

# Four Reasons to reject the Referendum Council Recommendations

## Background

On 30 June 2017 the Referendum Council delivered its final report to Prime Minister Malcolm Turnbull and Opposition Leader Bill Shorten.

The Referendum Council had been tasked with conducting a series of consultations on the question of how to recognise Aboriginal and Torres Strait Islander Peoples in the Australian Constitution.

On 18 July 2017 the prime minister and the opposition leader held a joint meeting with members of the Referendum Council to discuss the recommendations contained in the final report.

The Referendum Council's report makes two recommendations: a constitutional reform proposal to establish an entrenched indigenous 'voice to parliament', and an extra-constitutional proposal that all state and federal parliaments in Australia pass a declaration of recognition of Aboriginal and Torres Strait Islander Peoples.

## 1. Indigenous Australians already have a voice to parliament

The Referendum Council is right to identify participation as a vital ingredient in a successful liberal democracy.

Indigenous Australians should have a voice to parliament just as all Australian citizens should. Every Australian should be given the opportunity to participate in the democratic process.

And we already are.

Every citizen is already given that opportunity because we each have a vote, which we use to elect representatives to state and federal parliaments, and also representatives to local government.

We are all free to actively take part in democracy, and to advocate for our communities and for causes we believe to be important. No new body in the constitution is necessary to give any citizen a voice to parliament.

This is true for both indigenous and non-indigenous Australians alike.

## 2. A voice to parliament for one race is divisive and undemocratic – we are all equal

The Australian Constitution is the founding document of the Australian nation. Every Australian should be treated equally under the constitution. No special privileges should be afforded to any group of individuals based on race, gender, sexuality, or religion.<sup>1</sup> No group should be singled out for special treatment. We are all equal under the Australian constitution.

The creation of a voice to parliament for Aboriginal and Torres Strait Islanders divides Australians according to their race. Race should not be used as a qualification for participation in democracy. Using race as the basis for the creation of a new constitutional body is divisive.

Granting a special constitutional privilege to one segment of our community is also undemocratic. The creation of a body to exclusively represent one group elevates members of that group above others in our community.

Treating all Australians equally under the Australian constitution is important. This means being blind to immaterial differences such as race, ethnicity, and skin colour.

Martin Luther King Jr best expressed this during the American civil rights movement of the 1960s when he said: “I have a dream that my four little children will one day live in a nation where they will not be judged by the colour of their skin, but by the content of their character.”<sup>2</sup>

### 3. The voice to parliament is vague

The Referendum Council report has very little detail about the structure and functions of the proposed voice to parliament. It fails to make recommendations about the particular features of the proposal, instead leaving those questions to parliament: “It will be for the Parliament to consider what further definition is required before the proposal is in a form appropriate to be put to a referendum.”<sup>3</sup>

### 4. The constitution is a rulebook – this change is radical

The Australian Constitution sets out the structure of Australian government. The constitution is a rulebook for the nation. It divides power between the various arms of government and it makes provision for the democratic process through which our representatives are elected.

The constitution is not a history book. It is not a place for our ambitions as a nation. It is not a place for the changing values of the day.

The proposal to insert into the constitution a voice to parliament to represent Aboriginal and Torres Strait Islanders has been described by some as a ‘modest’ proposal. References have been made to ‘constitutional conservatives’ who support this model.<sup>4</sup>

But this is a proposal for radical constitutional change.

The voice to parliament is an untested concept. It undermines the concept of representative democracy and it puts at risk the idea that all Australians are equal participants in democracy.

### Conclusion and other matters

The Referendum Council’s report also proposed that a series of declarations “be enacted by legislation passed by all Australian Parliaments, ideally on the same day, to articulate a symbolic statement of recognition to unify all Australians.”<sup>5</sup> Not only is this divisive, but it is also redundant: all State parliaments and the federal parliament have already passed their own recognition laws. Victoria<sup>6</sup> was the first in August 2004, followed by Queensland<sup>7</sup> and New South Wales<sup>8</sup> in October 2010, South Australia<sup>9</sup> in March 2013, Western Australia<sup>10</sup> in September 2015, and Tasmania<sup>11</sup> in October 2016.

For all of these reasons, the Institute of Public Affairs, strongly recommends that the recommendations from the Referendum Council be rejected.

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1 James Buchanan, *The Calculus of Consent* (1962) 80.

2 Martin Luther King Jr., “I have a dream...” speech’ (1963) 5 <<https://www.archives.gov/files/press/exhibits/dream-speech.pdf>>.

3 Final Report of the Referendum Council, 30 June 2017 <[https://www.referendumcouncil.org.au/sites/default/files/report\\_attachments/Referendum\\_Council\\_Final\\_Report.pdf](https://www.referendumcouncil.org.au/sites/default/files/report_attachments/Referendum_Council_Final_Report.pdf)>.

4 *The Australian* <<http://www.theaustralian.com.au/national-affairs/indigenous/turnbull-backs-very-big-new-idea-on-indigenous-constitutional-recognition/news-story/db4923cdbaff78e10b2205b9892de02b>>

See, also, Editorial, ‘Indigenous recognition steps outside Constitution’ *The Australian* 19 July 2017 <<http://www.theaustralian.com.au/opinion/editorials/indigenous-recognition-steps-outside-constitution/news-story/ab867e0301efb08214dd661333196a7>>.

5 Commonwealth of Australia, ‘Final Report of the Referendum Council’ (2017) 2.

6 *Constitution (Recognition of Aboriginal People) Bill 2004*.

7 *Constitution Amendment (Recognition of Aboriginal People) Bill 2010*.

8 *Constitution Amendment (Recognition of Aboriginal People) Bill 2010*. NSW also recognises Indigenous Australians’ historical relationship with the Australian continent in the *Aboriginal Land Rights Act 1983*, the *Water Management Act 2000*, and the *Fisheries Management Act 1994*.

9 *Constitution (Recognition of Aboriginal Peoples) Amendment Bill 2012*.

10 *Constitutional Amendment (Recognition of Aboriginal People) Bill 2015*.

11 *Constitutional Amendment (Constitutional Recognition of Aboriginal People) Act 2016*.