

LOVE OF COUNTRY, *and A FAIR GO*

The Liberal Party and constitutional
recognition of Aboriginal and
Torres Strait Islander peoples

*'In the end,
my appeal to the broader Australian community . . .
is simpler, and far less eloquent.
It goes to love of country and a fair go.
It's about understanding the destiny we share as Australians
— that we are all in this together'*

THE HON. JOHN HOWARD MP
THE SYDNEY INSTITUTE, 2007

JOHN HOWARD starts the journey

In 2007, Prime Minister John Howard called for the recognition of Indigenous people in the Australian Constitution. This set off a chain of events that will help shape the course of our nation.

In this announcement, on the eve of the 2007 election campaign, Mr Howard told a room of conservatives at the Sydney Institute:

‘I believe we must find room in our national life to formally recognise the special status of Aboriginal and Torres Strait Islanders as the first peoples of our nation. We must recognise the distinctiveness of Indigenous identity and culture and the right of Indigenous people to preserve that heritage. The crisis of Indigenous social and cultural disintegration requires a stronger affirmation of Indigenous identity and culture as a source of dignity, self-esteem and pride’.

BURKEAN RESPECT

Mr Howard noted at the time that, far from being a road to Damascus type conversion, his speech to the Sydney Institute was ‘little more than an affirmation of well-worn liberal conservative ideas. Their roots lie in a Burkean respect for custom and cultural tradition and the hidden chain of obligations that binds a community together’.

Mr Howard also acknowledged a clear and unambiguous truth about the past: ‘I recognise that the parlous position of Indigenous Australians does have its roots in history and that past injustices have a real legacy in the present’.

Almost ten years after Mr Howard’s announcement, Indigenous Australians met at Uluru to conclude what had been a decade of hard work to find a proposal that will help address the injustices of which Mr Howard spoke. In her 2019 Boyer lectures, Rachel Perkins argued that constitutional change would also give the principle of hearing Indigenous voices the ‘moral weight that comes with the majority of Australians backing an idea’.

From the SYDNEY INSTITUTE to the ULURU STATEMENT

In the decade between Mr Howard's speech and the Uluru Statement from the Heart, important and necessary work has been undertaken by each Prime Minister, and each Parliament.

Australia has had six Prime Ministers since 2007. During this time, options for constitutional change have been carefully considered and assessed as we looked for a viable, desirable, and practical change that will improve the lives of Indigenous people.

Through this lengthy process, Indigenous people have again demonstrated their resilience and determination despite the political instability of Canberra.

STRENGTH IN 2020

At times, the process has been difficult, but changing the Constitution is not easy and each step has been necessary to put our nation in the position we are in now in 2020. Australia is now within reach of taking the last and most important few steps in this very long journey.

To understand how we got from the Sydney Institute in 2007 to Uluru in 2017 requires consideration of the work that occurred throughout this period.

Following Mr Howard's 2007 announcement, Kevin Rudd promised to match his election commitment to have a referendum. In 2010, Julia Gillard appointed an Expert Panel to take advantage of this 'once-in-50-year opportunity for our country'. This was the first significant consultation since John Howard made his announcement in 2007, and produced an important body of work that was again considered at Uluru.

EXPERT PANEL'S recommendations

The Expert Panel chaired by Patrick Dodson and Mark Leibler reported in 2012, with the following recommendations for constitutional change:

- Repeal section 25 which allowed States to ban people from voting based on race
- Repeal section 51(xxvi) and insert a new section 51A for the 'Recognition of Aboriginal and Torres Strait Islander peoples'
- Insert a new section 116A prohibiting racial discrimination
- Insert a new section 127A to affirm English as our national language, but also recognise Australian Indigenous languages as part of our national heritage.

Although the Expert Panel report significantly progressed the debate, it failed to secure support from either politicians or Indigenous people.

When the subsequent 2015 parliamentary Joint Select Committee, co-chaired by Ken Wyatt MP and Senator Nova Peris, considered the Expert Panel report, political leaders, Indigenous people, and the broader Australian community heard options and began to discuss these in more detail. What became apparent was that Indigenous people were not seeking purely symbolic recognition.

SUBSTANTIVE REFORM

In proposing the referendum in 2007, Mr Howard suggested the model to recognise Indigenous people would be through the insertion of words into the preamble. Such symbolic recognition was considered and rejected in 1999 when a proposed change to the preamble included the words 'honouring Aborigines and Torres Strait Islanders, the nation's first people, for their deep kinship with their lands and for their ancient and continuing cultures which enrich the life of our country'. It was resolutely defeated, failing to carry a majority in any State, with only 39.34% of people nationally voting in favour of it.

The recommendation for a racial non-discrimination clause became known as a 'one-clause Bill of Rights' that could not be supported by political leaders.

The remaining recommendations of the Expert Panel were symbolic in nature, and Indigenous people were not united behind any one of these proposals, so the quest for a model for substantive reform continued.

TONY ABBOTT'S commitment

Tony Abbott as Prime Minister felt the same sense of unfinished business as John Howard had years before. Mr Abbott stated ‘We will get constitutional recognition and, when it comes, I suspect that it will take the form of a pact, a heartfelt pact between Indigenous people and conservative Australia’.

In 2015, with the support of Opposition Leader Bill Shorten, Mr Abbott announced a Referendum Council would be appointed to identify a constitutional amendment that would deliver the heartfelt pact. The Referendum Council was subsequently appointed under new Prime Minister, Malcolm Turnbull, and included Regional Dialogues.

