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Uluru Statement: a quick guide

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A constitutional convention bringing together over 250 Aboriginal and Torres Strait Islander leaders met last month at the foot of Uluru in Central Australia on the lands of the Anangu people.

The majority resolved, in the '[Uluru Statement from the Heart](#)', to call for the establishment of a 'First Nations Voice' in the *Australian Constitution* and a 'Makarrata Commission' to supervise a process of 'agreement-making' and 'truth-telling' between governments and Aboriginal and Torres Strait Islander peoples.

First Nations National Constitutional Convention

Convened by the bipartisan-appointed [Referendum Council](#), the First Nations National Constitutional Convention met over four days from 23 to 26 May 2017 to discuss and agree on an approach to constitutional reform to recognise Aboriginal and Torres Strait Islander peoples. Delegates were selected from participants in regional Dialogues held around the country.

Discussions at the Convention built upon a [discussion paper](#) produced by the Council (and published in more than ten traditional languages) and reflected the diversity of views raised by Aboriginal and Torres Strait Islander communities in consultative Dialogues with the Referendum Council over the last six months. As participation in the Dialogues and Convention was by invitation, there has been some criticism about the representativeness of the Dialogues, and, by implication, the Uluru Meeting. Amnesty International wrote a [submission](#) to the Referendum Council stating:

We understand that participants at the regional dialogue meetings were invited in what was perceived as an exclusive process. We also understand that some people who attended those meetings then have an opportunity to attend the Uluru meeting, whereas those not included do not.

Acknowledging that participation in the Dialogues was by invitation, the Referendum Council stated on its [website](#):

This ensured each Dialogue was deliberative and reached consensus on the relevant issues. Meetings were capped at 100 participants: 60% of places were reserved for First Nations/traditional owner groups, 20% for community organisations and 20% for key individuals. The Council worked in partnership with a host organisation at each location, to ensure the local community was appropriately represented in the process.

The Convention also drew upon work done over the past few years by the [Expert Panel on Constitutional Recognition of Indigenous Australians](#) and the [Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples](#). There has been some distancing from the Recognise campaign, an earlier government-funded initiative to broaden the appeal for inserting a statement of recognition in the *Constitution*.

While the majority of delegates at the Convention backed the Uluru Statement, [a small number walked out in opposition](#) before the final consensus resolution was passed.

Uluru Statement

The Uluru Statement states two broad objectives for reform as agreed to by Aboriginal and Torres Strait Islander leaders at the Convention—the establishment of a First Nations Voice and a Makarrata Commission. These objectives reflect the nature of reform desired rather than specifying the fine detail of any proposed changes to the *Australian Constitution*.

The positions in the Uluru Statement do, however, reflect some of the ideas and proposals advanced by Indigenous and political leaders, and constitutional experts over many years. In articulating two positions which have broad support, it is hoped that they can become the foundations of a renewed conversation with the whole Australian community about constitutional reform and recognition of Aboriginal and Torres Strait Islander peoples and the precise form that will take.

In addition to these two proposals, the Uluru Statement affirms the sovereignty, and long and continuing connection of Aboriginal and Torres Strait Islander peoples with the land. It also comments on the social difficulties faced by Aboriginal and Torres Strait Islander peoples and the structural impediments to the real empowerment of First Nations Peoples.

The Uluru Statement sets up a position that strongly contrasts with that taken in the campaign for symbolic constitutional recognition advanced by the [Recognise](#) campaign. This echoes a [2015 online survey conducted by IndigenousX](#) which found that 58 per cent of Indigenous respondents did not support Recognise. The same survey found that 62 per cent did not believe Indigenous Australians would be better off recognised in the *Constitution*, but 54 per cent supported the construction of an Indigenous parliamentary body. That the Convention at Uluru was to come to a more robust conclusion was hardly a surprise given that most of the regional Dialogues had rejected a minimalist or symbolic model of Indigenous constitutional recognition in favour of more substantial reform.

First Nations Voice

The Uluru Statement calls for the ‘establishment of a First Nations Voice enshrined in the Constitution’. This has been interpreted in light of past suggestions put forward for the establishment of some form of representative body for Aboriginal and Torres Strait Islander peoples. There is no definitive statement about the form such a body would take, but proponents of the idea (such as Noel Pearson, who sits on the Referendum Council) have previously propounded that such a body would sit alongside Parliament to provide non-binding advice on legal and policy matters affecting Aboriginal and Torres Strait Islander peoples.

A proposal for an Indigenous body in the *Constitution* was mooted in 2014 as part of a [submission](#) by the Cape York Institute to the [Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples](#) inquiry. An elaboration of this idea in terms of constitutional text was subsequently drafted by constitutional law expert [Professor Anne Twomey](#). This was later [supported](#) by Noel Pearson and the Cape York Institute.

