

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

OXFAM AUSTRALIA

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Introduction

Oxfam Australia is part of an international confederation of organisations that works with impoverished peoples around the world, including many Indigenous peoples. In all of this work, we strongly emphasise a rights-based approach to addressing poverty and injustice. Oxfam has long championed the right of Indigenous peoples to self-determination and, when faced with development affecting Traditional Lands, the right to free, prior and informed consent. These fundamental rights are now enshrined in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), which the Australia government finally supported in 2009.

We believe that after suffering dispossession and alienation for 230 years, Aboriginal and Torres Strait Islander peoples have a right to formal representation through the First Nations Voice to Parliament. Oxfam welcomes the scope of Committee's inquiry as it provides an important platform for the Australian community to voice their support for the recommendations of the Referendum Council, and the sentiments contained in the Uluru Statement from the Heart. We welcome thoroughly the Committee's focus on "the methods by which Aboriginal and Torres Strait Islander Peoples are currently consulted and engaged on policies and legislation which affects them" because we believe it is vitally important that Australian governments at all levels engage directly and more sincerely with Aboriginal peoples on the policies affecting them. This submission will address this issue of consultation and engagement on policies affecting Aboriginal peoples, and the central question of Constitutional change and possible complementary legislation.

I Constitutional change and complementary legislative measures

The historic dispossession, alienation and injustices experience by Australia's First Peoples mean that addressing their recognition and representation in the community is an essential first step on the path towards true reconciliation. Recognition is fundamentally important to Indigenous peoples, and this is widely recognised by international agencies such as the United Nations and leading academics. The UN Declaration on the Rights of Indigenous Peoples, which Australia recognised in 2009, references the issue of "Recognition" seven times. From the outset, it states that: "the recognition of the rights of indigenous peoples in this Declaration will enhance harmonious and cooperative relations between the State and indigenous peoples, based on principles of justice, democracy, respect for human rights, non-discrimination and good faith,..."

Nolan Hunter, the chief executive of the Kimberly Land Council, and co-chair of Oxfam's Indigenous Advisory Committee, says that a First Nations Voice would improve policy-making and implementation. He explains:¹

A voice for our First Nations in their affairs would have tangible effects on policymaking and outcomes. Everyone agrees that to make good and fair laws and policies, government should consult with the people they are trying to help. Local communities should be the drivers in their own solutions, in partnership with government. As Noel Pearson says, we have a right to take responsibility in the decisions that affect our lives. A constitutionally guaranteed voice in our affairs is urgently needed to improve outcomes.

Governments are always making top-down decisions about our communities. The decision-makers are in Canberra, disconnected from our experiences on the ground. If we had a way of having our voices heard, policies would improve, duplication and waste would be reduced and policies might be more effective. A voice for our First Nations structuralises and gives force to better engagement with indigenous people. The government spends more than \$30 billion on indigenous affairs, but the gap is widening. The bang for buck is not there. We can and must do better. The only way to decisively shift things is through constitutional and structural reform, as called for in the Uluru Statement.

The principles of recognition and representation are fundamentally important when dealing with dispossessed peoples. As the leading American theorist Nancy Fraser has explained, recognition is just as important, if not more important, than redress of injustices that involve redistribution of economic benefits.² The conventional concept of justice typically involves debates about how nation states address claims for redistribution by its citizens. But in a more complex world that involves powerful actors outside the nation state, Fraser adds a third dimension which she calls representation. This is highly relevant to the situation facing Aboriginal and Torres Strait peoples in Australia given their economic and social marginalisation. Fraser writes:³ 'Overcoming injustice means dismantling institutionalized obstacles that prevent some people from participating on par with others, as full partners in social interaction.' Fraser explains that without strong representative institutions, citizens can be impeded from full participation by economic structures that deny them the resources they need in order to interact with others as peers. She writes:

People can be prevented from interacting on terms of parity by institutional hierarchies of cultural value that deny them the requisite standing; in that they suffer from status inequality or recognition. In the first case, the problem is the class structure of society, which corresponds to the economic dimension of justice. In the second case, the problem is the status order, which corresponds to its cultural dimension.

While some argue that Aboriginal people can participate in our democracy through existing institutions, it must be accepted that Aboriginal people are, on average, among the poorest and most marginalised people in Australia. This is why a dedicated First Nations Voice to Parliament would both recognise the unique place of Aboriginal and Torres Strait Islander peoples in the history of this country, and also enables them to achieve representation that reflects their place as the Traditional Owners of Australia.

