



Australian
Human Rights
Commission

Inquiry into constitutional recognition of Aboriginal and Torres Strait Islander Peoples

20 July 2018

**AUSTRALIAN HUMAN RIGHTS COMMISSION SUBMISSION
TO THE JOINT SELECT COMMITTEE ON
CONSTITUTIONAL RECOGNITION RELATING TO
ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLES**

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1 Introduction

- 1 The Australian Human Rights Commission makes this submission to the Joint Select Committee on Constitutional Recognition. It has been developed by each person who has held the statutory position of Aboriginal and Torres Strait Islander Social Justice Commissioner, namely:
 - Ms. June Oscar AO, 2017 – current;
 - Mr. Mick Gooda, Social Justice Commissioner, 2010 – 2016;
 - Professor Tom Calma AO, Social Justice Commissioner, 2004 – 2010;
 - Dr. William Jonas AM, Social Justice Commissioner, 1999 – 2004; and
 - Dr. Mick Dodson AM, Social Justice Commissioner 1993-1998.¹
- 2 The role of Social Justice Commissioner was created by the federal Parliament in 1993 to provide ongoing scrutiny and guidance about the human rights issues faced by Aboriginal and Torres Strait Islander peoples.
- 3 Each Social Justice Commissioner over the past 25 years has highlighted the need for constitutional reform through their work.
- 4 An overview of the findings of each Commissioner is included as **Attachment 1** to this submission. The attachment also identifies related developments in this time.
- 5 Each Commissioner has identified the need for constitutional reform as an integral component of the reforms necessary across our parliamentary system to address the ongoing human rights concerns faced by Aboriginal and Torres Strait Islander peoples.
- 6 Crucially, they have all explicitly noted that constitutional reform is **but one** important element of the response necessary from the government.
- 7 A failure to understand the complementary nature of constitutional reform is one of the key failings of the current debates on constitutional recognition. It has placed unrealistic expectations on what such reform can achieve while failing to provide appropriate consideration of other essential reforms to accompany it.
- 8 Social Justice Commissioners, past and present, have come together at this time due to their joint concern at the lack of a clear direction towards the achievement of constitutional reform.
- 9 There has been significant consideration and public consultation on the issue over an eight-year period. Clear proposals for reform have been identified. A high degree of consensus among the community and Aboriginal communities about these reforms has also been identified.

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- 10 The present and former Social Justice Commissioners are of the view that successive governments have failed to act decisively on constitutional reform and have not capitalised on public support through this indecision.
- 11 The statement that follows is intended to assist Parliament to find a pathway forward that will ultimately achieve constitutional reform.
- 12 The critical elements of such a pathway are identified as follows:
 - a. A commitment from the federal Parliament to achieve constitutional reform within the next five years.
 - b. A regular process by which federal parliamentarians can be held accountable to the Australian people by indicating whether they support constitutional reform or not.
 - c. A process of negotiation between parliamentarians, the government and Aboriginal and Torres Strait Islander peoples about the ultimate form of constitutional recognition.
- 13 A range of complementary measures are also identified to sit alongside constitutional reform relating to:
 - Effective parliamentary oversight for outcomes on indicators of well-being for Aboriginal and Torres Strait Islander peoples.
 - Meaningful participation by Aboriginal and Torres Strait Islander peoples including obtaining their consent in matters that affect them.
 - A framework for ongoing dialogue to recognise and address the consequences of past and ongoing injustices, through truth and reconciliation processes.
- 14 These complementary measures will take longer to achieve and require a commitment over a 25 year period. They should, however, commence immediately.
- 15 The proposals made in this submission are, in our view, consistent with the four criteria of referendum success set out in the Final Report of the Expert Panel on Recognising Aboriginal and Torres Strait Islander Peoples in the Constitution, namely:
 - 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.

2 Statement on constitutional reform and related measures

16 This statement is made by every Aboriginal person to hold the office of Social Justice Commissioner over a 25 year period.

