

Contents

Settlement the Flaw.....	1
Racist Voice	2
Uluru Statement	4
UNDRIP.....	4
Sovereignty	5
What is the Commonwealth of Australia?	5
Whose Territory	6
Treaty is the Voice.....	7
Assertion of Indigenous Sovereignty.....	8
Cannot unknow the Truth	9
In Closing.....	9

I, as the holder of Australian citizenship would like to thank the committee for allowing Australian citizens to have input into such an important issue.

The issues raised in this “so called voice” are more serious and far reaching than just creating a simple mechanism to allow a certain group of people to have a voice to the Australian Parliament.

We must go back in time to understand exactly what has occurred in the geographical location known as Australia and the surrounding islands before we just blindly charge into the future trying to fix a problem that was created by the colonies and is now inherited by the Commonwealth of Australia.

Settlement the Flaw

The fundamental flaw in the foundation of the Commonwealth of Australia occurred well before the birth of the new nation, this occurred at the arrival and subsequent claim by Lieutenant James Cook in August 1770. This claim set the British on the trajectory to

establish colonies settling¹ firstly continental Australia and subsequently the surrounding islands.

It has now been shown through numerous “Native Title Determinations”² and other studies that these lands were in fact the territories of the numerous pre-colonial indigenous nations. For whatever reason, the British did not enter into any formal agreements or treaties with these pre-colonial indigenous nations which is exactly why there are multiple “co-existing”³ sovereignties in the geographical region known as Australia. A situation of multiple sovereignties cannot be sustained without some form of agreement or treaty.

Constitutional issue

The problem of the “voice” is that it questions the foundation of the Commonwealth of Australia, more than being a solution to the problem it highlights the problem⁴. It must be asked why are the indigenous Australians calling for a voice in the first place, why is there talk about treaties by the various States of Australia if the Commonwealth of Australia is the almighty authority in this geographical location? Simply put, the pre-colonial indigenous nations did not cede sovereignty, the systems of authority and decision-making of those indigenous nations were not crushed and have continued to this day and at the time of settlement the British did not get permission to settle, they simply intruded into another nations territory.

Racist Voice

The “Voice to Parliament” is very clearly targeting one group of Australian citizens based on race⁵ be it for good purposes or bad. This is racist, for what might be good for one group based on race may be detrimental to another group who are not of that race. Why should one group of people based on skin colour or heritage be given a “special” voice? It does not cure the past and most certainly does not cure the foundational flaws of the Commonwealth of Australia.

¹ MABO AND OTHERS v. QUEENSLAND (No. 2) (1992) 175 CLR 1

² Mundraby on behalf of the Combined Mandingalbay Yidinji-Gungandji People v State of Queensland [2012] FCA 1039

³ Uluru Statement from the Heart

⁴ <http://www.theguardian.com/australia-news/2015/dec/14/ignoring-indigenous-australians-a-big-error-turnbull-tells-referendum-council>

⁵ LexisNexis Concise Australian Dictionary 4th edition

What will be the situation should an Australian citizen who is not of aboriginal and or Torres Strait Islander heritage pursue the Commonwealth of Australia through the provisions of the Racial Discrimination Act regarding this very issue?

Another issue of racist connotation is the use of the term “Indigenous Australian”. All Australians from any heritage or racial background are still all Australians that are indigenous to the Commonwealth of Australia and its territory, “wherever that may be”. All Australian citizens are citizens of the Commonwealth of Australia, those citizens or better described as legal identities are created pursuant to Australian law. All Australians are equal before the Australian law “having equal civic rights”⁶. This does not however mean that the Commonwealth of Australia has the necessary authority vested in it by the Australian Constitution to make laws for those who were excluded from the Commonwealth of Australia, that means that it does not have the authority to make laws for the pre-colonial indigenous Nations and their citizens, those pre-colonial indigenous nations are beyond the reach of the Australian Constitution and the authority that the Australian Constitution vests in the Commonwealth of Australia. These citizens simply are not “Australian” citizens, they are citizens that are foreign to the Commonwealth of Australia.

It must be noted that whilst I am not a supporter of the One Nation Party and its ideologies, Senator Hanson makes it clear how divisive the use of indigenous can be. Senator Hanson made the statement that she was an “indigenous Australian”⁷. Yes, the legal identity is created pursuant to Australian law and custom, that would make her legal identity indigenous to the Commonwealth of Australia, she however does not have any heritage of belonging to any of the pre-colonial indigenous nations of the geographical location known as Australia and its surrounding islands. Senator Hanson is seen legally and politically through the Australian citizen that is indigenous to the Commonwealth of Australia.

