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**SUBMISSION**

Submission to the Joint Select  
Committee on Constitutional  
Recognition Relating to Aboriginal  
and Torres Strait Islander  
Peoples

June 2018

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## CONTENTS

<b>About this submission</b>	<b>2</b>
Overview	2
The role of constitutional recognition in Indigenous economic prosperity	3
Achieving constitutional recognition	3
i.    Contributes to a more unified and reconciled nation	4
ii.   Be of benefit to and accord with the wishes of Aboriginal and Torres Strait Islander Peoples	4
iii.  Be capable of being supported by an overwhelming majority of Australians from across the political and social spectrums	5
iv.   Be technically and legally sound	5
Timeframe	6

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**The Business Council of Australia draws on the expertise of Australia's leading companies to develop and promote solutions to the nation's most pressing economic and social policy challenges.**

## **ABOUT THIS SUBMISSION**

The Business Council welcomes the opportunity to make a submission to the Joint Select Committee on Constitutional Recognition Relating to Aboriginal and Torres Strait Islander Peoples.

### **Overview**

The Business Council and its members are committed to the empowerment of Aboriginal and Torres Strait Islander peoples (in this report referred to as Indigenous Australians) and the creation of opportunities for full participation in the Australian economy and accordingly supports meaningful constitutional recognition of a Voice to the Parliament for Indigenous Australians. Without recognition of Australia's First Peoples, the Australian Constitution cannot be complete.

The purpose of the Business Council is to contribute to public policy aimed at ensuring a strong and vibrant Australian economy in which all Australians have the opportunity for full participation. Through our Indigenous Engagement Task Force, the Business Council is working hard to enhance economic development opportunities for Indigenous peoples and we believe constitutional recognition is of crucial importance towards achieving this.

As the Business Council understands it, the recommendation of the Referendum Council was the preferred constitutional change nominated by Indigenous leaders at Uluru after a careful process of regional dialogues and a national convention, which is the most comprehensive dialogue with Indigenous Australians on constitutional recognition to date. The recommendation of the Referendum Council was that the representative body be established to advise the Parliament in matters affecting Indigenous Australians. The recommendation was not for a body with any veto power over the functions of parliament or one which would place any constraint upon the Parliament's legislative powers.

The view of the Business Council is that the Uluru Statement from the Heart outlines the desire of the Indigenous community in regards to constitutional recognition, being:

- Recognition within the Constitution which is not only symbolic, but meaningful in a sense that it provides a mechanism to enhance the wellbeing of Indigenous Australians.
- An Indigenous Voice to Parliament which provides Indigenous Australians with a stronger say on legislation, policy and programs that impact Indigenous communities and quality of life.

Constitutional recognition of Indigenous Australians has been an unresolved issue for too many years. In the past, there has been an Expert Panel in 2012, a Joint Select Committee in 2015 and the report of the Referendum Council in 2017. The Business Council believes that it is time for the nation to come to terms with Indigenous constitutional recognition and urges the Committee to outline a plan that will give effect to constitutional recognition for Indigenous peoples.

## **The role of constitutional recognition in Indigenous economic prosperity**

The Business Council notes that constitutional recognition is no substitute for substantive economic development – through employment, procurement and capital formation for instance, to which the Business Council remains committed.

The Business Council and its members have a long record of working to close the gap in Indigenous disadvantage. Business Council members employ more than 20,000 Indigenous Australians and have spent or contracted over \$2 billion dollars with Indigenous-owned businesses and joint ventures.

The Business Council thinks completing the Australian Constitution by meaningfully recognising Indigenous Australians is a necessary precondition to closing the gap in Indigenous disadvantage and economic participation. Meaningful recognition underpins practical outcomes and ensures that Aboriginal and Torres Strait Islander peoples can enjoy the opportunity of full participation in the Australian economy and society as a whole.

## **Achieving constitutional recognition**

The Business Council notes that the terms of reference require the Joint Select Committee to ensure that any options for constitutional recognition are consistent with the following criteria:

- i. contributes to a more unified and reconciled nation
- ii. be of benefit to and accord with the wishes of Aboriginal and Torres Strait Islander peoples
- iii. be capable of being supported by an overwhelming majority of Australians from across the political and social spectrums
- iv. be technically and legally sound.

The Uluru Statement from the Heart says, among other things:

We seek constitutional reforms to empower our people and take a rightful place in our own country. When we have power over our destiny our children will flourish. They will walk in two worlds and their culture will be a gift to their country.

The report of the Referendum Council which followed the Uluru Statement from the Heart in June 2017 recommended, among other things:

That a referendum be held to provide in the Australian Constitution for a representative body that gives Aboriginal and Torres Strait Islander First Nations a Voice to the Commonwealth Parliament.

Given the above, the role of the Committee is to advise on enacting a constitutionally enshrined body which will facilitate consultation and advice from Indigenous Australians in relation to the laws and policies which specifically affect Indigenous peoples and communities. The Business Council recommends that the Committee propose a framework as to how the Indigenous Voice to the Commonwealth Parliament would work, providing a level of detail that will give the Australian public and Government the assurance that the Indigenous voice places no constraint upon the Parliament's legislative powers. The Business Council thinks this is an important step in ensuring the proposed Voice to Parliament is not dismissed due to uncertainty as to how it would operate within the existing parliamentary framework.

