

APPENDIX I: PROCESS FOR FIRST NATIONS REGIONAL DIALOGUES

Process and significance

The bipartisan support of the Government and the Opposition for the Council to host a series of Aboriginal and Torres Strait Islander designed and led dialogues provided a historic opportunity to genuinely engage with First Peoples. For the first time, the voices of Aboriginal and Torres Strait Islander leaders and communities were placed at the centre of discussions. This was achieved through a series of leadership meetings followed by a trial dialogue convened in Melbourne to test the methodology. The First Nations Regional Dialogues commenced in December 2016 and culminated in a National Constitutional Convention at Uluru in May 2017.

The process developed for the First Nations Regional Dialogues was modelled partly on the one that was used by the Constitutional Centenary Foundation through the 1990s to encourage debate on constitutional issues in local communities and schools. It was adapted to suit the needs of this process but the characteristics remained the same: impartiality; accessibility of relevant information; open and constructive dialogue; and mutually agreed and owned outcomes.

The First Nations Regional Dialogues engaged 1,200 Aboriginal and Torres Strait Islander delegates, out of a population of approximately 600,000 Aboriginal and Torres Strait Islander peoples nationally. This is the most proportionately significant consultation process that has ever been undertaken with Aboriginal and Torres Strait Islander peoples – it engaged a greater proportion of the relevant population than the constitutional convention debates of the 1800s, from which Aboriginal and Torres Strait Islander peoples were excluded.

This is the first time in our nation's history that such a process has been undertaken, and the first time a constitutional convention has been held with and for Aboriginal and Torres Strait Islander peoples. It was significant, not only as a step toward recognising Aboriginal and Torres Strait Islander peoples in the Australian Constitution, but as a response to their historical exclusion from the original processes which led to the drafting, establishment and oversight of Australia's Constitution.

Initial stages

The Council established an Indigenous Steering Committee from its Aboriginal and Torres Strait Islander membership to design and deliver the Dialogues. The Australian Institute of Aboriginal and Torres Strait Islander Studies was engaged to provide expert assistance in delivering logistics and supporting delegates to attend. The Steering Committee also engaged an Executive Officer, through the Australian Human Rights Commission, to support efficient decision making and communicate with key stakeholders.

The Council sought input to the design of the framework through a series of three Indigenous leadership meetings with around 150 Aboriginal and Torres Strait Islander traditional owners, peak body representatives and individuals. These meetings were held in Broome (28–29 June 2016), Thursday Island (12–13 July 2016) and Melbourne (18–19 July 2016), and involved consideration of the Council's proposed approach to its task, as well as an overview of the proposals and the Council's role.

Several key themes emerged from the Indigenous Leadership meetings:

- the Council's framework for the Dialogues was widely supported;
- the Dialogue process should not be rushed;
- constitutional reform must be meaningful and supported by Aboriginal and Torres Strait Islander peoples;
- there is growing interest in and support for the proposal for an Indigenous representative body or voice to the Parliament;
- a 'package' of reforms in Indigenous affairs to accompany constitutional reform is necessary, and constitutional recognition is in no way a solution by itself;
- treaty/treaties (or a framework for treaties) is the most meaningful form of 'recognition' and constitutional 'recognition' that undermines sovereignty was unacceptable; and
- the role of Recognise needed to be clearly delineated from the Referendum Council.

A 'trial' Regional Dialogue was held in Melbourne on 4–6 November 2016. The purpose of the trial was to test and, if necessary, adjust, the format proposed for the twelve First Nations Regional Dialogues that would follow. There were approximately 70 participants involved, including many who would go on to become the convenors and workshop leaders for the Dialogues in their region. This had the advantage of ensuring that a core group of participants in most of the Dialogues would be familiar with the agenda to be followed.

The trial Dialogue confirmed that the structure of the First Nations Regional Dialogues – namely, plenary sessions combined with structured working groups on each of the five principal constitutional reform options – was effective in achieving the aims of the Dialogue process. It also provided important learnings about the types of support required for convenors and working group leaders, the need to include discussion of sovereignty and agreement-making, and confirmation of the message of the Kirribilli Statement that, whatever recognition involved, it should make a substantive difference. A minimalist approach to reform, which provides preambular recognition, removes section 25 and moderates the race power, was viewed as unacceptable to Aboriginal and Torres Strait Islander peoples.

The Referendum Council gave final approval of the framework for the Dialogues on 20 October 2016. The approach continued to be refined throughout the delivery of the Dialogues.

The First Nations Regional Dialogues

The aim of the First Nations Regional Dialogues was to enter into a dialogue with Aboriginal and Torres Strait Islander peoples about what constitutional recognition involves from their perspectives. The format was designed to give participants a chance to examine the main options for recognition that had been put forward, to understand them in detail, to discuss the pros and cons of each proposal and to explore their potential significance for the relationship between Aboriginal and Torres Strait Islander peoples and other Australians. Through this process, delegates were invited to identify an

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approach to recognition that seemed most likely to be meaningful. The Dialogues involved a sample of Aboriginal and Torres Strait Islander peoples from a sample of regions in Australia. The deliberative decision-making nature of the Dialogues meant that the numbers had to be capped and the agenda structured.