17 As the national monitor of the enjoyment of human rights by Aboriginal and Torres Strait Islander peoples, we are uniquely placed to offer advice on options for constitutional reform and pathways to achieving it.

The ongoing need for constitutional reform

18 Every Commissioner since 1993 has identified the need for constitutional reform through our monitoring and reporting. We have made recommendations to this end in response to:

- Major inquiries identifying the ongoing experience of racism and discrimination by Aboriginal and Torres Strait Islander peoples (such as the Royal Commission into Aboriginal Deaths in Custody, National Inquiry into Racist Violence and Bringing Them Home).
- The Proposals for a Social Justice Package, as part of a settlement for the extinguishment of native title (1995).
- The reconciliation process (1991-2000).
- The abolition of Aboriginal and Torres Strait Islander representation within government through ATSIC (2004).
- The national human rights consultation (2009).
- Consultations on constitutional recognition (2012 onwards).

19 As Social Justice Commissioners, we have reported on the reliance of government on the Constitution to discriminate against Aboriginal and Torres Strait Islander peoples to enable:

- The confirmation of extinguishment of native title between 1975 and 1992 (with commitments made in 1993 to remedy this through the implementation of other measures of restitution which were subsequently not met).
- The removal of heritage protection laws for a group of Aboriginal people due to their unwillingness to consent to a development.
- The winding back of rights to negotiate on native title about some land tenures, following the High Court's decision in *Wik* that Aboriginal interests in land may continue to co-exist with other tenures.
- The acquisition of Aboriginal property without consent and the removal of the protection of racial discrimination laws from all Aboriginal people in the Northern Territory (and some parts of

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Queensland) through the Northern Territory Emergency Response legislation.

- 20 These examples make clear that the Australian Constitution enables and permits racial discrimination to occur in the twenty-first century.
- 21 These examples, unfortunately, indicate that the potential for the Constitution to be used in this way is not merely theoretical, but something that has been actively utilised by successive Parliaments.
- 22 We are unable to identify another country that provides the constitutional power to discriminate in this way.
- 23 Our reputation as a country that respects the rule of law and human rights is reduced by the continuation of racially discriminatory power in our Constitution. There remains a pressing need for the removal of such provisions from our Constitution.
- 24 We have witnessed and, in various ways, participated in debates about constitutional recognition since 2010. In this time, various proposals for reform have been identified and debated in detail.

A failure of leadership to achieve constitutional reform

- 25 In our view, we have been unable to achieve constitutional recognition since 2010 for the following reasons:

1) An inability by parliamentarians across political lines to agree on an acceptable scope of constitutional reform.

Clear proposals for reform have been identified, and yet parliamentarians have not been able to agree on the scope of reform.

In particular, a minority of parliamentarians have adopted the contradictory position of being willing to remove existing language in the Constitution that permits racism (section 25 and section 51(xxvi)) but are unwilling to put in its place language that would unequivocally prevent discrimination in the future.

2) A desire by some parliamentarians for absolute certainty about the impact of any constitutional reform for the future.

The inability of parliamentarians to agree an acceptable scope of constitutional reform has been informed by a desire for absolute clarity on how a reformed Constitution would operate in the future.

The 1967 Referendum is an example of how it is not possible to provide an absolute guarantee of this nature. At the time, the 1967 Referendum was seen as a beneficial measure that enabled the inclusion of Aboriginal and Torres Strait Islander peoples at the federal level, by allowing the making of laws for them. It would have been incomprehensible to the many Indigenous and non-Indigenous activists who campaigned so long

and hard for that constitutional reform that it would ultimately have enabled the passage of racially discriminatory laws by the federal Parliament in the 1990s and 2000s.

3) *An unwillingness to sit down and negotiate with Aboriginal and Torres Strait Islander peoples.*

Since 2010, consideration of constitutional reform has moved down two parallel pathways – understanding what is acceptable to Aboriginal and Torres Strait Islander peoples, and understanding what is acceptable to our elected representatives.

