

Museums Galleries Australia

Resolution in support of the Uluru Statement from the Heart of May 2017

adopted at the AGM, Melbourne, 6 June 2018

Members of Museums Galleries Australia meeting in annual conference on 6 June 2018 in Melbourne express their support for Indigenous Australians in their aspiration for a 'Voice to the Parliament' as proposed by the meeting at Uluru in May 2017 in the Statement from the Heart and endorsed by the Referendum Council, and urge all museums to familiarise themselves with the Statement and its background since establishment of the Council for Aboriginal Reconciliation in 1991, and engage their audiences to promote understanding of the Statement.¹

We further note and support the significant request in the Uluru Statement, in particular the call for a Makarrata Commission, to supervise 'the coming together after a struggle' through a process of agreement-making between governments and First Nations involving truth telling about history, to meet 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".

In adopting this resolution, we note the following:

- the many appeals for self-determination advanced by Indigenous peoples over the last more than 100 years have failed to produce adequate recognition or response;
- that Indigenous peoples had no voice in the framing of the Australian Constitution – indeed, were not recognised as Australian citizens at the time of its adoption;
- that the 1967 Referendum gave the Commonwealth powers (in Section 51(xxvi) "to make laws with respect to people of any race", thereby including Indigenous peoples; and
- that the Australian High Court's Mabo decision of 1992 repudiated the doctrine of *terra nullius*, or the land as unoccupied prior to British colonisation, and recognised Aboriginal peoples' continuing connections with, and ownership of, their land.

We further note:

- that a period of almost a decade has now passed since such processes were launched to consult with both Indigenous people and a broad cross-section of the Australian community on a desired form of Indigenous recognition in the Australian Constitution;

¹ The full text of the Uluru Statement from the Heart and its background can be accessed at: https://www.referendumcouncil.org.au/sites/default/files/report_attachments/Referendum_Council_Final_Report.pdf

- that the organisers of the meetings at Uluru and the Referendum Council (established jointly by the current Prime Minister and Opposition Leader) conducted extensive consultations concerning constitutional recognition of Indigenous people;
- that the National Constitutional Convention meeting at Uluru in May 2017 empowered First Peoples from across the country to form a consensus position on the form constitutional recognition should take; and
- that in reaching its conclusion, a 'minimalist approach' involving merely a statement of recognition included in the present Preamble to the constitution, and moderation of the race power/s, was considered unacceptable to Aboriginal and Torres Strait Islander peoples today.

Moved Desmond Griffin AM, seconded Bernice Murphy

Background

Australia's Indigenous people today wish to ensure that they have a distinctive, recognised voice as First Peoples in the nation, and that this voice can always claim a place in the shaping of national opinion and debate that surrounds the formulation of national laws and policies of Australian government at all levels – especially in respect of Indigenous peoples. The request is that the 'Voice' be protected within the Australian Constitution.

Self-determination is a vital principle for the development of all peoples and communities. The evidence from many countries is that when people are in charge of their own futures, outcomes in respect of health, education, employment etc. are significantly improved.

The two issues most relevant to this resolution are the long-standing Indigenous policies of Museums Australia (since the national body was formed in January 1994), and the United Nations Declaration on the Rights of Indigenous Peoples of 2007, which was adopted by the Australian government in April 2009.

The notes provided below also deal with the Australian Government's reaction to the Uluru statement, proposals for reconciliation, constitutional status of the Referendum Council's recommendation, the likely outcome of a constitutional referendum, and the situation in other countries with significant indigenous populations. Details are included as appendices to the present document.

Finally, some important and relevant statements recorded by both Indigenous leaders and the High Court of Australia conclude the notes to this resolution text (as here proposed).

