

## **3.1 Statement of Uluru Treaty – Background and Options**

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### **Background**

On May 2017, 250 Aboriginal and Torres Strait Islander delegates formed a Referendum Convention and made the Uluru Statement from the Heart: a consensus position on indigenous constitutional recognition. The statement calls for three actions: Voice, Treaty and Truth.

a. Voice - Voice to Parliament

This action calls for a constitutionally guaranteed voice for the Indigenous community by means of an advisory board to Parliament. Such a change would establish and require the consultation of an Indigenous board in law and policy making concerning indigenous affairs. While finally included as a part of the statement, it is important to acknowledge that constitutional recognition was hotly debated at the Convention, with many contending that constitutional change represents a loss of sovereignty for Indigenous Peoples.<sup>1</sup> It was argued that if initial contact between the British and Aboriginal People had been genuinely negotiated, Australia would have a coexisting- or pluralistic-legal system.<sup>2</sup> As such, recognition of the constitution as the only valid institution ‘perpetrate(s) the Crowns domination of Aboriginal people and void(s) Aboriginal sovereignty which they never ceded.’<sup>3</sup>

However, the statement ultimately emphasizes the importance of having a voice to parliament included in the constitution. This is because advisory boards which were not constitutionally enshrined in the past (such as the Aboriginal and Torres Strait Islander Commission) have been easily dismantled with a change in political priorities.<sup>4</sup> This constitutional change would require a referendum, which would only come into effect if the proposal receives the support of a majority of voters in a majority of states.

b. Treaty - Makarrata Commission

Makarrata is a Yolngu word from the people in Arnhem Land. It means two parties coming together to heal the wounds of the past, and to live again in peace. It is proposed that a Makarrata Commission would serve as both the voice to parliament, as well as oversee the making of treaties between the Indigenous people and the Federal and State Governments.<sup>5</sup> It is also envisioned that the Commission would provide another avenue for truth-telling of Indigenous history in an effort to establish pluralistic law in Australia.

The function of treaties negotiated by the commission would facilitate the ‘truth-telling’ of indigenous sovereignty. Much like a contract, a treaty would describe agreements about how resources on Indigenous land are to be managed between the Australian government and

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<sup>1</sup> Dani Larkin and Kate Galloway, ‘Uluru Statement from the Heart: Australian Public Law *Pluralism*’ *Bond Law Review*, December 2018, vol 30(2), page 11.

<sup>2</sup> *Ibid*, 5.

<sup>3</sup> Jens Korff, ‘Explainer: Uluru Statement from the Heart,’ *Creative Spirits*, 18 September, 2019 <<https://www.creativespirits.info/aboriginalculture/selldetermination/uluru-statement-from-the-heart#toc7>>

<sup>4</sup> Daniel McKay, ‘Uluru Statement: A Quick Guide’, *Parliament of Australia*, 19 June 2017, <[https://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/pubs/rp/rp1617/Quick\\_Guides/UluruStatement](https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1617/Quick_Guides/UluruStatement)>.

<sup>5</sup> Fernada Dahlstrom, ‘Uluru Statement from the Heart’, *GoToCourt*, viewed online 4 February 2020, <<https://www.gotocourt.com.au/immigration/uluru-statement/>>.

Indigenous people. The treaty would describe responsibilities and obligations upon both parties as equals, and sanctions in where those are dishonoured.

A treaty-as opposed to an agreement-holds special significance as it recognises a sovereignty which was not granted to the Indigenous people when Britain colonised Australia. It is not explicitly mentioned in the statement whether the Commission would be enshrined by the constitution or set up under legislation. The former requires a referendum while the latter only requires enactment under legislation. Regardless, any treaty entered into would have legally binding obligations.

c. **Truth - Declaration of Recognition**

Finally, the Referendum Council of the Convention recommended that an enactment of a Declaration of Recognition. This legislation would be symbolic recognition of Australia's shared history and provide collective aspirations for the future.

Such a declaration would be enacted by parliament, and would not require constitutional change or a referendum.

#### **Potential Implications on Local Government and City of Prospect**

In considering the structure of the Makarrata Commission, law review bodies draw on similar arrangements between the Canadian State Government and their First Nations. As such, the Makarrata Commission may mirror that of the British Columbia Treaty Commission, composing itself of Indigenous representatives, as well as representatives of federal, state, and local governments.<sup>6</sup>

Land negotiations may be a key element of any treaty as it would form the basis for political and economic empowerment, though the constitutional power to do so remains at a state or federal level.<sup>7</sup> The specific aims and implications of the treaties envisioned by the Uluru statement are largely unknown, though Australia's history of failed treaty-making may be informative. Scholars contend that this might suggest that treaty negotiations in the future may take a more integrated approach mirroring that of our Canadian counterparts.<sup>8</sup> Treaties between the Canadian government and their indigenous people included negotiations at all tiers of government, including renaming of creeks and other local areas at a local level.<sup>9</sup> City of Prospect has already endorsed dual naming and the potential for treaty negotiations as a part of its Reconciliation Action Plan and a motion to LGA annual General Meeting.

By Endorsing the Uluru Statement from the Heart, City of Prospect, takes a position similar to formal actions taken in the past, and is in line with its RAP. On 12 August 2013, Council formally endorsed a Statement of Reconciliation and National Sorry day acknowledgement. In April 2018, Council endorsed a Reconciliation Action Plan 2018-2020, which included an action to display Council's reconciliation statement in Council facilities.

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<sup>6</sup> Harry Hobbs and George Williams, 'Treaty-Making in the Australian federation,' (2019) 43(1) *Melbourne University Law Review* 228

<sup>7</sup> Harry Hobbs and George Williams, 'Treaty-Making in the Australian federation,' (2019) 43(1) *Melbourne University Law Review* 228

<sup>8</sup> Ibid 216

<sup>9</sup> Ibid 228

## Options

Councils such as Byron shire council have supported the Statement from the Heart by displaying the statement on their website and resolving to:

1. Support the Uluru statement from the heart.
2. Be a signatory to the ACOSS statement of support for the Uluru Statement
3. Acknowledge Aboriginal and Torres Strait Islander people as the Traditional Owners of this country and pay respect to their ongoing spiritual and cultural connections with it.
4. Recognise the need for constitutional change that goes beyond the symbolic and the benefits that a treaty offers all Australians.<sup>10</sup>

Bayswater Council In Western Australia resolved the above actions, as well as

1. Lodging a submission to the Joint Select Committee on Constitutional Recognition Relating to Aboriginal and Torres Strait Islander Peoples
2. Showing outward support by placing a framed copy of the Uluru Statement from the Heart within the City's public honorary cabinets at the entrance of the Council Chambers
3. Writing a letter of support from Council to request the Western Australian Local Government Association (WALGA), who advocate on behalf of 138 local governments, to embrace the Uluru Statement from the Heart
4. Writing a letter of support from Council to the Prime Minister and Federal Leader of the Opposition showing our support for the Uluru Statement from the Heart.

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<sup>10</sup> [https://byron.infocouncil.biz/Open/2018/06/OC\\_21062018\\_AGN\\_776\\_WEB.htm](https://byron.infocouncil.biz/Open/2018/06/OC_21062018_AGN_776_WEB.htm)