notes the importance of dealing with the “... *schism between Indigenous and non-Indigenous Australia’s understanding and perspectives of how our nation’s history has shaped the contemporary circumstances of Indigenous communities, and their relationship with the Australian State, and the “discernible lack of appreciation by settler Australia about the grievances and sense of historical injustice that Indigenous people feel”*.”<sup>viii</sup>

Professor Megan Davis states that:

... a nation cannot recognise people they do not know or understand. The Aboriginal experience in Australian history is critical to recognition. From pre-contact to invasion, from conciliation to the frontier wars and killings, from compulsory racial segregation to assimilation, from self-determination to the return to neo-paternalism, it is time now to make peace and the Uluru reforms are the road map to peace.<sup>ix</sup>

The Uluru Statement from the Heart states:

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.

Truth-telling about past injustices has long been used in the international sphere as a starting point for coming to terms with a period of conflict, upheaval or injustice. Formal processes of truth-telling, such as truth and reconciliation commissions, have been used more than 30 times since the 1970s in countries around the world.<sup>x</sup> The 2008 Canadian Truth and Reconciliation Commission aimed to mend the deep rifts between Aboriginal peoples and the settler society that engineered a system that removed their children.

The growing momentum to establish an Australian truth-telling processes aim to promote awareness of the historical and ongoing impact of colonisation, and the dispossession and trauma that First Nations Peoples and encourage all sides to come together towards unity and equity. Truth-telling can grow out of the agreement making process or commence at any time.

An example of the impact of truth-telling is the response to the uncovering of historic truths around the Stolen Generations. Since the release of the *Bringing Them Home* report there have been a number of federal and state responses. There has been significant investment in the *Bringing Them Home* programs, the Link-Up program, the Social and Emotional Wellbeing Regional Centre Program and the Mental Health Program as well as State and Commonwealth government apologies. These responses have been significant, however many of the other recommended actions in the *Bringing Them Home* report have not been addressed. As such, the 54 recommendations of the *Bringing Them Home* report remain as relevant today as they were in 1997.

The Inquiry into reparations for the Stolen Generations in New South Wales is an important step in the process of healing and key to the NSW Government fulfilling the recommendations made by the *Bringing Them Home* report.

As highlighted by Dr Tom Calma in his address at the ‘Ten Years Later: *Bringing Them Home* and the Forced Removal of Children’ Conference, the responses of Australian governments need to be ongoing and capable of meeting the needs of the growing Indigenous population<sup>xi</sup>. The policies of removal by successive Australian governments have left an ongoing legacy for many Aboriginal peoples and their descendants is an ongoing issue. It is important that the NSW government is active in its attempt to address this legacy of trauma and begin the process of healing and reconciliation for the members of the Stolen Generations in NSW.

Recommendation no. 3 of the *Bringing Them Home* report that states that reparations should consist of:

- a) Acknowledgement and apology
- b) Guarantees against repetition
- c) Measures of restitutions
- d) Measures of rehabilitation, and
- e) Monetary compensation

An example of localised truth-telling in NSW is the national and state heritage listed memorial at Myall Creek, which has for nearly twenty years served as an icon for truth-telling in history and a means of encouragement on what can be achieved when Aboriginal and Torres Strait Islander and non-Indigenous people work together towards true reconciliation in our land.

In 2008 in his apology to the Stolen Generations then Prime Minister Kevin Rudd spoke of “*the real possibility of reconciliation writ large: ... reconciliation across the entire history of the often bloody encounter between those who emerged from the Dreamtime a thousand generations ago and those who ... came across the seas only yesterday.*” To have true reconciliation all Australians should be aware of the genuine events that occurred.

The Friends of Myall Creek Memorial are working on a proposal to deepen the cultural impact of the Myall Creek Memorial precinct to enable Aboriginal people to reclaim and transform a place of genocide into a place celebrating Aboriginal culture, both traditional and contemporary.

## How Reconciliation NSW can support the implementation of the recommendations of the Uluru Statement and the Referendum Council

Reconciliation NSW's objective is to work with, inform and support *all people* in NSW to engage in reconciliation. This is of growing importance as calls for constitutional reform, treaty and truth-telling discussions gain support following the Recognise campaign and the Uluru Statement. In March 2018 the Victorian Parliament became the first to introduce treaty legislation, and the NT Government has recently pledged to work towards a treaty with Aboriginal and Torres Strait Islander peoples.

As several states now move towards treaty agreements with Australia's First Peoples, it is timely for the Federal Government to provide a commitment to working towards a national treaty framework.

The *Advancing the Treaty Process with Aboriginal Victorians Bill 2018* will be the roadmap to that state's treaty negotiations and is the culmination of the work of over 7,000 community members who have been engaged to work with government to progress Treaty over the past two years.

Reconciliation Victoria, through a close working relationship with the Victorian Treaty Advancement Commission is currently mobilising and expanding their state-wide network of reconciliation supporters to build a supportive community environment for the Victorian Treaty/ies process, through raising awareness and understanding among non-Aboriginal Victorians about the importance of Aboriginal history and culture and the need for truth, justice and healing. They are working with local government to facilitate reconciliation leadership; developing the capacity of local reconciliation groups and networks to be strong and effective champions for change in their local communities; and increasing public awareness and engagement in reconciliation and support for Treaty/ies through online and strategic communications.

Reconciliation NSW is currently preparing to take a lead role in similar work in NSW, working in and with communities around NSW to build a supportive community environment for constitutional reform, truth-telling and treaty.

Part of this work will be building the capacity of Local Reconciliation Groups to be champions for change in their communities. This is important to ensure there is grassroots infrastructure and organisation to support a referendum campaign – ie Local Reconciliation Groups with the appropriate political skills to run campaigns, organise forums, participate in community debates, etc. We are looking at possible links to educational or professional learning institutions so that whilst the training/capacity building may be informal, there is a formal structure to it.

As the peak reconciliation organisation in NSW, Reconciliation NSW is in the preliminary stages of planning for a series of community dialogues throughout NSW to support the pathway to reconciliation in our state. To engage with the work and aspirations of Coalition of Aboriginal Peak Organisations (CAPO) and more broadly Aboriginal peak organisations in NSW, we are seeking the Coalition of Aboriginal Peak Organisations (CAPO) and the broader Aboriginal leadership to be our partners in driving the process and of where reconciliation in NSW is heading, under the broader umbrella of self-determination. The local government peak body LGNSW has also been approached to take part, and we will be speaking with the NSW Parliamentary Friends of Reconciliation.

Discussions and capacity building around constitutional reform, makarrata and treaty will be integral to this community engagement project.

## Conclusion

Truth-telling is critical to raising public awareness of the need for constitutional reform, to improving civic understanding of our nation's history, and to recognising Aboriginal and Torres Strait Islander sovereignty.

In the Uluru Statement from the Heart, Aboriginal and Torres Strait Islander peoples invited non-Indigenous Australians to: "... walk with us in a movement of the Australian people for a better future." Constitutional reform will be an important affirmation of Australia's recognition of Aboriginal and Torres Strait Islander self-determination, and an essential step in our nation's reconciliation journey.

## References

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