

# Expert Panel on Constitutional Recognition of Indigenous Australians

Meeting No. 2 : 16 – 17 March 2011  
Arnold Bloch Leibler, 333 Collins Street, Melbourne

## MINUTES OF MEETING

### DAY 1 – Wednesday 16 March 2011

#### Agenda Item 1 – Welcome by Co-Chairs

Attendees:

- Apologies: Mr Rob Oakeshott MP and Mr Ken Wyatt MP; deep and sincere apologies from Aunty Joy Murphy (who was not able to deliver the formal welcome to country); and
- Attended for part of meeting: Mr Noel Pearson (Ms Shireen Morris observed on Mr Pearson's behalf), Mr Graham Bradley and Professor Marcia Langton.

Professor Patrick Dodson paid his respects to the elders of the Kulin nation and acknowledged that the Panel was meeting on their lands. Professor Dodson also thanked Mr Mark Leibler and his colleagues at Arnold Bloch Leibler for providing the venue and catering.

Professor Dodson noted that this will be an important meeting where the Panel will need to make decisions about the scope, form and pitch of the Discussion Paper. Associate Professor Megan Davis and Mr Henry Burmester were thanked for preparing the foundational document to guide the Panel, and members were thanked for their contribution to date. He also noted the importance of getting the engagement strategy right, especially in light of the amount of time the Panel had to complete its task by December 2011.

The Secretariat and Executive Officer were thanked for the work between meetings noting the short time had put pressure on all.

Professor Dodson noted that success or otherwise was going to depend on members' attentiveness to details and their diverse input.

Mr Mark Leibler acknowledged the Wurundjeri peoples, and ancestors past and present of the Kulin nation. Mr Leibler also thanked Associate Professor Megan Davis and Mr Henry Burmester for their work on the Discussion Paper and legal matters. Mr Leibler advised that the meeting would be joined by:

- Ms Leah Armstrong and Ms Karen Mundine from Reconciliation Australia (RA), who will be talking about the revised RA engagement strategy;
- Mr Martin O'Shannessy to share results and deliberations regarding his important polling; and introduced
- Ms Meg Dixon-Child, the Panel's newly appointed Media Manager. Ms Dixon-Child outlined her 20-year background as a journalist;
- Ms Jeannine Bevan – a management consultant who is observing the operations of the Secretariat; and

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- Ms Cath Halbert, Acting Deputy Secretary of FaHCSIA - Mr Leibler indicated the Panel appreciates the support it gets from the Department.

## **Agenda Item 2 – Minutes and Actions Arising from previous meeting**

Members noted desirability of having the Minutes as comprehensive as possible.

The Minutes from Meeting No. 1 were formally adopted without amendment.

Mr Leibler reported that most action items arising from Meeting No. 1 have been actioned, and made specific mention of the following:

- four suggestions were received in relation to draft preambles (Item 5.3);
- no-one has responded to the draft criteria, so they are assumed to be agreed (Item 6.1);
- Professor Dodson is waiting for a response from Mr Noel Pearson as to whether the Wik paper can be distributed to Panel members (Item 13.2);
- the Secretariat is still waiting for a response from the Minister's Office in relation to the release strategy for the Panel's Report (Item 14.1); and
- no-one has yet been identified to write the Panel's report (Item 14.2).

## **Agenda Item 3 – Discussion Paper**

Panel members noted that the advice received from the Attorney-General's Department (AGD) was of very high quality, and adequately answered the questions asked by the Panel. It was noted that most of the long list of legislation in the AGD paper has never been used.

Associate Professor Megan Davis was thanked for the large amount of work she had done on the draft discussion paper, which now incorporated responses from a number of Panel members. Associate Professor Megan Davis explained the process by which the paper was produced, and indicated that the Panel should decide on the structure and content of the paper before a specialist writer addressed the tone, formatting and editing for publication.

The following points consolidate Panel feedback and comment on the draft **discussion paper**:

- the paper is a good starting point for further discussion and needs to be a source document that is appealing and engaging without oversimplifying the issues.
- it needs to be a simple, open, user-friendly, broad-based information document that covers:
  - what is the Panel's job?
  - what is recognition? - need to clarify what is meant by this
  - why is it important/ why we need to change the Constitution?