These two pathways have not been brought together through a robust negotiation process.

26 These factors have resulted in a state of inertia.

27 Some Aboriginal and Torres Strait Islander peoples have consequently lost faith in the ability for constitutional reform to deliver change that is meaningful to them. It has led to recent developments, such as the Uluru Declaration, to focus instead on the importance of measures other than constitutional reform.

28 In our view, this reflects a failure of leadership across government and the Parliament.

Achieving constitutional recognition – key actions

29 We continue to believe that constitutional reform should be treated as necessary and as a priority for our nation.

30 Constitutional reform *complements* the actions identified in the Uluru Statement from the heart (of 2017).

31 The pursuance of constitutional reform should not be a substitute for responding to the Uluru Statement.

32 Nor should responding to the Uluru Statement be a substitute for pursuing constitutional reform.

33 Achieving such recognition, however, will require us to overcome the challenges that have arisen over the past eight years.

34 Parliament will need to exercise leadership on this issue and unite Australians in the belief that there is no place for racism in our Constitution.

35 We propose the following process to achieve constitutional recognition:

Step 1: Parliament to commit to achieving constitutional reform within five years

- 36 Parliament should commit to achieving constitutional recognition by the end of the next term of Parliament at the latest (i.e., within five years).
- 37 This Joint Committee has an ongoing role in finalising the Referendum question and recommending to the government the timing for conducting a Referendum.

Step 2: A regular motion of support for constitutional reform be introduced to both houses of Parliament

- 38 The timing of a Referendum will be informed by the level of support for such reform. The support of federal Parliamentarians will be one key element of determining whether a Referendum can be carried.
- 39 To date, federal Parliamentarians have considered this issue when introducing into law the *Aboriginal and Torres Strait Islander Recognition Act 2013* (Cth). This Act committed the Parliament to:
- placing before the Australian people at a referendum a proposal for constitutional recognition of Aboriginal and Torres Strait Islander peoples; and
 - building the national consensus needed for the recognition of Aboriginal and Torres Strait Islander peoples in our Constitution.²
- 40 This Act ceased on 28 March 2018, with these commitments not achieved.
- 41 Parliament has a responsibility to take leadership on this issue. For this reason, **a motion should be introduced in the Parliament on a regular basis to identify the level of support among parliamentarians for removing racism from our Constitution.** It should be co-sponsored by the Prime Minister and Leader of the Opposition.
- 42 The purpose of such a motion is two-fold:
- *Transparency:* If there are members of parliament who do not agree with the proposition that Australia's Constitution should be non-discriminatory, the voters of Australia are entitled to know this. If their opposition is based on the proposed reforms (once settled) then this should be openly stated and subject to scrutiny.
 - *Focus:* The continued existence of discrimination in our Constitution is extremely problematic. A regular motion highlighting this issue, leads to important questions from the public such as 'what will you do about it?' and 'how much longer will this be tolerated?'

Step 3: A negotiation process occur to agree on the wording of constitutional reform to be taken to the Australian people

