



Uniting Church in Australia  
**NATIONAL ASSEMBLY**



The Uniting Aboriginal and Islander  
Christian Congress

## THE UNITING ABORIGINAL AND ISLANDER CHRISTIAN CONGRESS & THE ASSEMBLY OF THE UNITING CHURCH IN AUSTRALIA

SUBMISSION TO THE EXPERT PANEL ON INDIGENOUS  
CONSTITUTIONAL RECOGNITION

SEPTEMBER 2011

The Uniting Church in Australia makes the following submission to the Expert Panel on Indigenous Constitutional reform.

### BACKGROUND

The Uniting Church in Australia was formed on 22 June 1977, as a union of three churches: the Congregational Union of Australia, the Methodist Church of Australasia and the Presbyterian Church of Australia. The Uniting Church is the third largest Christian denomination in Australia. It has over 2000 congregations, delivers community services to over two million Australians across 1300 sites and over one million Australians claim an association. The Assembly is the National Council of the Church.

Crucial to the identity and life of the Uniting Church has been a commitment to work in partnership with Aboriginal and Torres Strait Islander peoples in the development of ministry, education, justice policy and practice, and welfare activity. Formed in 1985, the Uniting Aboriginal and Islander Christian Congress (UAICC) is the First Peoples' arm of the church, with 10,000 to 15,000 Aboriginal and Torres Strait Islander people involved.

The Uniting Church, seeking genuine partnership with the Uniting Aboriginal and Islander Christian Congress, has undertaken significant work in a number of key areas including: working towards reconciliation, support for land rights, and the issuing of an apology to the Stolen Generation in 1997. In 2009, at the 12th Assembly, the revised Preamble to the Uniting Church Constitution was adopted, acknowledging the fundamental relationship between the First Peoples and their land, and the significant role Indigenous people have played within the church.

The amended Preamble of the Uniting Church Constitution affirms, in part, the truth of Christian churches in Australia. It notes that many church members shared the values and relationships of the emerging colonial society including paternalism and racism towards the First Peoples. They were complicit in the injustice that resulted in many of the First Peoples being dispossessed from their land, their language, their culture and spirituality, becoming strangers in their own land.

The amended Preamble was an important step in calling the Uniting Church to account for the way in which its members are fulfilling their shared responsibility to Aboriginal and Torres Strait Islander (ATSI) peoples. The dignity of recognition afforded by the church's Constitutional Preamble allows for the continued building of a relationship based on truth, justice and trust.

### INTRODUCTION

The following comments for possible amendments to the Australian Constitution are offered as a response to the suggestions in the Discussion Paper, 'A National Conversation about Aboriginal and Torres Strait Islander Constitutional Recognition' of May 2011.

There are three areas which it seems to us are important in considering changes to the Australian Constitution:

- Recognition
- Equality
- Naming Injustice

Whilst we acknowledge the challenges of garnering cross-party support and agreement within the community with regards to the way in which injustices perpetrated against ATSI peoples are named, we strongly encourage the Expert Panel to engage in this important aspect of truth-telling. Naming injustice will not only provide us with the opportunity to reflect upon who we are as a nation, but will prove to be foundational in our journey together towards being a truly reconciled community.

The Uniting Church emphasises the importance of any Constitutional amendments proceeding on the basis of genuine engagement through consultation with ATSI representatives. This must be accompanied by appropriately-resourced community discussions where ATSI peoples are provided with a voice in relation to Constitutional reform based on equality and consent. This would ensure that the reform process adheres to articles 18 and 19 of the Declaration on the Rights of Indigenous Peoples, which state:

18. Indigenous peoples have the right to participate in decision-making in matters which would affect their rights through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision making institutions.
19. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.



Such genuine conversation should be a priority above and beyond any timelines that may be set by Government in order to meet electoral and other politically motivated agendas.

Additionally, we encourage the Expert Panel to ensure that any attempt at Constitutional reform is accompanied by an extensive public education and awareness campaign to ensure that all Australians understand the importance and value of Constitutional recognition for ATSI peoples and for everyone in our society.

## Statements of Recognition or Values: Ideas 1 & 3

The Uniting Church believes that each person and community needs to be recognised, to have a place in the broader community where we are accepted and belong. We need to have our identity honoured and our history named in truthful ways.

We support the suggestion that the prior place of Aboriginal and Torres Strait Islanders in this land is recognised. Recognition of them as the First Peoples of this nation is essential, and will provide a platform from which they can dream and shape the way they participate in the nation.

The Uniting Church has done this by amending the Preamble to our Church Constitution so that it includes significant reference to ATSI peoples, whom – after long consultation with the Indigenous community – we have recognised and named as First Peoples.

Such naming, it seems to us, encapsulates the issues at the heart of this reform process: the need to recognise, as an essential part of our identity and history as a nation, the existence of a peoples well before European arrival. Recognition will enrich the nation's identity.

Part of that recognition needs to be an acknowledgement of continuing existence, identity and ownership of the land. This is not simply a footnote to European history, but a statement about people's history and location in this land.

Some will suggest that any preambular note should recognise all other people and groups who have contributed to this nation's life, as reflected in the Preamble prepared by John Howard when he was Prime Minister.

We would not support such a move, for a number of reasons. First, it would be very difficult to gain agreement on who and which events should be included. Second, and more importantly, this is about honouring a group excluded from the Constitution who are First Peoples, and part of the founding history of this land.