AN HISTORIC AGREEMENT

The Regional Dialogues were an extensive and deliberative process where Indigenous people from all over Australia came together to consider the many bodies of work that had been developed since Mr Howard's 2007 announcement. The regional dialogues culminated in the First Nations National Constitutional Convention at Uluru. The outcome of that convention was the Uluru Statement from the Heart which, significantly, dismissed all other constitutional proposals and instead called for ‘the establishment of a First Nations Voice enshrined in the Constitution’.

After a decade of consultation, debate and discussion, Australia was now hearing how Indigenous people would like to be recognised in the Constitution. Until the historic meeting at Uluru in 2017, there was not agreement on how to make this a reality. The Statement from the Heart reflects the clear consensus that Indigenous Australians want their voices to be heard, and that the Constitution should provide some guarantee for these ‘voices’.

The aim is to address the structural disempowerment Indigenous people have faced since colonisation. It will not and can not fix everything. But it is a start.

MALCOLM TURNBULL'S response to Uluru

The Uluru Statement from the Heart did not contain any details of how this model would work and what a constitutional amendment might look like. Prime Ministers Malcolm Turnbull and Scott Morrison both ruled out one option for reform that would have seen a national voice enshrined in the Constitution.

In rejecting an entrenched national voice, there was an acknowledgement from Mr Turnbull that local voices may be more appropriate:

‘We have listened to the arguments put forward by proponents of the Voice, and both understand and recognise the desire for Aboriginal and Torres Strait Islander Australians to have a greater say in their own affairs. We acknowledge the values and the aspirations which lie at the heart of the Uluru Statement. People who ask for a voice feel voiceless or feel like they’re not being heard. We remain committed to finding effective ways to develop stronger local voices and empowerment of local people’.

TAKING RESPONSIBILITY

This bottom-up model approach was outlined in Warren Mundine’s paper, Practical recognition from the mob’s perspective, arguing these local bodies could ‘realise the ambition of Indigenous Australians for self-determination and the mainstream ambition that Indigenous Australians take responsibility for improving their welfare’. This is consistent with the Liberal and National parties approaches to Indigenous Affairs, which strives for greater responsibility.

SCOTT MORRISON'S co-design process

In 2019 a Senior Advisory Group was appointed to assist, guide and oversee the co-design process for both a national voice and options to enhance local and regional decision making. The Minister for Indigenous Australians, Ken Wyatt, said this co-design process ‘will develop models to enhance local and regional decision-making’.

CONSTITUTIONAL ANCHOR

The final piece of work, which can occur concurrently to the co-design process, will be to determine how to anchor the outcome of the co-design process in the Constitution. This work will provide details on how we can create a ‘constitutionally entrenched, legislatively controlled’ capacity for Indigenous people to have input into the making of laws that impact them, as Murray Gleeson stated in his monograph, Recognition in keeping with the Constitution: a worthwhile project.

John Howard’s desire for constitutional change in 2007 remains relevant today:

‘It is founded on the notion that we are all Australians together; bound by a common set of laws which we must all obey and from which we are entitled to equal justice . . . it’s about recognising that while ever our Indigenous citizens are left out or marginalised or feel their identity is challenged we are all diminished. It’s about appreciating that their long struggle for a fair place in the country is our struggle too’.

This year, our nation will celebrate 250 years since Captain James Cook came ashore at a place we now call Kamay Botany Bay National Park. The model for Constitutional recognition has been the subject of lengthy debate and discussion. However, most fair-minded Australians accept that Indigenous people have suffered greatly since colonisation, and that we must make structural changes in order to achieve the step-change we seek, so that Indigenous Australians can enjoy the same outcomes in health, education and employment, and the same sort of share in our country’s opportunities and prosperity, as the rest of the population.

POTENTIAL FOR AGREEMENT

In 2015, Julian Leeser eloquently articulated the parameters for conservatives to support constitutional recognition: 'any package of reforms worth considering must be consistent with Australia's constitutional architecture' and that it 'should not affect the Crown, the Federation, the sovereignty of Parliament, or create a bill of rights'.

The proposal to hear Indigenous voices is a practical change to the constitution that meets all of these criteria. It also accords with the wishes of Indigenous people at Uluru. As Mr Leeser has observed, this proposal has the unexpected potential for Indigenous leaders and constitutional conservatives to agree.

The Statement from the Heart was an act of indigenous self-determination, the like of which this country has not seen in terms of its scope, rigour, and inclusion. How can such diverse indigenous peoples from all compass points of the country participate in a process and achieve that which everyone said would never be possible: to achieve a broad and real consensus? No consensus is real without dissent, but the dissent never detracted from the truth of Uluru's accord. I doubt that any polity in any community in this country has achieved the breadth of unanimity as our people achieved with Uluru.

NOEL PEARSON, LOWITJA O'DONOGHUE ORATION 2018

The Uluru Statement from the Heart calls for Indigenous voices to be heard. This request comes in this context of a nation founded on excluding Indigenous voices. But the calls for Indigenous voices to be heard has two very specific purposes. Firstly, to recognise the unique status of Aboriginal and Torres Strait Islanders as our lands First People and secondly, that the voices of Indigenous people are heard when special laws and policies are made about us under the power of the Australian constitution.

RACHEL PERKINS, BOYER LECTURES 2019

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