Museums Australia policies

Museums Australia has embraced an Indigenous policy supporting the position expressed in this resolution throughout its life as a national organisation. *Previous*

Possessions, New Obligations was adopted by the final assembly of the Council of Australian Museum Associations (CAMA) on 1 December 1993, in Hobart. This policy was subsequently revised by Museums Australia, after further national consultation with Indigenous leaders, and replaced by *Continuous Cultures, Ongoing Responsibilities* (adopted in 2005).² A significant parallel Resolution to *Previous Possessions*, recognising Indigenous people as First Peoples of the Australian nation, was adopted at the December 1993 meeting in Hobart.³

Self-determination is crucial to the rights of Indigenous people as expressed in the 2007 United Nations Declaration on the Rights of Indigenous Peoples, Articles 3–5.⁴ These three articles of the UN Declaration are especially relevant to the Australian political landscape today.

Reconciliation, the Referendum Council and the Uluru Statement

Reconciliation with Australia's Indigenous people has been under consideration by Australian government bodies since the 1990s. For much of that time a view prevailed that insertion of a statement in the Australian Constitution (in the existing Preamble), and changes to the clause in respect of race power/s, would meet the desire for Indigenous recognition.

The Uluru Statement from the Heart, endorsed by the Referendum Council, is the latest key document from Australia's Indigenous peoples expressing their aspirations around constitutional recognition. It is a unique document in that it represents the outcome of extensive regional consultations throughout Australia.

After a very short time, and no process of consideration by all members or involving both houses of parliament, the executive of the Australian Government came to its own conclusion and rejected outright the Indigenous recommendation for constitutional establishment of a Voice to the Parliament.

It has been falsely claimed that the Uluru statement was calling for creation of a 'third chamber' in the national parliament, when this is explicitly not the case. A Voice to the Parliament, as has been clearly recognised by Indigenous people, would not itself have any legislative powers. But it would be a guaranteed 'Voice' to government when framing recommendations or decisions on issues deeply affecting the lives of Australia's Indigenous Peoples.

The reasons given by the government for its rejection have also been countered by constitutional lawyers as false in their analysis. Furthermore, the assertion that the 'Voice' proposition would not gain national support in a referendum has been challenged, with credible arguments to the contrary following some public opinion surveys conducted.⁵

High Court statement on Aboriginal rights and interests (Mabo, 1992)

Justice Brennan, in the judgement of the High Court (Chief Justice Mason presiding) in *Mabo v Queensland (No 2)* CLR 1 (3 June 1992), provided the

² Appendix 1: Museums Australia Indigenous policy (1993; revised 2005).

³ Appendix 2: Parallel first Resolution adopted by the national museums body, 1 Dec. 1993 (Hobart).

⁴ See Appendix 3: UN Declaration on the Rights of Indigenous Peoples, 2007

⁵ See Appendix 4: Australian Government Response, Constitutional considerations and related matters (all as of 1 May 2018).

following opinion about the continuance of Aboriginal peoples' ownership of their lands after British colonisation:

'Aboriginal rights and interests were not stripped away by operation of the common law on first settlement by British colonists, but by the exercise of a sovereign authority over land exercised recurrently by Governments. To treat the dispossession of the Australian Aborigines as the working out of the Crown's acquisition of ownership of all land on first settlement is contrary to history. Aborigines were dispossessed of their land parcel by parcel, to make way for expanding colonial settlement. Their dispossession underwrote the development of the nation.'

Distinguished Aboriginal elder Galarrwuy Yunupingu AM has provided an eloquent expression of Indigenous aspirations today (in his essay '*Rom Watangu*', published in *The Monthly* in July 2016):

'What Aboriginal people ask is that the modern world now makes the sacrifices necessary to give us a real future. To relax its grip on us. To let us breathe, to let us be free of the determined control exerted on us to make us like you. And you should take that a step further and recognise us for who we are, and not who you want us to be. Let us be who we are – Aboriginal people in a modern world – and be proud of us. Acknowledge that we have survived the worst that the past had thrown at us, and we are here with our songs, our ceremonies, our land, our language and our people – our full identity. What a gift this is that we can give you, if you choose to accept us in a meaningful way.'

