

# Fulfilling the Prime Minister's promise on Indigenous recognition

## Address to the Liberal Women's Council

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Ladies:

### **1. The Prime Minister's promise and why we ought to find a way to fulfil it**

Time and again the Prime Minister has affirmed his personal commitment to Indigenous recognition, and time and again he has affirmed it as Government policy. His personal commitment is real and deep. It is reflected in a practical way by his voluntary work in Cape York for many years, and in a symbolic way by his participation in the 2000 Sydney Harbour Bridge walk for reconciliation. In supporting the Gillard Government's *Aboriginal and Torres Strait Islander Peoples Recognition Bill*, then Leader of the Opposition, Tony Abbott, lamented that

*"we have never fully made peace with the First Australians. This is the stain on our soul that Prime Minister Keating so movingly evoked at Redfern twenty years ago. We have to acknowledge that pre-1788 this land was Aboriginal then as it is Australian now. Until we have acknowledged that, we will be an incomplete nation and a torn people... In short we need to atone for the omissions and for the hardness of heart of our forebears to enable us all to embrace the future as a united people."*

As Prime Minister, he has affirmed that the Government will hold a referendum to recognise Indigenous Australians. But saying that we shall do this is different from saying *how* we shall do it.

It has been assumed that the way to 'recognise' Indigenous Australians is by amending the Constitution to insert a new preamble, or to amend the existing preamble, to recognise the historical and enduring place of Indigenous people in the Constitution. This is easier said than done. It is not as easy as some people have been suggesting to insert a symbolic statement in our Constitution. And it is even more difficult to predict how such a symbolic statement will be interpreted by the High Court in years to come.

The Prime Minister's promise is an admirable one, and we should all commit ourselves to finding a way to fulfil it. However, the prevailing approach at the moment—to insert a new symbolic preamble into the Constitution—is fraught with danger. So we should open our minds to other possibilities.

## **2. Reconciling different kinds of needs**

Many of you will be familiar with the collection of Tutini or Pukumani graveposts on the other side of the Domain, at the Art Gallery of New South Wales. They were commissioned by the Gallery, from senior artisans on Melville Island, in 1959, and they are of especial significance as they represent the first major commission of Aboriginal art by a public gallery. At the time of the commission, the Melville Island artisans found themselves in a quandary. These graveposts had a very specific function within the culture of Melville Island, where they were valued on account of their religious significance. The artisans also knew that they were being commissioned to create Tutini that would not function as graveposts, but as works of art, which would be displayed in an art gallery far away, and where they would be appreciated for their aesthetic value, rather than their religious value. So the artisans decided that they had to think about what they were doing in a different way. They decided that they would employ the traditional techniques of carving and painting. But, instead of using the traditional blackwood, they would carve the Gallery's Tutini out of ironwood.

In this way, the Aborigines of Melville Island were able to do two things: they were able to find a way of adapting and responding to the circumstances of a foreign culture. And, at the same time, they preserved the integrity of the institution of the Pukumani gravepost. The ceremonial graveposts would function as they always had, and would continue to be made out of blackwood, while the artisans would respond to the new need for works of art by carving Tutini out of ironwood for exhibition as works of art in the Art Gallery of New South Wales.

We Australians now find ourselves in a similar situation. There are calls for constitutional recognition of Indigenous Australians. This is to be achieved—at least in part—through the adoption of a symbolic statement. It is said that this statement should be inserted into the Constitution. But the Australian Constitution, as it currently functions, is not a repository for symbolic statements of the nation's values and aspirations. So, just as, in 1959, the Melville Island Aborigines saw that they needed to find a new way of creating works of art for display in art galleries, which would be compatible with the continuing function of Tutini as religious artefacts, so too must Australians today find a way of recognising Indigenous Australians that is compatible with preserving the existing function of the Australian Constitution. Just as the Aboriginal artists created ironwood Tutini that would serve the aesthetic needs of the Gallery, whilst not disturbing the traditional function of blackwood Tutini as graveposts, we need to find a way of adopting a symbolic statement about the place of Indigenous Australians in the history and life of our nation which does not interfere with the operation of the Constitution.

### **3. The Constitution: charter of government or statement of national aspirations?**

Perhaps you are surprised that I should think that it is fundamentally problematic to insert a symbolic statement in the Australian Constitution. To understand why I think that it is so problematic, you need to understand the kind of thing that I think the Constitution is. Justice Antonin Scalia, a Justice of the Supreme Court of the United States, writes of the American Constitution:

*“If you want aspirations, you can read the Declaration of Independence, with its pronouncements that ‘all men are created equal’ with ‘unalienable Rights’ that include ‘Life, Liberty, and the Pursuit of Happiness.’ Or you can read the French Declaration of the Rights of Man... There is no such philosophizing in our Constitution, which, unlike the Declaration of Independence and the Declaration of the Rights of Man, is a practical and pragmatic charter of government.”*

The Australian Constitution, like the American Constitution on which it was modelled, is a practical and pragmatic charter of government. It is not a statement of aspirations. The Americans are rightly proud of their Declaration of Independence. It is a statement of the nation’s history and an expression of the kind of nation that Americans aspire to be.