This “Voice” whilst being racist will not secure in any meaningful way the legal foundation of the Commonwealth of Australia. It will simply create more division and problems than what it will fix.

Yes, the original inhabitants have suffered greatly at the hands of the intruders be it British or Australian, we however need to focus on the issues and not just give them more of the same “worthless gesture by white Australia”⁸.

⁶ [Indigenous advisory body rejected by PM in 'kick in the guts' for advocates - ABC News](#)

⁷ [Pauline Hanson slams Games ceremony for being 'too Aboriginal' \(sbs.com.au\)](#)

⁸ <http://www.theaustralian.com.au/opinion/columnists/greg-craven/false-promise-of-indigenous-treaty-could-derail-recognition/news-story/a831cb624f4e3f8dfa0c2c33cacd0530>

Uluru Statement

The Prime Minister and the leader of the Opposition of the Commonwealth of Australia jointly handpicked⁹ what was considered to be the best and brightest legal minds in constitutional and indigenous law to come up with a way forward to recognise the members of the indigenous nations within the Australian Constitution. It must not be taken lightly the seriousness to appoint such a body, there must be serious underlying issues for both sides of politics to work together. What were those issues or short comings? The Uluru Statement from the Heart was presented in mid 2017 making it very clear that the Commonwealth of Australia knew that the pre-colonial indigenous nations did not in fact cede, treat or bargain in any other way, their original sovereignty to their territories. It also made it truly clear that the pre-colonial indigenous nations were and are still the owners of their lands and territories from a time well before the British arrived and the subsequent establishment of the Commonwealth of Australia. This being the case, what is the legal and lawful position of the Commonwealth of Australia?

In response to the Uluru Statement, Prime Minister Turnbull made it very clear that all Australian Citizens have the same basic civic rights and to have a constitutionally enshrined additional representative assembly in which only Indigenous Australians could vote for or serve in is inconsistent with this fundamental principle.¹⁰

UNDRIP

The Commonwealth of Australia supported in full the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) in April 2009. This demonstrated the intention of the Commonwealth of Australia that it believed there were multiple societies upon the geographical location known as Australia. To support that statement Article 5 must be comprehended. The indigenous peoples have a choice.

It is made clear that there are multiple societies in which the indigenous peoples can choose to participate. They can participate in the life of the State if they so choose what if they so choose not to? They have a right to participate in the life of their continuing pre-colonial indigenous nation.

⁹ [The Council | Referendum Council](#)

¹⁰ [Turnbull government says no to Indigenous 'Voice to Parliament' \(theconversation.com\)](#)

What is the situation when they choose to revitalize their pre-colonial indigenous nations systems of decision-making and authority? The maxim of law that the Commonwealth of Australia utilizes to have authority and control of all persons and things within the Australian territory can be used by the governments of the pre-colonial indigenous nations. Thus, the question must be answered “Who is upon whose territory?”

Can those people of the pre-colonial indigenous nations be forced to participate in the life of the Commonwealth of Australia, that is can they be forced to hold an Australian citizen? In accord with article 8 of UNDRIP they cannot be forced to assimilate in the life of the Commonwealth of Australia.

The British and the Commonwealth of Australia do in fact owe a great deal to the pre-colonial indigenous nations, even in accord with article 28 of the UNDRIP. How can this debt be settled by a simple voice to Parliament, or is the voice to Parliament a mechanism to keep the pre-colonial indigenous within the Commonwealth of Australia and not exercising their rights as nations with whom the Commonwealth of Australia has neither a formal agreement or treaty?

Sovereignty

Sovereignty of the Commonwealth of Australia is the authority that the Constitution vests in the Commonwealth of Australia for the peace, order and good governance of the legal identity called the Commonwealth of Australia and those who choose to participate in the life of the Commonwealth of Australia through the legal identity called the Australian citizen. They are seen legally and politically through the legal fiction called the Australian citizen and it is through this legal identity that the human cedes some of their “sovereignty” to be part of the collective sovereignty to “unite under the Crown” for the common goal as defined by the intention of the Constitution. The people hold the ultimate sovereignty¹¹.

What is the Commonwealth of Australia?

The Commonwealth of Australia is the legal identity that participates as a citizen in International law of the United Nations for and on behalf of the holders of Australian citizenship and in doing so has surrendered some of its sovereignty to the International

¹¹JAMES ANDREW MCGINTY AND OTHERS v THE STATE OF WESTERN AUSTRALIA (1996) 186 CLR 140

jurisdiction called the United Nations. It is through the contractual arrangement of membership or better called citizenship that the humans agree to unite for the common goal. Originally, they united for the ideologies of the “White Australia” as the outpost in the South Pacific for the British race¹². This was and still is the racist intention of the Commonwealth of Australia and is clearly defined by the covering clauses of the Australian Constitution. The members of the pre-colonial indigenous nations were actively excluded from the very conception of the Commonwealth of Australia. To date this intention has never been redefined.