It is envisaged that such a body will provide a constitutionally entrenched institution which enables Aboriginal and Torres Strait Islander peoples to be formally consulted on legislation and policy affecting their communities.

Makarrata Commission

The Uluru Statement seeks ‘a Makarrata Commission to supervise a process of agreement-making between governments and First Nations and truth-telling about our history’.

Makarrata is a word from the language of the Yolngu people in Arnhem Land. As Noel Pearson has [explained](#):

The Yolngu concept of Makarrata captures the idea of two parties coming together after a struggle, healing the divisions of the past. It is about acknowledging that something has been done wrong, and it seeks to make things right.

The word ‘Makarrata’ has often been used instead of ‘treaty’, and gained wider currency in the 1980s when the National Aboriginal Conference (NAC) adopted the word. In a letter from the National Aboriginal Conference Secretariat ‘to all Aboriginal Organizations’ Jim Hagan (the then chairman of the NAC) wrote ‘using the word Makarrata makes it clear this is intended to be an agreement within Australia, between Australians’.

The call for a treaty has existed for some time. The [Barunga Statement](#), presented in 1988 to Prime Minister Bob Hawke, called for a treaty with the Commonwealth of Australia. In response, [Bob Hawke promised to negotiate a](#)

[treaty](#) 'between the Aboriginal people and the Government on behalf of all the people of Australia' before the end of the current session of Parliament. Though it did not eventuate, calls for a treaty have persisted.

A Makarrata Commission would likely be tasked with seeking Makarrata agreements between Aboriginal and Torres Strait Islanders and the federal government.

Are there any constitutional implications?

First Nations Voice

The *Constitution* can only be changed by the Australian people. Any move to enshrine a 'voice' for Aboriginal and Torres Strait Islander peoples in the *Constitution* would need to be passed at a referendum. Details of the changes would have to be agreed by Parliament before being presented to the people for a vote.

A change would only come into effect if the proposal receives the support of a majority of voters in a majority of states. There have been [44 referendums since 1901, of which only eight have succeeded](#). The most successful attempt to change the *Constitution* was the [1967 referendum](#) in which over 90 per cent of the population voted to allow the counting of Aboriginal and Torres Strait Islander peoples in the Census, and the federal government to make laws for Aboriginal and Torres Strait Islander peoples.

Makarrata Commission

A Makarrata Commission and any agreements or statements endorsed by such a body would likely not require any constitutional change. However, creating such a commission would most likely require legislation passed by Parliament. A commission could also be established by letters patent granted with the prerogative powers of the Governor-General on the advice of the Prime Minister, though this is not likely.

It is unclear what constitutional or legal consequences would flow from any Makarrata agreement or treaty reached between governments and Aboriginal and Torres Strait Islander peoples. An analysis of the potential effects would be subject to the detail of any final proposals.

What are people saying?

There has been a range of views in response to the Uluru Statement by commentators, constitutional observers, politicians and Indigenous leaders. These views reflect contrasting positions about constitutional change, and on the best approach to Indigenous recognition.

Professor **George Williams**, Dean of Law at the University of New South Wales, has [responded](#), writing that the Uluru Statement:

... is an important and long overdue expression of what Aboriginal people want from constitutional reform. It is a welcome, but very different perspective to earlier processes. The formidable challenge now is to work from this statement to reach a set of changes to the constitution that can win support from the community at large and across the political divide.

Professor **Anne Twomey** has criticised what she sees as unhelpful speculation, and states that the [important message of the Uluru Statement](#) was:

When it comes to constitutional reform, the priority of Aboriginal and Torres Strait Islanders is to have their views heard in relation to the making of laws and policies that affect their lives. This ranks above the insertion of formal words of recognition in a preamble and the removal of discriminatory clauses from the Constitution. It is not historic recognition by written words that is sought, but active and ongoing recognition of indigenous voices, allowing them to be heard in the corridors of power.

June Oscar, the Aboriginal and Torres Strait Islander Social Justice Commissioner, has [stated](#):

The Uluru Statement recognises the need for an entrenched constitutional voice on the one hand whilst maintaining the long term aspirations of our peoples for a treaty on the other. One change can be achieved with constitutional change, and the other outside of the constitution through new legislation and the creation of Makarrata or Treaty Commission. Both have the potential to be meaningful and both represent the collective vision of our people's ... The Uluru Statement carves out a path for change and we need that to be embraced by our fellow Australians and our political leaders.