- 43 This Joint Committee, and the Australian people, now have before them a range of options for reforming the Constitution. The legwork has been done to identify options for reform.
- 44 What is now required is an agreed view of the form constitutional recognition should take and a focus on consensus building to ensure success at Referendum.
- 45 What has not occurred in the past eight years is negotiation with representatives of Aboriginal and Torres Strait Islander peoples to agree on the final wording and approach to proposed reform.
- 46 No negotiation has occurred with Aboriginal and Torres Strait Islander peoples despite broad acceptance of the principles for constitutional reform that was proposed by the Expert Panel on Constitutional Recognition in 2010, one of which was that any reform 'be of benefit to and accord with the wishes of Aboriginal and Torres Strait Islander peoples.'
- 47 This Joint Committee should recommend a mechanism for negotiating an agreed form of wording with representatives of Aboriginal and Torres Strait Islander peoples. This should identify how the Prime Minister will ensure engagement and support from First Ministers in each state and territory, to maximise the potential for a successful referendum.
- 48 While identifying representation is a challenging issue, there are many existing mechanisms and processes that can be built on for this task.
- 49 Such negotiation should build on existing representative structures across the nation. For example, the ACT has an elected representative body that has a unique role of annually scrutinising government policies and programmes that impact Indigenous Territorians. Victoria has undertaken consultations on identifying the representatives for treaty negotiations. The NT government has entered into an agreement with the four land councils for similar discussions. SA had commenced similar discussions. Federal consultative mechanisms also exist such as the National Health Leadership Forum, the National Native Title Council and the National Congress of Australia's First Peoples.
- 50 The task of this Joint Committee should be to identify an appropriate negotiating forum to finalise constitutional reform proposals.
- 51 The reform proposals should emerge from these negotiations.
- 52 We note that there are common elements of agreement to the proposals from the various consultation processes to date.
- 53 Most notably, there is near unanimous agreement on the need to remove the racism of section 25 of the Constitution as well as the ability to pass laws based on race in section 51(xxvi).

54 There is also a high degree of agreement on the importance of providing recognition of Aboriginal and Torres Strait Islander peoples in the Constitution. However, the scope and placement of such recognition is contested (for example, whether it should be in a preamble or other section of the Constitution).

55 The *Aboriginal and Torres Strait Islander Recognition Act 2013* (Cth), which enjoyed bi-partisan support upon its passage, provides a form of this recognition in section 3 of the Act as follows:

3 Recognition

(1) The Parliament, on behalf of the people of Australia, recognises that the continent and the islands now known as Australia were first occupied by Aboriginal and Torres Strait Islander peoples.

(2) The Parliament, on behalf of the people of Australia, acknowledges the continuing relationship of Aboriginal and Torres Strait Islander peoples with their traditional lands and waters.

(3) The Parliament, on behalf of the people of Australia, acknowledges and respects the continuing cultures, languages and heritage of Aboriginal and Torres Strait Islander peoples.

56 There is also more extensive recognition of the place of Aboriginal and Torres Strait Islander peoples in other federal legislation, such as the *Native Title Act 1993* and the *Aboriginal and Torres Strait Islander Act 2005*, the latter of which notes the following in the preamble:

AND WHEREAS they have been progressively dispossessed of their lands and this dispossession occurred largely without compensation, and successive governments have failed to reach a lasting and equitable agreement with Aboriginal persons and Torres Strait Islanders concerning the use of their lands;

AND WHEREAS it is the intention of the people of Australia to make provision for rectification, by such measures as are agreed by the Parliament from time to time, including the measures referred to in this Act, of the consequences of past injustices and to ensure that Aboriginal persons and Torres Strait Islanders receive that full recognition within the Australian nation to which history, their prior rights and interests, and their rich and diverse culture, fully entitle them to aspire;

AND WHEREAS it is also the wish of the people of Australia that there be reached with Aboriginal persons and Torres Strait Islanders a real and lasting reconciliation of these matters;

57 We note that the vast majority of successful Referendums to reform the Constitution have involved a minimal change to the Constitution.

58 Any reforms should be unambiguous and strictly necessary if they are to be embraced by the Australian people.

59 In our view, the starting proposition should be:

- Repealing section 25 and section 51(xxvi) of the Constitution
- Some form of recognition of the special place of Aboriginal and Torres Strait Islander peoples in Australia.

60 While other provisions that have been proposed by the various panels and advisory bodies over the past eight years are logical, we are not convinced that they are necessary or that they are sufficiently unambiguous to enjoy the necessary support of the Australian public.

Step 4: A revamped Aboriginal and Torres Strait Islander Peoples Recognition Act be enacted that provides for a new engagement with Aboriginal and Torres Strait Islander peoples

61 In our view, one of the reasons for failure to achieve constitutional recognition in the past eight years has been set too high an expectation of what such reform can achieve.

62 It cannot address the myriad of challenges that currently exist in the relationship between the state and Aboriginal and Torres Strait Islander peoples.