The Commonwealth of Australia is a society of people who have agreed to unite for a common purpose and goal. This was the “White Australia”, and it actively excluded the members of the pre-colonial Indigenous Nations from participating in the life of the Commonwealth of Australia. The intention of the Commonwealth of Australia has never been clearly changed to this very day and as such remains for all intents and purposes “White Australia”. By excluding groups of people based on race has left the Commonwealth of Australia in its current dilemma, a nation that is scrambling to try and remedy the problem from within, when clearly it can only be remedied from outside between the nations of the “co-existing” sovereignties. Clearly the Commonwealth of Australia is only one half of the equation.

Whose Territory

Where is the Territory of the Commonwealth of Australia?

It is very easy to point to a map and say there it is, in reality there is nothing created in a formal manner that the Commonwealth of Australia can use to demonstrate how it got so-called sovereignty over the geographical Australian continent. No treaty, no formal agreement, no gain by conquest, nothing. Quite the opposite is true, there are numerous instruments and documents created by the Commonwealth of Australia and its courts prove the very opposite is the reality. “The Court determines that this is your land. That it is based on your traditional laws and customs which have always been; and that means that the law says to all people of Australia that this is your land and it always has been your land because your laws and customs have said, and say today, that it is your land.”¹³

¹² Prime Minister John Curtin 1941

¹³ Payi Payi on behalf of the Ngururrrpa People v the State of Western Australia [2007] FCA 2113

The question then must be asked “Who is upon whose territory” and only then when that is correctly answered in accordance with modern standards of territory can the Commonwealth of Australia move forward. From all modern indicators surrounding sovereignty and associated territory, it appears that the Commonwealth of Australia is intruding on the territories of the numerous pre-colonial indigenous nations, nations whose sovereignty has been acknowledged as co-existing with that of the Crown. It has been acknowledged by a number of Australian Members of Parliament and the Australian Senate that the Commonwealth of Australia is actually intruding¹⁴ upon the territories of the numerous pre-colonial Indigenous Nations.

Once this is understood then there is no requirement for a special voice to Parliament, but rather a formal agreement or treaty between the co-existing sovereignties. Anything less will achieve nothing to correctly establish the foundation of the Commonwealth of Australia.

Treaty is the Voice.

A correctly concluded formal agreement or treaty will be voice that the continuing pre-colonial indigenous nations are seeking, and their voice will be through their department of foreign affairs. This situation is not racist as the “Voice to Parliament” is.

What will be the situation if sovereignty is applied? I know that the Yidindji Nation has appointed a minister¹⁵ to their Department of Foreign Affairs and Trade, this is not a Department of any Australian State or the Commonwealth of Australia, but the point to which foreign affairs are directed for and on behalf of the continuing pre-colonial indigenous nation to which neither the State of Queensland nor the Commonwealth of Australia have a formal agreement or treaty. The Yidindji Nation was excluded from participating in the life of the Commonwealth of Australia.

It has now been acknowledged that there are “co-existing” sovereignties in the geographical location commonly known as Australia, what will be the situation should one of the holders of the “other” sovereignty be when they exercise that right to create “their” systems of authority for the peace, order and good governance within their territory that has been neither ceded to nor extinguished by the sovereignty of the Commonwealth of Australia?

¹⁴ <http://www.abc.net.au/news/2016-02-09/greens-call-on-prime-minister-to-open-debate-on-treaty-process/7150448>

¹⁵ [\(11\) Murrumu of Walubara | LinkedIn](#)

With the acknowledgement that sovereignty has not been ceded means that their sovereignty can be ceded in whole or in part, what will be the situation should one of those “other” indigenous societies choose to cede some or all of “their” sovereignty to another UN member state?

Assertion of Indigenous Sovereignty

There is nothing to prevent the assertion of the continuing sovereignty of the pre-colonial indigenous nations. The Commonwealth of Australia regards the Australian continent as theirs through the so-called displacement of the sovereignty of the pre-colonial indigenous nations, but this is just the “opinion” of the Commonwealth of Australia. “It does not affect how the Aboriginal people view their own sovereignty. As a result, it does not prevent them from asserting their own independence and the continuing validity of their laws and customs.”¹⁶

There are certain pre-colonial indigenous nations that are in fact revitalizing their systems of authority, decision-making, dispute resolution and more importantly their systems of land tenure, systems that are recognised to exist by the Australian Courts¹⁷. As you may or may not be aware the Yidindji Nation in the geographical location known in Australia as the Cairns and surrounding Atherton Tablelands through its representative body known as the “Sovereign Yidindji Government”¹⁸ are issuing land titles from their Department of the Surveyor-General. Which land title will have standing when determining who has the right to issue land titles to a particular geographical location when there is no formal agreement or treaty between the co-existing sovereignties?