Treaties in other countries, for comparison

Australia is the only Commonwealth country not to have a treaty with its Indigenous people. There are numerous well-researched and carefully considered articles and books dealing with the issue of a Treaty in Australia. The governments of Victoria and South Australia are currently in various stages of discussion of the formulation of a Treaty with Aboriginal peoples in their states.

Treaties with Indigenous peoples exist in New Zealand (notably) as well as in the USA and Canada. New Zealand's Treaty of Waitangi (signed in 1840 and now recognised as *taonga* or a treasured object) is amongst the most active in its scope, providing for individual settlements with Māori communities, which are still being negotiated progressively, accompanied by Government admissions of past wrongs. The New Zealand Parliament also includes designated seats for Māori people. At the same time the main political parties may also include Māori members of the Parliament.

In North America, treaties have been negotiated over centuries, but broken numerous times. In Scandinavian countries, the situation concerning Indigenous parliaments through Sami peoples' involvement in government process is particularly interesting.⁶

Concluding statement from proposers

In proposing this Resolution to provide an important national voice from the Australian museums community at a crucial juncture in our history, we add some final personal observations.

The Voice to the Parliament is intended as a constitutionally guaranteed advisory body to provide advice to Parliament, would have no voting rights and would not

⁶ See Appendix 5: Indigenous Parliaments in North Polar regions.

alter the make-up of the Australian Parliament, but would, for the first time, give First Nations peoples a voice to Parliament. The Uluru Statement also explicitly invites the Parliament to participate in working out the ways the 'Voice' would be realised.

A large number of Indigenous and non-Indigenous people have strongly criticised the Government's negative answer to the Uluru Statement from the Heart – amongst them, Pat Anderson (Co-Chair of the Referendum Council), Senator Patrick Dodson, Noel Pearson of the Cape York Institute, and Professor Marcia Langston of Melbourne University.

Commenting on 'the recognition project', Professor Megan Davis (a Cobble Cobble woman from Queensland, Pro-Vice chancellor, University of New South Wales, and a member of the Referendum Council) has written (in an essay entitled 'The republic is an Aboriginal issue', in *The Monthly*, April 2018):

'[W]ith the announcement of another joint select parliamentary committee this year, we will have had five processes in seven years. We are exhausted. We would like to come home. The Uluru Statement from the Heart is the way home.'⁷

The Uluru Statement from the Heart concludes

'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.'

Dr Des Griffin AM
Bernice Murphy
6 June 2018

⁷ Megan Davis, 'The republic is an Aboriginal issue', *The Monthly*, April 2018;
<https://www.themonthly.com.au/issue/2018/april/1522501200/megan-davis/republic-aboriginal-issue>

Appendix 1:

Existing Indigenous policies of Museums Australia (1993 to present), and acknowledged in Australian government documents, as national policies supporting the rights of Indigenous peoples

On December 1, 1993 the last assembly of the Council of Australian Museum Associations (CAMA) adopted as policy the document, *Previous Possessions: New Obligations*, after a process of consultation with Indigenous leaders over two years. This national Indigenous policy was consultatively revised in 2005, to become *Continuous Cultures, Ongoing Responsibilities*. Both policies explicitly support the right of Indigenous people to self-determination and uphold their authority over all matters affecting the continuance of their communities and maintenance of their heritage.

The Preface to the revised MA Indigenous policy (2005) states:

'In 1993, Previous Possessions, New Obligations: policies for museums in Australia and Aboriginal and Torres Strait Islander people, was launched by the Council of Australian Museum Associations, the precursor body to Museums Australia. It was the International Year of Indigenous People. When Museums Australia was created a month later (in January 1994) it adopted Previous Possessions, New Obligations as its flagship policy, and used its detailed instructions to forge a new direction for Australian museums and galleries holding and exhibiting Indigenous Australian cultural material...'

Principle 1 of the original policy, dealing with *self-determination*, states:

'Museums support the right of Aboriginal and Torres Strait Islander people to self-determination in respect of cultural heritage matters.'