Why should such recognition go into the Preamble of the Australian Constitution? In developing the changes to the Uniting Church's Preamble, the Uniting Aboriginal and Islander Christian Congress argued that the reason they needed Constitutional recognition was because they had a long experience of supportive decisions and resolutions being lost and forgotten or changed, and of constantly needing to educate new leaders about past decisions.

Similarly we think it is important to recognise First Peoples in the Preamble of the Constitution rather than relying on legislative acts and judicial decisions which are dependent on the good-will of particular political parties and their reading of the mood of an electorate.

Such recognition in the Preamble to the Australian Constitution also reflects the significance of Law in Indigenous communities. To have recognition and 'truth-telling' in the Constitution is important.

While preambular recognition would be largely symbolic, it would have an important impact on the way ATSI people see themselves in the community, and would provide an important starting point for further practical change.

## Repeal of the 'race powers': Idea 5

The Uniting Church supports amendments to the 'race powers' set out in Section 51 (xxvi) of the Australian Constitution. The present wording allows for governments to make laws that are both supportive of and detrimental to ATSI peoples, a concern highlighted by the High Court in *Kartinyeri v The Commonwealth* (1998).

Section 51 (xxvi) should be amended so that it is possible for all parliaments to make laws for Aboriginal and Torres Strait Islander peoples, but only for beneficial purposes. In doing so, drafters of the new section should avoid use of the word 'race,' a divisive term which we believe is not reflective of our nation's desire to move forward together towards unity.

We would also recommend the inclusion in the Constitution of a section such as:

"There can be no law that discriminates with respect to Aboriginal and Torres Strait Islander peoples. This does not prevent the making of laws to redress historical disadvantage, or laws that seek to preserve language, culture or identity."

One important reason for doing this is that it would incorporate the insights of the Anti-Discrimination Act into the Constitution, where they could not be suspended.

It is recognised that such an amendment may raise issues about the validity of the Native Title Act (1993) and the Northern Territory National Emergency Response Act (2009), commonly known as 'the Intervention'. One option would be to have the new clause not apply retrospectively. The other is to allow it to apply, and to allow these two things to be challenged. The Uniting Church supports the latter option.

## Repeal of Section 25: Idea 6

This section is simply unfair and unjust and should be repealed.

## Agreement-making power: Idea 7

We believe it is worth supporting the addition of a provision similar to Section 105A of the Australian Constitution, which would empower the Commonwealth to enter into agreements with Aboriginal and Torres Strait Islander communities on issues such as land, mining, education and health. We believe it is important to formalise this right as both a way of affirming the sovereignty of the ATSI peoples, and to ensure that all future negotiations are adequately resourced.



One of the foundations for our support of this sort of proposal is our affirmation of the importance of negotiation. For example, at the request of the Uniting Aboriginal and Islander Christian Congress, the 2009 meeting of the National Assembly determined:

To call on all Australian governments (Commonwealth, State and Territory) to use negotiated partnership approaches in regard to Indigenous Australian citizens, which includes the right to negotiate and communicate in their language of choice, and through their specified mechanisms. [2009 Assembly, Minute 09.37.01]

## ADDITIONAL SUGGESTIONS

The drafters of this submission have some sympathy for the following suggestions which have been discussed in a number of forums, but have no foundation in the Uniting Church's positions and statements to affirm them.

1. We believe it is worth considering the insertion of a provision to recognise and protect the unique rights that Indigenous peoples possess; such as rights to culture, heritage and land. While concerns have been raised as to what rights should be entrenched in the Australian Constitution, and the effect of such entrenchment, we advise looking towards The United Nations Declaration on the Rights of Indigenous Peoples (2007) as a successful working model.

The Declaration establishes the right of Indigenous peoples as a collective or as individuals to the full enjoyment of all human rights and fundamental freedoms as recognised in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law. Despite the expression of formal support on 3rd April 2009, Australia is yet to introduce policies and procedures that confirm the Declaration's principles into Federal or State law. Still, a strong case exists for arguing that the Declaration provides Australia with the opportunity to implement rights-based Indigenous policies. As such, it represents an important component in promoting and protecting the distinct rights of ATSI peoples.

2. We believe that the idea of dedicated ATSI representation through reserved seats in Federal Parliament should be canvassed with ATSI peoples. In 1995, the Council for Aboriginal Reconciliation recommended that any constitutional consultation process explore the possibility of dedicated seats in both Houses of the Federal Parliament.

Precedent in New Zealand, who have had dedicated seats for Maori for over 100 years, provides a strong backing for this course of action here in Australia. While we acknowledge key cultural differences between Australian and Torres Strait Islander peoples, and New Zealand Maori, both groups share a desire to ensure that their unique cultures thrive, and see the end to social and economic disparities when compared with non-Indigenous groups in both countries.

We acknowledge that the number of Maori in New Zealand is significantly higher than the number of Australian and Torres Strait Islander peoples, however dedicated parliamentary representation should still be recognised as a potent symbol of inclusion.

## CONCLUSION

We believe that the changes to the Constitution suggested in this submission would help build a fairer and more harmonious society and a better future, and would build pride and trust in many parts of society. We do not believe that these changes would only be of benefit to ATSI peoples, but would be good for the nation as a whole.

With Constitutional recognition for ATSI peoples, our nation will continue to move beyond the shame and distrust that has characterised political relationships of the past. We encourage the Expert Panel to ensure that any Constitutional reform is consistent with the aspirations of Aboriginal and Torres Strait Islanders.

We believe our views reflect those of Indigenous communities participating in the life of the Uniting Church.