By what mechanism can the States of the Commonwealth of Australia use to justify their authority to issue land titles when the original systems of land tenure are still in place from a time before the British land titles were issued?

Also, you may or may not be aware that the Yidindji Nation is revitalizing its “Police Force”¹⁹ who by the very nature of having the necessary authority vested in it by the continuing sovereignty to arrest and charge persons under the laws of the Yidindji Nation.

¹⁶ Davis M, Williams G, *Everything You Need To Know About The Referendum To Recognise Indigenous Australians*.

¹⁷ *Mundraby on behalf of the Combined Mandingalbay Yidinji-Gunggandji People v State of Queensland* [2012] FCA 1039

¹⁸ [Sovereign Yidindji Government](#)

¹⁹ [\(11\) Post | Feed | LinkedIn](#)

What will be the situation when the Yidindji Police enforce Yidindji law upon the intruders who are within the Yidindji Territory without treaty or consent?

Qui in territorio meo est, etiam meus subditus est- that which is in my territory is my subject; old rule of a state's authority over persons and things found within its territory.²⁰

By the very maxim that the Commonwealth of Australia can enforce authority within the Australian territory, so to can the continuing pre-colonial indigenous nations. They do not need to prove their lawful right to do so other than asserting their original sovereignty that has been acknowledged by the Commonwealth of Australia as still being there and co-existing with that of the Australian Crown. It is under that sovereignty that they can enforce authority over all persons and things within their respective territories. What mechanism can the Commonwealth of Australia utilise to defend itself from this “other” sovereignty? Will a “voice” in the Australian Parliament be a defence?

The Commonwealth of Australia must be aware that it is not up to the Commonwealth of Australia as to how much sovereignty may be conceded but “what reach the Sovereign claims for itself”²¹.

Cannot unknow the Truth

Once we know that these problems are there, we cannot unknow them, for the Commonwealth of Australia to continue what it is currently doing is to be doing so willingly and with full knowledge that it is an unlawful non-citizen on the territories of the numerous pre-colonial indigenous nations. This demonstrates that the intention of the Commonwealth of Australia and its hypocritical disposition in preventing certain citizens from entering the Australian territory whilst the Commonwealth of Australia and its citizenry are unlawful non-citizens on the territories of the pre-colonial indigenous nations.

In Closing

I know what I am writing in this document does not fit the current narrative that the Commonwealth of Australia may want to portray, or what this committee on the “Voice” is seeking but we need to look at the facts as they stand. How much longer can the

²⁰ Dictionary of International & Comparative Law 3rd edition

²¹ Ngurampaa Ltd v Balonne Shire Council & Anor - [2014] QSC 146

Commonwealth of Australia go before the competing sovereignties clash in scenarios as mentioned earlier in this document?

It is not a voice that the pre-colonial indigenous nations want in an Australian Parliament but a formal agreement or treaty that the Commonwealth of Australia needs. This is the fundamental foundational flaw that needs to be remedied.

I do not write this document from a position of any political leaning or of bias or racism; I write this from a position that aims to bring about a proper and long-lasting reconciliation between the co-existing sovereignties.

In closing I know there is still a long way to go, and I know that we will get there, we just as a collective nation need to focus on the solution to the problem and not the solution to a perceived or make-believe problem. We need as a nation to be world leaders seen as taking the high moral ground and a nation that is mature enough to be able to address such daunting and difficult issues. We are at fault, for as Prime Minister Keating said “Recognition that it was we who did the dispossessing. We took the traditional lands and smashed the traditional way of life. We brought the diseases. The alcohol. We committed the murders. We took the children from their mothers. We practised discrimination and exclusion.”²²

Let us now address the skeletons in “our” closet, let us move forward, let us settle the past and secure the future for all persons and things through correctly formulated reconciliation no matter how bitter the pill is to swallow for the pre-colonial indigenous peoples have already swallowed theirs by the force of the British and Australians.

We as a nation must now stand up for what is not only morally correct but also for what is lawfully and legally correct.

Peter Fisher

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²² Prime Minister Keating *Redfern Speech* 1992