



Department of the House of Representatives
PO Box 6021
Canberra ACT 2600
Australia

Submission to:

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

Dear Joint Select Committee,

The Australian Indigenous Governance Institute (AIGI) welcomes the opportunity to make a submission to the Joint Select Committee on Constitutional Recognition Relating to Aboriginal and Torres Strait Islander Peoples.

AIGI is a privately funded institute that conducts governance research and training for Indigenous organisations, corporations, institutes and unincorporated bodies throughout Australia.

AIGI is a national centre of governance excellence, connecting Indigenous Australians to world-class governance practice, providing accessible research, disseminating stories that celebrate outstanding success and solutions, and delivering professional development opportunities to meet the self-determined governance needs of Indigenous peoples.

AIGI welcomes the work being undertaken by the Joint Select Committee however, we believe that significant progress is yet to be made in resolving the long-standing issues relating to the non-recognition of Aboriginal and Torres Strait Islander peoples and their relationship with non-Indigenous Australians. In particular, we entreat that no matter what strategies for reform emerge from the Joint Select Committee, the impact must foster sustainable self-determination for Aboriginal and Torres Strait Islander peoples.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Michelle Deshong', written in a cursive style.

Ms Michelle Deshong,

Chief Executive Officer, Australian Indigenous Governance Institute.

Australian Indigenous Governance Institute

Submission to the Joint Select Committee on Constitutional Recognition **Relating to Aboriginal and Torres Strait Islander Peoples**

Summary

The Australian Indigenous Governance Institute supports the recognition of Aboriginal and Torres Strait Islander peoples in the Australian Constitution. However, we believe that recognition is but one component of larger reforms needed to transform the relationship between Aboriginal and Torres Strait Islander peoples and non-Indigenous Australians. Furthermore, it is the position of AIGI that strategies to promote the Recognition of Aboriginal and Torres Strait Islander Peoples in the Australian Constitution must foster self-determination through strong self-governance.

Recommendations

1. **That Recognition of Aboriginal and Torres Strait Islander peoples in the Australian Constitution must include and promote self-determination through strong self-governance**
2. **The Australian Government commit to truth-telling through supporting and fully funding an Australian Truth-telling Commission**
3. **That the Australian Government pursue agreement making through a Makarrata Commission with Aboriginal and Torres Strait Islander peoples, communities and nations**
4. **That the Australian Government commit to pursuing Constitutional Recognition of Aboriginal and Torres Strait Islander peoples**

Introduction

The Australian Indigenous Governance Institute (AIGI) is a national centre of governance excellence, dedicated to supporting the sustainable self-determination of Aboriginal and Torres Strait Islander peoples, communities and nations through strong and effective self-governance. Whilst this submission represents the views of AIGI, we recognise that Indigenous peoples and communities themselves are best placed to speak about their experiences, circumstances and ambitions.

This submission addresses a number of issues that AIGI believe are critical when considering the larger question of Constitutional Recognition of Aboriginal and Torres Strait Islander peoples. This submission will respond to three specific areas:

- Acknowledging the work of previous bodies
- Recommendations for constitutional recognition and concurrent activities
- Equal partners in future relationships

Acknowledging the work of previous bodies

AIGI acknowledges the comprehensive work undertaken by the Referendum Council through their National Dialogues in 2016-17. We support in-principle the outcome of the National Convention, the 'Uluru Statement from the Heart'.

AIGI acknowledges the recent work undertaken the Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander People 2015 and the Expert Panel on Constitutional Recognition of Indigenous Australians 2012. We acknowledge also the work undertaken by other government and non-government agencies in facilitating discussions on Constitutional Recognition such as the National Native Title Conferences and the Australian National University's First Nations Governance Forum in 2018.

AIGI further acknowledges the long history of advocacy by Indigenous Australians relating to Constitutional Recognition including the Aborigines Conference, the Barunga Statement, the National Aboriginal Conference, the Aboriginal Treaty Committee, the Constitution Committee's Report and the Council for Aboriginal Reconciliation Report to name but a few.

Taken together, there now exists a substantive and long-standing body of work by generations of Aboriginal and Torres Strait Islander peoples, as well as non-Indigenous Australians that have consistently called for constitutional recognition. However, in response to these many reports, statements, panels, councils and committees, successive Australian governments have failed to act.

Recommendations for constitutional recognition and concurrent activities

AIGI believe that the three goals as outlined in the *Uluru Statement from the Heart*; Constitutional Recognition, a Makarrata Commission and truth-telling, are sound objectives. However, we believe that these objectives must be strategically aligned to build awareness and support over time, thereby providing the best possible chance of success at a referendum.

It is the position of AIGI that the government commit to truth-telling as a first step. This commitment includes supporting and fully funding an Australian Truth-telling Commission. Similar models of truth-telling have been undertaken through Canada and South Africa's Truth and Reconciliation Commissions.