63 Constitutional reform will address but one of these challenges – the authorisation of racial discrimination by our Constitution.

64 Any reform effort must place constitutional reform within its proper context as but one of the components of reform required if we are to ultimately ensure that Aboriginal and Torres Strait Islander peoples are respected as the first peoples of this land and enjoy the same opportunity as other Australians to thrive.

65 For constitutional reform to succeed, will require a parallel conversation about other measures to address ‘unfinished business.’

66 Over the past eight years, discussions on options for constitutional reform have occurred at a time where the government has not:

- ensured the effective participation of Aboriginal and Torres Strait Islander peoples in decision making that affects their lives
- addressed well-documented limitations in recognition of native title, due to overly restrictive requirements for connection to country
- made sufficient progress in addressing inequalities in socio-economic indicators experienced by Aboriginal and Torres Strait Islander peoples
- engaged in a dialogue with Aboriginal and Torres Strait Islander peoples about remedying ‘unfinished business.’

- 67 Aboriginal and Torres Strait Islander peoples have started to lose faith in the value of constitutional recognition as they have not seen improvements in these related issues.
- 68 Accordingly, we recommend that a revamped *Aboriginal and Torres Strait Islander Peoples Recognition Act* be enacted by the federal Parliament that reflects the Parliament's commitment to achieving constitutional reform, but places it alongside renewed commitments to:
- put into place a mechanism for the representation of Aboriginal and Torres Strait Islander peoples in federal policy development processes
 - create new accountability mechanisms for outcomes in Indigenous service delivery
 - set out guiding principles for negotiating 'unfinished business' with Aboriginal and Torres Strait Islander peoples.
- 69 This legislation should explicitly note that it is anticipated that the challenges faced in the legislation are inter-generational. A 25 year period should be agreed for achieving all elements of the legislation.

3 Actions to be undertaken alongside constitutional reform

A representative voice for Aboriginal and Torres Strait Islander peoples

- 70 The federal government has consistently struggled to engage with Aboriginal and Torres Strait Islander peoples in policy development and service delivery.
- 71 There has been no discernible improvement in engagement with Aboriginal and Torres Strait Islander peoples despite the acceptance by Australia of the UN Declaration on the Rights of Indigenous Peoples in 2009.³ The Declaration emphasises the importance of 'participation of indigenous peoples in matters that would affect their rights, through representatives freely chosen by themselves' (Article 18, see also Articles 19, 3 and 4).
- 72 It is in the interests of both government and Aboriginal and Torres Strait Islander peoples to ensure the functioning of appropriate representative structures to inform decision-making across all areas of government activity.
- 73 The fact that we currently experience record high rates of incarceration of Aboriginal and Torres Strait Islander peoples and record high rates of engagement of Aboriginal and Torres Strait Islander children in care and protection systems is evidence of the urgent need for change.
- 74 The Australian Human Rights Commission has previously published comprehensive research on models for national representative voices, resulting in the establishment of the National Congress of Australia's First Peoples.

- 75 We note that the National Congress is in its infancy as a representative organisation. At present, it has over 250 organisations as members and over 9,000 individuals. Consideration should be given to how we build on the early achievements of the Congress in moving forward.