Continuous Cultures, Ongoing Responsibilities (2005) expanded upon this right, especially in Principles 1 and 2, which state:

1. Aboriginal and Torres Strait Islander people have the right to self-determination, particularly in respect of cultural heritage matters.
2. Aboriginal and Torres Strait Islander people have the right to fulfilment of their own cultural aspirations.

Appendix 2:

Parallel resolution adopted by museums in general assembly, 1993

Resolution #1 (in 3 parts) from the final CAMA Assembly, adopted 1 December 1993 (meeting in Hobart), and passed on to Museums Australia at its formation in 1994, reads as follows:

1. *That the Australian Aboriginal and Torres Strait Islander peoples are the original inhabitants and owners of the lands eventually federated as the Commonwealth of Australia;*
2. *That the Aboriginal and Torres Strait Islander peoples therefore be recognised as having unique, distinctive and different cultural traditions from all of those peoples who have arrived subsequently in Australia, and that they be recognised as having primary and inalienable rights of ownership in respect of their cultural property, its interpretation, transmission and continued development;*
3. *That the effect of such recognition should be that all statements of cultural policy development, while comprehending cultural diversity in contemporary Australia, should take care to ensure that Aboriginal and Torres Strait Islander peoples are accorded this unique and primary position in Australia.*

Appendix 3:

UN Declaration on the Rights of Indigenous Peoples (2007)

Article 3: *Indigenous peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.*

Article 4: *Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.*

Article 5: *Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their rights to participate fully, if they so choose, in the political, economic, social and cultural life of the State.*

Appendix 4:

The Australian Government's Response, Constitutional considerations and other matters related to the Uluru Statement

The response by the Prime Minister and Ministers to the report of the Referendum Council (chaired by Pat Anderson and Mark Leibler) was to reject the proposition that a Voice to the Parliament be established. Mr Turnbull claimed that such an addition would be neither desirable nor capable of winning acceptance in a referendum; that such a body would be effectively a 'third chamber' of the Parliament; and that: 'A constitutionally enshrined additional representative assembly for which only Indigenous Australians could vote for (sic) or serve in is inconsistent with this fundamental principle [of our democracy]. It would inevitably become seen (sic) as a third chamber of Parliament.' (<https://www.malcolmturnbull.com.au/media/response-to-referendum-councils-report-on-constitutional-recognition>) [accessed 28/4/2018]

However, the strongly supported legal view is that such a 'Voice' does not constitute a 'third chamber' of Parliament, nor is it intended to be. The inclusion of the 'Voice' in the Constitution, however, would prevent its being disbanded by ministerial decision, as has been the case with a number of Indigenous advisory bodies, notably the Aboriginal and Torres Strait Islander Commission (ATSIC), abolished in 1994 by Prime Minister John Howard and Minister for Indigenous Affairs Amanda Vanstone.

In rejecting the proposal of a 'Voice to Parliament' for Indigenous people, Prime Minister Turnbull: 'Our goal should be to see more Aboriginal and Torres Strait Islander Australians serving in the House and the Senate – members of a Parliament which is elected by all Australians.' Whilst many would consider this inclusiveness desirable, it does not at all guarantee that the principle or rights of Indigenous self-determination can be upheld in any constitutionally binding provision.

A purported 'third chamber' of the Parliament

According to constitutional law experts, the 'Voice' requested does not represent a 'third chamber' or entail any legislative powers, and the proposal is in fact modest.

Gabrielle Appleby, a constitutional lawyer working at the Gilbert + Tobin Centre, University of New South Wales, who provided pro bono legal assistance at the Referendum Council's Regional Dialogues and the Uluru Convention, wrote the following (*Inside Story* 27 October 2017, <http://insidestory.org.au/malcolm-turnbulls-announcement-misunderstands-uluru-and-should-be-rejected/>):

'The plan is not to create a "third chamber of parliament" in which new legislation is introduced, publicly debated, and potentially voted down. It is far more modest: to create a representative body that will ensure Aboriginal and Torres Strait Islander views are sought on proposed legislation that will affect their interests. Once this is understood, it is clear that the proposal does not undermine the equality of our constitutional system or the notion of "one vote, one value." ... Australia would not be breaking new ground if it adopted such a proposal. Many other countries have structures that facilitate Indigenous participation in governmental and legislative decisions, including the Sami parliaments in Sweden, Finland and Norway, and the Māori seats introduced in New Zealand back in the middle of the nineteenth century.'