The leaders of the two major parties have been careful in their public comments pending the release of the final report by the Referendum Council on an agreed process. The Prime Minister **Malcolm Turnbull** has adopted a tone of caution, [noting](#):

The constitution cannot be changed by Parliament. Only the Australian people can do that. No political deal, no cross-party compromise, no leader's handshake, can deliver constitutional change ... To do that, a constitutionally conservative nation must be persuaded that the proposed amendments respect the fundamental values of the constitution, and will deliver precise changes, clearly understood, that benefit all Australians.

Opposition Leader **Bill Shorten** has made clear his openness to the ideas expressed in the Uluru Statement [saying](#): 'We owe the [Uluru delegates] an open mind on the big questions. On the form recognition takes, on treaties, on changes required in the constitution'.

Individual **Labor** members have stated similar positions. Senator **Pat Dodson** has [commented](#):

It's fine there's come this report out of Uluru, talking about an entrenched voice into the constitution, that will have to be weighed and considered. But I don't think we should just dismiss out of hand the work that was done by the expert panel [on constitutional recognition in 2012].

Federal Labor MP **Linda Burney** [has warned](#) that Indigenous leaders may have to compromise in order to reach a broader consensus position that will succeed. Former National President of the Australian Labor Party and Indigenous leader **Warren Mundine** [has been more critical](#) of the idea of having an Indigenous body enshrined in the *Constitution*, and makes the case that a series of treaties is preferable. He writes:

The Uluru Statement made two proposals. One is a "top-down" lawyers' proposal that will certainly fail. The other is a grassroots proposal with overwhelming Indigenous support that could be implemented without the need for any referendum. I'm calling time on 10 years of discussion on constitutional recognition. We don't need it.

Members of the **Coalition** have expressed [a range of views](#). Liberal MP and Minister for Indigenous Health **Ken Wyatt** [said in an interview](#) that the significance of the Uluru Statement was the momentum behind 'finding a way forward of entrenching a position of Aboriginal Torres Strait Islander people within the constitution; whatever form that takes' and advised:

... we shouldn't block our minds at the moment, we should wait for that [the Referendum Council] report to be tabled, consider what the options are in the voracity of argument around each of those options. But we've got to consider them to see if they're constitutionally sound, because that is the test. It has to meet the rigour of the constitutional requirements. It then has to meet the rigour of whether the majority of Australians and the majority of states will support it.

Liberal MP and constitutional lawyer **Julian Leeser**, who co-founded [Uphold & Recognise](#), has been optimistic about the Statement, as has Indigenous Affairs Minister **Nigel Scullion**. In contrast, Deputy Prime Minister and Leader of the National Party **Barnaby Joyce** conveyed his initial doubts about whether the idea of a constitutionally enshrined Indigenous body would find wider support, [commenting](#):

If you overreach in politics and ask for something that will not be supported by the Australian people, such as another chamber in politics or something that sort of sits above or beside the Senate, that idea just won't fly.

Liberal senator **James Paterson** has also [expressed](#) his concerns about the unintended consequences of substantial constitutional change:

Any proposal that could impinge on parliamentary supremacy is highly unlikely to win support because it is a core foundation of our liberal democracy. A first nations' voice, enshrined in the Constitution, runs the great risk of doing so. There are many different ways it could be formed. But even the most modest proposal, requiring parliament to consult an elected representative body, makes conflict with the democratically elected parliament for all Australians virtually certain.

Among the minor parties, the **Australian Greens** have [stated](#) their strong support, while Senator **Cory Bernardi** of the **Australian Conservatives** has reiterated his disapproval of constitutional change and warned on his [website](#): '... no one should endorse constitutional change without knowing exactly what they are agreeing to'. The views of other parties, or individual members, have yet to be more publicly articulated.

Where to from here?

Under its Terms of Reference, the Referendum Council is required to provide its final report to the Prime Minister and to the Leader of the Opposition by 30 June 2017.

A working group (comprising members nominated by delegations to the convention and other interested parties) has been formed to maintain momentum and work on the implementation of the goals in the Uluru Statement. This group will be especially important in working with stakeholders after the release of the Referendum Council report.

The Uluru Statement may prove to be a catalyst in a long-running movement for Indigenous constitutional recognition. While at this stage there is no clear proposal that could be put forward at a referendum, the Uluru Statement articulates two reform objectives which can then be put forward for further public consultation.

Looking ahead, the success or failure of any future referendum on inserting an Indigenous voice into the *Constitution*, and the initiative of a Makarrata Commission, will hinge upon there being enough political and community goodwill to reach a position that can be supported by the majority of Australians, both Indigenous and non-Indigenous.

Further reading

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