Improving government accountability for Indigenous Affairs

- 76 There is currently a lack of accountability of government for outcomes of services to Aboriginal and Torres Strait Islander peoples. This lack of accountability is integrally connected to the lack of engagement with Aboriginal and Torres Strait Islander peoples.
- 77 One mechanism that can improve accountability is by ensuring Aboriginal and Torres Strait Islander participation in Senate Estimates processes.
- 78 The cross-portfolio Indigenous Affairs day at Senate Estimates could be enhanced by inviting non-parliamentary representatives of Aboriginal and Torres Strait Islander communities to sit with the parliamentary committee for questioning of agencies. Ideally, a national Indigenous representative voice would provide these representatives.
- 79 In the absence of such a voice, they could initially be drawn from the National Congress or related national level representative bodies such as the National Health Leadership Forum.
- 80 While it is not usual for non-parliamentarians to participate in Estimates processes in this way, it is not without precedent.
- 81 There is no requirement of Parliamentary Committees that their members are exclusively drawn from parliamentarians. We also note that the A.C.T. Parliament has enacted provisions that give the A.C.T Indigenous elected representative body functions to participate in Estimates proceedings in this manner.
- 82 The proposed *Aboriginal and Torres Strait Islander Peoples Recognition Act* could authorise the appointment of non-parliamentarian representatives as members of the committee.
- 83 Additionally, the proposed *Aboriginal and Torres Strait Islander Peoples Recognition Act* should amend section 3(1) of the Human Rights (Parliamentary Scrutiny) Act 2011 (Cth) to include the United Nations Declaration on the Rights of Indigenous Peoples. The Attorney-General should similarly exercise his power under section 47 of the Australian Human Rights Commission Act 1986 (Cth) to include the UN Declaration within the human rights functions of the Australian Human Rights Commission. In both instances, this would improve accountability through parliamentary scrutiny processes and the work of the Australian Human Rights Commission of how policies and programs respect the rights of indigenous peoples.

Laying the foundations for a new relationship

84 The above measures will make a positive contribution to the development of policy and delivery of services to Aboriginal and Torres Strait Islander peoples. Of themselves, they are not enough.

85 It is long overdue for the federal government to commit to entering discussions with Aboriginal and Torres Strait Islander peoples about the ongoing impact of colonisation – in other words, to deal with so-called ‘unfinished business’.

86 Efforts to deal with unfinished business have constantly stalled due to the apparent fear by politicians that the outcomes of any negotiation process are uncertain. Such a stance entirely misses the point of such a process – that it is a negotiation. The point of negotiations is that one side of the negotiations do not impose their will on the other. Instead, mutual accommodation is sought based on dialogue.

87 We see two mechanisms to advance this:

- 1) A fact-finding process to identify the scope and ongoing dimension of the harm caused to Aboriginal and Torres Strait Islander peoples since colonisation. Usually referred to as a Truth and Reconciliation Commission.

Australia has just seen the conclusion of one of the most successful truth and reconciliation processes in our history: The Royal Commission into Institutional Abuse of Children.

One option for a truth and reconciliation process would be to establish a Royal Commission with the well understood and well-defined powers that come with such an entity.

- 2) This Royal Truth and Reconciliation Commission should be accompanied by a legislated negotiation framework for ongoing discussions with Aboriginal and Torres Strait Islander peoples. There are examples of what such principles should cover through many processes in Australia, at the federal, state and territory level.

88 Precedents exist that show that committing to negotiate with Aboriginal and Torres Strait Islander peoples can be a positive experience that benefits the nation as a whole.

89 For example, in March 2008 all parliamentary parties signed the Statement of Intent to close the gap in Indigenous health inequality. The Statement committed governments to:

- develop a comprehensive, long-term plan of action that is targeted to need, evidence-based and capable of addressing the existing inequities in health services, in order to achieve equality of health status and life expectancy between Aboriginal and Torres Strait Islander peoples and non- Indigenous Australians by 2030.

- ensure the full participation of Aboriginal and Torres Strait Islander peoples and their representative bodies in all aspects of addressing their health needs.
- respect and promote the rights of Aboriginal and Torres Strait Islander peoples, including by ensuring that health services are available, appropriate, accessible, affordable, and of good quality.
- measure, monitor, and report on our joint efforts, in accordance with benchmarks and targets, to ensure that we are progressively realising our shared ambitions.⁴

90 Over ten years, this commitment has led to a range of significant outcomes, including:

- The commitment by COAG to new inter-governmental arrangements for health service delivery.
- The adoption of reforms for prioritising and delivery of health services to Aboriginal and Torres Strait Islander peoples in every jurisdiction in Australia.
- A people's movement to support closing the gap.
- The creation of the National Health Leadership Forum (NHLF) as a representative voice for Indigenous health sector agencies.
- The development of a National Aboriginal and Torres Strait Islander Health Plan negotiated with the full involvement of Aboriginal and Torres Strait Islander representative bodies (through the NHLF).
- Government accountability through the Prime Minister's annual Closing the Gap report which tracks progress against targets.