The Business Council thinks that a constitutionally appropriate Indigenous body established to advise the Parliament will meet the stated requirements:

**i. Contributes to a more unified and reconciled nation**

Over the course of Australia's history, many Australians have contributed to reconciliation efforts with progress made, particularly in recent years. It is clear that further efforts are needed. Constitutional recognition for Indigenous Australians will come some way to address the wrongs and shortcomings of the past and establishing an Indigenous Voice to Parliament will enhance the Parliament's efforts in achieving reconciliation and enhancing prosperity for Indigenous Australians.

Constitutional recognition will be a significant contributor to a more unified and reconciled nation for the simple reason that all Australians can regard it as a significant step forward in addressing past wrongs and failures and enabling greater self-determination for Indigenous Australians. Although constitutional recognition will not of itself, without necessary changes in policy and better implementation, change the individual lives of Indigenous Australians, we must not, as a nation, diminish the unprecedented advancement in reconciliation that can be achieved through constitutional recognition. Further, establishing an Indigenous Voice to Parliament is critically important to the empowerment of Indigenous Australians in tackling the challenges their communities face, leading to improved wellbeing and contributions to the economy and nation in general.

Australians will want to be satisfied that any advisory body enshrined in the Constitution must fully respect parliamentary supremacy with no veto rights. It is in this sense that constitutional settings must be respected.

In addition to enhancing Government's reconciliation efforts, the Indigenous Voice will add great value to the reconciliation efforts and Indigenous engagement programs of the Business Council and our members, who want to ensure organisational actions reflect the needs and wishes of Indigenous peoples. Therefore, the Business Council believes the Indigenous Voice to Parliament will also be a source of guidance for organisations across the business, not-for-profit and community sectors as well as for state, territory and local levels of government.

**ii. Be of benefit to and accord with the wishes of Aboriginal and Torres Strait Islander Peoples**

It is the view of the Business Council that meaningful constitutional recognition such as is requested by the Uluru Statement from the Heart will provide for a more unified and reconciled nation provided that parliamentary supremacy is maintained as mentioned above.

It is almost universally agreed by politicians, businesses and the community sector that the solution to so many of the challenges faced by Indigenous communities depends upon Indigenous peoples having greater empowerment and responsibility in the decision-making process. The Uluru Statement from the Heart is a request to the nation for a constitutionally guaranteed Indigenous voice as a guarantee of better considered laws and policies which affect Indigenous peoples and communities.

The benefit to Indigenous Australians will occur through greater and more respectful recognition by the nation of the special place held by Indigenous peoples. It will be a source of empowerment and confidence for individuals and communities and make for a greater

contribution by Indigenous Australians on the laws and policies that touch upon and influence their lives. This will have an important impact on improving outcomes for individuals and communities. Given the approximate \$34 billion expended on Indigenous affairs annually and the unresolved challenges of poverty, poor health, poor education, high levels of incarceration and unemployment, Indigenous Australians clearly need a stronger say in how these challenges are addressed. In short, empowering Indigenous peoples to build the solutions will increase the likelihood of eliminating the disadvantage Indigenous communities have faced for far too long.

Of particular concern to the Business Council is the urgent need to develop wealth for Indigenous Australians to enable full participation in business and asset development for Indigenous advancement and benefit. Indigenous Australians have, in recent years, advocated strongly for mechanisms and structures to enable participation in the economy with the same opportunities as are available to all other Australians. The recognition that meaningful constitutional change can give Indigenous Australians will, in part, advance prospects for such participation.

Having regard to the significant discrimination that Indigenous peoples have suffered since 1788 and the wrongs that Indigenous communities have had to live with, a structural change in our constitution to guarantee Indigenous Australians a better say in their affairs is entirely appropriate at this point in the nation's history.

**iii. Be capable of being supported by an overwhelming majority of Australians from across the political and social spectrums**

The Business Council thinks that with strong bipartisan support at all political levels and the building of a national consensus, constitutional change ought to be achievable. This will require the support from all levels of Australian society, including large businesses and organisations such as the Business Council. Further, the Business Council urges the Parliament to have faith in the Australian public's capacity to tackle complex issues, such as ensuring the Constitution reflects the standards Australians believe in.

**iv. Be technically and legally sound**

The Business Council supports parliamentary democracy in Australia. It has served our nation well. We understand submissions from constitutional experts will be made to the Joint Select Committee to address how recognition proposals could fold into Australia's constitution. The difficulties in formulating how material, as distinct from symbolic, constitutional recognition might be achieved and be technically and legally sound should be capable of being addressed.

Issues have been raised by the Prime Minister and others that any constitutionally enshrined advisory body to the Parliament would, in effect, be or become a third chamber of parliament. It is the Business Council's understanding that this is not the intention behind the Voice to Parliament and it is important that this should not occur. We strongly support parliamentary democracy in the Westminster tradition.

Any such proposal should not relate to every law or policy of the Parliament on the basis that many laws of our country affect all citizens, including Indigenous Australians. Rather, any advisory body should only be consulted on laws particular to Indigenous Australians or which disproportionately affect Indigenous communities. Any such body should be constructed so that it is not seen to be a part of the ordinary parliamentary process but external to the

Parliament itself. Further, any such body should also be assured of sufficient resources to effectively carry out the duties it is assigned.

## **Timeframe**

The Business Council believes this issue is too important to be kicked into the weeds as we approach an election year. Equally, we do not support the politicisation of constitutional recognition and would not want to see a question put alongside next year's federal election.

The Business Council believes the question should be agreed, formulated and put to the Australian people via referendum within 12 months of the next federal election. With the support of the Australian people, this would deliver a constitutional change before July 2020.

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### **BUSINESS COUNCIL OF AUSTRALIA**

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