Australians have no equivalent Declaration. We have no statement of Australia’s national aspirations that complements the practical and pragmatic charter of government that we have in the Australian Constitution.

When Australians talk about the need for adopting a symbolic statement about Indigenous people, they are really talking about the need for Australia to declare to ourselves and the world what has happened in our past, and the kind of nation that we aspire to be in the future. So the time has come for Australia to adopt its own Declaration—the Australian Declaration of Recognition.

So, in order to address the need for symbolic recognition of Indigenous people, we ought to adopt an ironwood Declaration whilst preserving our blackwood Constitution.

### **4. Adopting the Australian Declaration of Recognition**

How does Australia go about adopting an ironwood statement of national aspirations whilst still preserving its blackwood charter of government? We propose that Australians use the following process to adopt the Australian Declaration of Recognition:

- i. The Australian Government holds a national competition, in which all Australians are invited to enter a 300-word Declaration that they would like to see adopted;
- ii. A Government-appointed committee shortlists the five best versions of the Declaration;
- iii. All Australians vote for their preferred version of the Declaration from the choice of the five shortlisted versions;
- iv. The most popular version is then formally adopted at a national ceremony.

In this way, Australia will adopt a statement of its history and aspirations for the future that has a powerful popular mandate, and which will inspire Australians for generations to come, just as the Declaration of Independence has inspired generations of Americans.

## **6. Being more precise about the benefit of recognition**

Recently, the *Medical Journal of Australia* invited the President of the Australian Indigenous Doctors' Association, Dr Tammy Kimpton, to write an editorial for the June issue of the *Journal*. The editorial is entitled, "Racism, health and constitutional recognition". Dr Kimpton writes that

*"Constitutional recognition is the next step in developing a healthier nation. Recognising Indigenous Australians as the First Nations peoples will enrich the identity of the nation and make significant steps towards reconciling past injustices... Recognising our rightful place as First Nations people in the constitution lays a strong foundation for the health, wellbeing and unity of all Australians. While it will not wash away the grave injustices of the past, with such recognition there is capacity to heal the deep wounds that affect health outcomes and continue to weigh heavily on Australia as a nation.*

*The medical community has a role to play in promoting Aboriginal and Torres Strait Islander recognition in the constitution. AIDA, as the peak body for Aboriginal and Torres Strait Islander doctors and medical students, will work with its peers in the medical community, as well as more broadly, to support this constitutional reform to achieve the sustainable, unifying and positive benefits that are envisaged for all Australians."*

I trust the editor's professional judgment that recognising Indigenous Australians in a meaningful way will indirectly improve health outcomes. But let me ask you, do you think that Dr Kimpton believes that Indigenous health and wellbeing will be improved by Australians adopting a statement expressing Australians' shared feelings about our history and shared aspirations for our nation's future, or does she think that these improved health outcomes will flow from an amendment of Australia's practical and pragmatic charter of government? If the primary benefit comes from a statement of aspirations, then she is effectively calling for an Australian Declaration of Recognition.

The time has come for us to be precise about the difference between a statement of national aspirations and a charter of government. Because we need to go about achieving these in different ways. Although the *Australian Medical Journal* editorial seems to call for constitutional reform, on closer analysis, it really has more to do with the need for a statement of national aspirations, not with amendment of the practical and pragmatic charter of government. So it is not really a claim about the urgency of amending the Constitution. The time has come for us to be precise about what Indigenous recognition really involves, because it might turn out that the profound cultural benefit does not come from tinkering with some details of the Constitution, but with adopting the lofty sentiments of an Australian Declaration of Recognition.

## **8. The Blackwood Constitution and the Ironwood Declaration**

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As the Prime Minister said, we need to atone for the omissions and for the hardness of heart of our forebears if we are all to embrace the future as a united people. So the challenge is to find a means of fulfilling his promise to do so. We believe that it is possible to adopt a statement that, on the one hand, acknowledges the wrongs of the past, and, on the other, expresses our aspirations for the future. And we believe that it is possible to adopt such a Declaration without interfering with the Constitution. The Constitution must continue to function as it always has done, like the good old blackwood graveposts. Now is the time to adopt an ironwood Declaration to stand side-by-side with our blackwood Constitution, just as visitors continue to enjoy the aesthetic qualities of the ironwood Tutini at the Gallery. Each has a separate role to perform, and the Australian nation will flourish in the future by retaining its existing charter of government in the Constitution, and adopting an Australian Declaration of Recognition that captures the nation's aspirations by recognising Indigenous people. This is the way to fulfil the Prime Minister's promise.

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