91 It has also started to see improvements in some indicators of well-being, well beyond the improvements realised in the decades prior. There is, however, still a significant distance to travel to achieve the full ambitions of the Close the Gap Statement of Intent. Significant measures to bridge this distance will be critical to ensure the current Closing the Gap Refresh process delivers effective outcomes for Aboriginal and Torres Strait Islander peoples.

4 A new partnership

92 The difficulties faced in achieving constitutional recognition over the past eight years reflect a broader malaise in the treatment of Aboriginal and Torres Strait Islander peoples in Australia.

93 There is a lack of willingness to engage in partnership with our communities on the issues that affect us most deeply in our day to day lives.

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- 94 We are overdue for a respectful dialogue with Aboriginal and Torres Strait Islander peoples. It starts with negotiation on a relatively simple matter: getting racism out and recognition in to the Constitution.
- 95 The opportunity of constitutional reform that is broadly supported and achievable, should be embraced to lay a platform for dealing with the other major issues that lie at the core of the relationship between Aboriginal and Torres Strait Islander peoples and the nation-state of Australia.
- 96 Overseas experience in countries such as New Zealand, Canada, Norway and the United States of America tells us that we cannot entirely predict the final destination from a negotiation process.
- 97 There will be mistakes made along the way, and agreement will not always be possible on some matters. Key points on which consensus will emerge that simply cannot be imagined or foreseen at this time.
- 98 That is why above all else, the commitment to commence a negotiation process with Aboriginal and Torres Strait Islander peoples and ensure our representation in policy matters that affects us, is a commitment to a new relationship built in partnership.
- 99 As was stated in the first *Social Justice Report* to Parliament in 1993:
- The recognition that social justice is about the enjoyment and exercise of human rights establishes a framework in which indigenous peoples cannot be regarded as the passive recipients of government largess but must be seen as active participants in the formulation of policies and the delivery of programs.⁵
- 100 We urge this Committee to be bold in setting a determined path forward that can achieve these ambitions, by ensuring:
- Nothing about us without us – let us be co-design partners.
 - Full accountability for government decision making that affects us.
 - Acknowledgment of the harm that has been caused in the past.
 - A seat at the table to have our say about our vision for a future, reconciled Australia.

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Ms June Oscar AO

Aboriginal and Torres Strait Islander
Social Justice Commissioner
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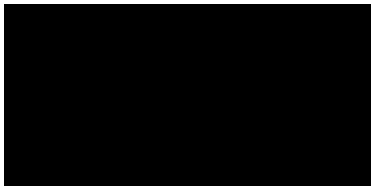
Mr Mick Gooda

Former Aboriginal and Torres Strait Islander
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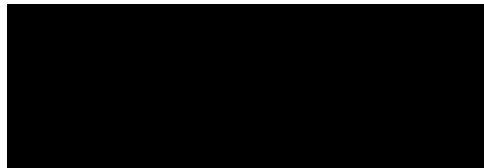
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Professor Mick Dodson AM

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Endnotes

¹ The Commission notes that in addition to the substantive office holders listed above, Ms Zita Antonios and Emeritus Professor Gillian Triggs have been appointed as acting commissioners in the past.

² Aboriginal and Torres Strait Islander Recognition Act 2013, preamble.

³ Australia voted against the Declaration at the United Nations General Assembly upon adoption. In 2009, it issued a statement of support for the Declaration.

⁴ Close the Gap Statement of Intent (2008). At <https://www.humanrights.gov.au/publications/close-gap-indigenous-health-equality-summit-statement-intent>.

⁵ Human Rights and Equal Opportunity Commission, *Social Justice Report* (1993), pp6-7.