The Dialogues were held between December 2016 and May 2017:

Dates	Location	Host organisation
9–11 December 2016	Hobart, Tasmania	Tasmanian Aboriginal Corporation
10–12 February 2017	Broome, Western Australia	Kimberley Land Council
17–19 February 2017	Dubbo, New South Wales	NSW Aboriginal Land Council
22–24 February 2017	Darwin, Northern Territory	Northern Land Council
3–5 March 2017	Perth, Western Australia	South West Aboriginal Land and Sea Council
10–12 March 2017	Sydney, New South Wales	NSW Aboriginal Land Council
17–19 March 2017	Melbourne, Victoria	Federation of Victorian Traditional Owners Corporation
24–26 March 2017	Cairns, Queensland	North Queensland Land Council
31 March – 2 April 2017	Ross River, Northern Territory	Central Land Council
7–9 April 2017	Adelaide, South Australia	Aboriginal Legal Rights Movement Inc
21–23 April 2017	Brisbane, Queensland	-
5–7 May 2017	Torres Strait, Queensland	Torres Strait Regional Authority in partnership with a number of Torres Strait Islander organisations
10 May 2017	Canberra, Australian Capital Territory	United Ngunnawal Elders Council (Information Day)

Each First Nations Regional Dialogue was delivered in partnership with a local host organisation with an understanding of the region. Two convenors were selected from the local region to facilitate discussions according to an agenda prepared by the Council's Indigenous Steering Committee. Five local working group leaders, supported by legal and technical advisors, facilitated the working group discussions at each Dialogue. The host organisations, together with co-convenors, and, in some cases, working group leaders, provided guidance on a range of issues including: invitees, venues, Welcome to Country, and community functions held on the first evening.

Up to 100 delegates were invited to each First Nations Regional Dialogue. Those attending from outside the regional centre were supported to travel and attend. Delegates were selected according to the following split: 60% of places for First Nations/traditional owner groups, 20% for community organisations and 20% for key individuals. The Council, together with the Australian Institute of Aboriginal and Torres Strait Islander Studies, worked with the host organisation at each location to

ensure the local community was appropriately represented, including a reasonable spread across age and gender demographics.

As relevant and appropriate, at each Dialogue, interpreting services were offered, in the local languages of the region.

Each Dialogue was held over two and a half days, beginning at 12.30pm on day 1 and ending with lunch on day 3. The agenda was a structured agenda. It involved intensive civics education on the Australian legal and political system and a history of Aboriginal and Torres Strait Islander advocacy for structural legal and political reform.

The first half-day was spent on introductions, an overview of the struggle of the First Nations Peoples for reform since the early 19th century, and a plenary discussion that was broad-ranging on constitutional reform and the aspirations of delegates for the future of their region.

The second morning commenced with a civics lecture that included the following information:

- *What is the Constitution?*
- *Why have constitutions?*
- *Who determines the interpretation of the Constitution?*
- *What is the difference between the Constitution and ordinary laws?*
- *Who makes ordinary laws?*
- *What is the Parliament?*
- *How is a bill generated and then is passed?*
- *What scrutiny is there of Australian government actions?*
- *What role for ordinary citizens?*
- *What role for Aboriginal and Torres Strait Islander peoples in that process?*

The remainder of the morning included a discussion of the word 'recognition, an overview of relevant constitutional and legal frameworks, and comparative international models. Six principal reform options were explained: a statement of acknowledgement, within or outside the Constitution; amendment or replacement of the 'race power'; repeal of section 25; constitutional prohibition of racial discrimination; agreement-making; and an Indigenous Voice to the Parliament, with a base in the Constitution. All of these, with the exception of the repeal of section 25, were allocated to a working group to examine in the next session.

The remainder of the day involved a dialogue in plenary and small group sessions. In working groups, delegates examined and reported back on the reform options, including possible benefits, any concerns and their preference for what should be taken forward. Each working group was led by a regional working group leader and guided by advice from a constitutional lawyer or technical advisor.

Delegates were advised that it was open to them to agree or disagree that constitutional reform was necessary or desirable, indicate what might be a priority and that they could propose additional options for reform beyond those presented in the Discussion Paper.

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The day ended with discussion of the process to select delegates for the National Constitutional Convention at Uluru. All delegates were invited to nominate. The selection process was determined by each region, but mostly was done by secret ballot.

On the final day, delegates were presented with a draft Record of Meeting which synthesised the discussion and debate from the plenary sessions and provided the opportunity to make changes. Nominees for the National Constitutional Convention delegation were then invited to address the full group on why they should be selected to attend and a vote was taken. From each Dialogue, ten delegates were selected to represent their region together with the convenors and working group leaders from the Dialogue (17 delegates in total). In addition to these delegates, the Council invited a number of other key individuals to attend the National Constitutional Convention, in order to ensure representation of an appropriate range of views.

Two short films, commissioned by the Council, were played at each Dialogue. These short films, researched and written by Council member Megan Davis and produced and narrated by Rachel Perkins, provided an inspirational historical overview of the Indigenous advocacy for reform and an educational overview of the structure of the Australian political system and the role of the constitution. They not only assisted in framing the several days of deliberation of each Dialogue, but also emphasised the importance of the Dialogues as further history-making events in the long line of Aboriginal and Torres Strait Islander political engagement.