AIGI strongly support the establishment of a Makarrata Commission with the goal of negotiating self-governance agreements with Aboriginal and Torres Strait Islander peoples or nations. These agreements should recognise the right of Aboriginal and Torres Strait Islander peoples to collectivise and organise in ways appropriate to them. Significantly, agreements negotiated through a Makarrata Commission must be built on the recognition that Aboriginal and Torres Strait Islander peoples have the inherent right to their own cultural, political and economic representation. We believe that agreements negotiated in good faith will provide real opportunities for Aboriginal and Torres Strait Islander peoples to exercise self-determination through strong self-governance, thereby supporting them to set their own priorities and development goals.

Finally, it is also the position of AIGI that constitutional recognition be pursued as part of a national truth-telling process. We believe that truth-telling will inform the wording as well as build support among the wider Australian population for constitutional recognition.

This process, we believe, accords with the criteria as set out in the Final Report of the Expert Panel on Recognising Aboriginal and Torres Strait Islander Peoples in the Constitution:

- Contribute to a more unified and reconciled nation;
- Be of benefit to and accord with the wishes of Aboriginal and Torres Strait Islander Peoples;
- Be capable of being supported by an overwhelming majority of Australians from across the political and social spectrums; and
- Be technically and legally sound.

It is crucial that the Australian Government demonstrate commitment and leadership in any process of Constitutional Recognition. One way in which this leadership needs to be demonstrated includes

working collegially with other major parties present in the Australian Federal Parliament, the Australian media and building awareness and support for Constitutional Recognition in the wider Australian public.

Acting in this way acknowledges that Constitutional Recognition is but one component of a larger journey to better the lives of Aboriginal and Torres Strait Islander peoples and creating a more inclusive and complete expression of Australia.

Equal partners in future relationships

The evidence collected from the Indigenous Community Governance Project from 2002-07 clearly demonstrates that top-down approaches in Indigenous policy have not and will not succeedⁱ. Furthermore, the evidence demonstrates that when governments engage Indigenous peoples and communities as equal partners, vesting real decision-making powers in Indigenous communities and Indigenous-led organisations, meaningful improvements in the health, wellbeing and general livelihoods of Indigenous peoples and communities are realised.

The recommendations outlined in this submission support the self-determination of Aboriginal and Torres Strait Islander peoples. The right to self-determination is a cornerstone of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), of which Australia has formally expressed its support. This includes the right to self-governance with the wider nation state.

It is the position of AIGI that strategies to promote the Recognition of Aboriginal and Torres Strait Islander Peoples in the Australian Constitution *must* include and promote self-determination through strong self-governance. We believe that the Recognition of Aboriginal and Torres Strait Islander Peoples in the Australian Constitution presents the Australian Government with a unique opportunity to move beyond statements supporting self-determination through the UNDRIP, to embedding it in the fabric of the Australian Nation.

Evidence collected from various parts of the world including Canada, the United States of America, New Zealand and Norway demonstrate that when the recognition of Indigenous Peoples' unique rights are matched with structural decision-making power, many communities are able to achieve long-term sustainable development. In many instances, this development has resulted in long-term economic growth, decreased reliance on public financial support, future planning and improved health and wellbeing for community membersⁱⁱ. Furthermore, with the necessary tools including legal recognition and structural decision-making power, Aboriginal and Torres Strait Islander peoples would be equipped to plan for and realise their own visions of a prosperous future and ensure gender and generational equity within their communities.

The tiered recommendations outlined in this submission, in our opinion, will foster and promote the self-determination of Aboriginal and Torres Strait Islander peoples in practically effective ways. Furthermore, the negotiation of self-governance agreements through a Makarrata Commission would give real and substantial decision-making authority to Aboriginal and Torres Strait Islander peoples, communities and nations and lay the platform for sustainable self-determination.

Conclusion

This submission is based on the work of generations of Australians committed to the constitutional recognition of Aboriginal and Torres Strait Islander peoples and supported by research collected over the past 15 years in the area of Indigenous Governance in Australia and throughout the world. Coordinating activities, as so outlined in this submission, recognises that constitutional recognition is but one element of larger reform needed to better the lives of Aboriginal and Torres Strait Islander peoples. We firmly believe that truth-telling, self-governance agreement making followed by constitutional recognition will have a genuine prospect of transforming the relationship between Aboriginal and Torres Strait Islander peoples and non-Indigenous Australians and contribute to the formation of a more complete Australia.

ⁱ Hunt, J., Smith, D., Garling, S., Sanders, W. (2008) *Contested Governance: Culture, power and institutions in Indigenous Australia*, Australian National University E-Press, Canberra, ACT.

ⁱⁱ Jorgensen, M. ed. (2007) *Rebuilding Native Nations: Strategies for Governance and Development*, University of Arizona Press, Tucson, Arizona.