Professor George Williams AO, Dean of Law, University of NSW commented (Sydney Morning Herald 29 May 2017 <https://www.smh.com.au/opinion/uluru-statement-offers-up-different-set-of-priorities-20170528-gweya1.html>):

'The Uluru statement is a landmark moment in the reshaping of our system of government to reflect the aspirations of Australia's first peoples. It is the first time in over a decade of discussion about constitutional recognition that Aboriginal and Torres Strait Islander peoples have had the opportunity to speak with one voice. Their claims have come late in the debate, but must be accorded great weight and respect.'

Likely outcomes of a Constitutional referendum – recent public opinion

Opinion polls conducted after the Referendum Council's transmission of their Report to the Prime Minister have found as high a level of support for a 'Voice' to the Parliament as was achieved in the postal vote on marriage equality (Stephanie Zillman ABC 30 October 2017 <http://www.abc.net.au/news/2017-10-30/australians-would-support-referendum-indigenous-voice-parliament/9101106>).

An Australian Constitutional Values Survey, conducted online by Omnipoll, found that at least 61 per cent of Australians would vote 'yes' in a referendum on adding an Indigenous voice to Parliament.

The survey of 1,526 adults was conducted in August 2017, and led by researchers from the University of New South Wales (UNSW), the Australian National University, as well as Sydney and Griffith universities.

The survey found the following national indicators of Australian public opinion:

- 61 per cent support a 'voice to Parliament'
- 71 per cent generally support recognition
- 58 per cent support formal agreements between Governments and Indigenous peoples

Amendment of the Australian Constitution

Earlier recommendations by, for instance, the Expert Panel on Constitutional Recognition, which reported to the Government in January 2012, considered such measures as amending the existing Preamble to the Constitution. This focus on including 'recognition' of Aboriginal and Torres Strait Islander peoples in the Australian Constitution, through addition of words in the Preamble and the modification of certain clauses generally referred to as the 'race/s power' (in Section 51[xxvi]), lacks acceptance by the majority of Indigenous Peoples today, as the Referendum Council noted in 2017.

Professor Anne Twomey, Director, Constitutional Reform Unit, University of Sydney Law School (in an AILR article, '*The Preamble and Indigenous Recognition*'),⁸ has pointed out that the existing Preamble cannot be amended and that writing a new Preamble would be problematic, giving rise to questions about its status and how it might be used. Prof. Twomey also deals with possible changes to the Constitution itself. These do not touch on

⁸ Anne Twomey, *The Preamble and Indigenous Recognition*, AILR, Vol 15 No 2, 2011, pp. 4–22
<http://www.austlii.edu.au/au/journals/AUIndigLawRw/2011/15.pdf>

self-determination, although they do address issues of race and discrimination. She concludes that any proposed changes deserve informed debate and rigorous analysis.

Appendix 5: Indigenous Parliaments in North Polar regions

In North Polar regions there are a number of parliaments representing Inuit peoples.

In Finland, the Sami Parliament established 1973 is a legally independent body within the Ministry of Justice, responsible for matters relating to language, culture and status. In Norway, the Sami Parliament established 1987 serves as an elected body responsible for powers assigned by the Norwegian government, including development of language and Sami culture and protection of cultural sites. The Sami Parliament of Sweden is a representative body under the authority of the Swedish parliament.

In Russia, the Kola Sami Assembly is an elected assembly, with links to the Sami parliaments of Finland and Norway, but it is to date not recognised by the government of the Russian Federation.