However, Oxfam Australia accepts that changing the Australian Constitution is difficult and that it may take time to build support in every State. This is why we welcome the statements by the Minister for Indigenous Health, the Hon. Ken Wyatt MP,⁴ in support of legislative change as an interim measure. After the Prime Minister rejected the Referendum Council's key recommendation, Mr Wyatt said he was still optimistic that the institution could be created, and being "framed under legislation is a position of strength". Given the importance of this issue to Indigenous peoples, it should be possible to build bipartisan support to create a First Peoples Voice to Parliament through legislation, before enshrining this through Constitutional change. We believe this Committee's

inquiry can play an important role in building public support towards both legislative and constitutional change.

II Consultation and Engagement

The relationship between Aboriginal and Torres Strait Islander peoples and governments at all levels in Australia has been characterised by paternalism and this has led to ongoing marginalisation. This approach has disempowered Aboriginal people, which is why we believe that a rights-based approach that empowers people is central to improving the wellbeing of Aboriginal and Torres Strait Islander peoples. This approach is exemplified in the Close the Gap campaign for Indigenous health equality, which Oxfam has been associated with since its inception. While the campaign is backed by a broad cross section of Indigenous and non-Indigenous organisations, it has been led and driven by Aboriginal and Torres Strait Islander leaders, organisations and communities for more than a decade. More recently, the Change the Record campaign was launched in 2015 and it has adopted a similar Indigenous led- model of operation.

As outlined in Oxfam's 2017 *Moving from Recognition*⁵ report, Aboriginal peoples and organisations are consistently disappointed by the lack of good faith and political will demonstrated by successive Australian governments to ensure their active engagement and participation in policy and legislative developments. As this report said: 'There are countless examples of Aboriginal and Torres Strait Islander peoples being excluded from decisions about their future, ranging from the abolition of ATSIC, to the introduction of the Northern Territory Emergency Response, to the allocation of funding for Aboriginal and Torres Strait Islander programs under the Indigenous Advancement Strategy.'

Participation in policy development and implementation

Oxfam Australia's links with Aboriginal and Torres Strait Islander communities have taught us that outcomes are invariably better when Aboriginal peoples own the solutions to the challenges they face. This view is strongly supported by the Federal Government's own Productivity Commission. In its 2016 report *Overcoming Indigenous Disadvantage*, the Commission said that when Aboriginal and Torres Strait Islander peoples make their own decisions about what approaches to take and what resources to develop, 'they consistently out-perform [non-Indigenous] decision makers'.⁶ The Commission noted research from the Harvard Project which found "self-determination led to improved outcomes for North American Indigenous people".

Despite this evidence of the benefits of being directly involved in legislative and policy development, Aboriginal and Torres Strait Islander peoples have consistently struggled to maintain meaningful and effective participation. The latest *Indigenous Expenditure Report* released by the Productivity Commission shows that a declining amount of government expenditure has been allocated directly to Indigenous peoples. In 2008, the share of direct expenditure by Federal, State and Territory governments was 22.5 per cent, whereas this had fallen to 18 per cent in 2017.⁷ Likewise, the Federal government's much vaunted Indigenous Advancement Strategy has allocated the majority of its funding to non-Indigenous organisations, thus undermining local community-controlled organisations and self-determination at the local level.

Concluding comments

The historic dispossession and marginalisation experienced by Aboriginal and Torres Strait Islander peoples since the beginning of colonisation can still be seen today in the approach to Indigenous policy at all levels of government in Australia. This is why a new institution in the form of the First Nations Voice is an essential first step towards giving First Peoples the platform to engage with the Federal Parliament. But a first step towards Constitutional reform could be made through bipartisan legislation that creates this institution, which would in turn build the case for enshrining its role in the Constitution.

¹ *The Deal*, 2018. 'Land Rich, Dirt Poor', p.16.

² Fraser, N. 2009, *The Scales of Justice*, Polity Press, Cambridge, p.12.

³ *Ibid.*, p.16.

⁴ *The Guardian*, 11 February 2018, 'Ken Wyatt says MPs could legislate Indigenous voice to parliament', viewed 4 June 2018.

⁵ Oxfam Australia 2017. *Moving Beyond Recognition: Respecting the Rights of Aboriginal and Torres Strait Islander Peoples*, Oxfam, Melbourne,

⁶ *Steering Committee for the Review of Government Service Provision, Overcoming Indigenous Disadvantage 2016*, p.3.19.

⁷ 2017 Indigenous Expenditure Report, Productivity Commission, Canberra, p.xii.