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- what are the benefits? (what it will and will not do) – need to set out what the changes will do (e.g. increase respect for Aboriginal people [and reduce racism against them], by establishing that Aboriginal people are an important part of this nation, and that all Australians are living on Aboriginal country) without misleading people Include what forms recognition would take and why is it needed.
- what are the options? (the form recognition could take)
- what are the legal implications?
- what are the challenges and how they constrain the discussion?
- what the process is
- it should be accompanied by a 1-2 page version, and direct motivated/engaged readers to further in-depth information sources.
- it needs to invite comment without raising expectations (recognition won't solve all problems) and allow people to make informed decisions.
- The language needs to be more inclusive – recognition should improve the bonds between us as we progress together as a nation and look to the positive effects and importance for all Australians.
- it should replace the terms:
  - 'Indigenous Australians' with 'Aboriginal and Torres Strait Islander peoples'
  - 'bipartisan' with 'multiparty'
  - 'rights' with 'values'
- need to be clear in use of language around legal effect vs legal recognition.
- it needs to frame the discussion more concisely by reducing the background information, the detail in the explanations regarding the challenges of constitutional reform, minimising the emphasis on politics/politicians and removing repetition.
- the complexity and mystique of the Constitution needs to be dispelled so that the paper more clearly reflects that sovereignty resides in the people of Australia and the success or otherwise of a referendum is determined by the will of the people and their attitudes.
- it should not rule anything out at this stage and should address more clearly and together the possible forms that recognition could take (i.e. it should include the option of a preamble and broad based values; and include listed/reserved seats in Parliament for Aboriginal and Torres Strait Islander Australians):
  - it should discuss the consequences (positive or negative) of each option without pre-empting, pre-judging or misleading regarding the outcomes
- ordering of the paper could be reconsidered: e.g. put discussion of section 25 and the races power at the front (before discussion of the preamble and statement of values).
- The 'why' needs to be added in various places as it is not going to be convincing unless people understand the reasoning for it, beyond an historical description e.g.:
  - why there could be a statement of values;

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- why Aboriginal and Torres Strait Islander Australians can't be recognised without removing the race power; and
- need to explain strongly, concisely and clearly why the issue wasn't already dealt with in 1967 - Aboriginal people are at the mercy and behest of Parliament, election cycles and legislation, and have no security. The only place they will get this security is in the Constitution. The Panel must make clear to the Australian people in plain English what needs to be fixed in the Constitution.
- need to be explicit that it is not just about a preamble, it is also about substantive change in the body of the Constitution recognising the substantive differences and subsequent consequences between inserting a preamble and/or a statement of recognition compared with making changes in the body of the Constitution. The different consequences need to be addressed and the issues separated.
- Aboriginal and Torres Strait Islander cultural heritage could be *for* all Australians but is not *of* all Australians.
- the paper needs to take into consideration the views, positions and key statements by Indigenous people (e.g. the Barunga Statement) so that Aboriginal and Torres Strait Islander Australians do not see this as another 'white person's effort':
  - need to cross-check against past Aboriginal statements, and incorporate quotes from them.
- it should more clearly explain negative citizenship
- the box on front page works well (helps explain role and engagement), but could be fleshed out more.
- more information on how people can get involved is needed
- will be crucial to have questions to guide discussion – they need to be put in the relevant sections throughout the paper:
  - they should be repeated in surveys/submission guides for ease of reporting
- be clear about who can vote in the referendum and which states/territories are included in the count (i.e., the NT and ACT can vote but are only considered as part of the 'majority of people' count)

Panel members discussed the merits or otherwise of a **preamble** and if a **statement of values** should be included. The following summarises the key points raised:

- a preamble cites background or historical material to set the context/scene and includes a statement of values - it does not form a substantive provision that changes the law or has a substantive operation.
- Australia has never had a preamble written by its citizens for its citizens and neither has a common set of values as a nation been acknowledged;
  - it was considered doubtful that a preamble could be developed without including the broader statement of values, and how we define ourselves as Australians;
  - concern was expressed that a statement of values may be problematic (what would it mean; how to express values for a unique group in a statement of

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universality of values; and what would it look like) and a simple statement of recognition in the body of the Constitution could avoid such issues and be more likely to succeed.

- people who think there is already a preamble may be confused by a general statement of values that goes beyond recognition – it could start a totally new debate, may be too complex, raise too many different opinions, and could detract from the primary focus on recognition of Indigenous people
- recognition is not about special rights (or special laws), but rather about equal rights and equality for all Australians - people are generally more in favour of equal treatment, and less in favour of special treatment. If a preamble referred only to Indigenous people, it may attract resistance, however, it needs to be acknowledged that a wrong was done and much needs to be done to bring Aboriginal and Torres Strait Islander peoples onto an equal footing. The UN Declaration on the Rights of Indigenous Peoples finds that balance – it could be drawn on for guidance and text.
- a preamble is just one option – there are other opportunities for changes to the Constitution that could deliver justice and protection for Aboriginal and Torres Strait Islander peoples interests and rights, such as – an agreement making capacity that can withstand the whims of the government of the day.
- regardless of whether a general statement of values is included, this is an opportunity to recognise Aboriginal and Torres Strait Islander peoples, to modernise the Constitution, to define our national identity and the place of Aboriginal and Torres Strait Islander people in that.

Panel members discussed the **issue of recognition** and what it means. The following summarises the key points made:

- the Panel's Terms of Reference do not limit how it frames its advice - considering removal of the race power already broadens the debate beyond simply recognition
- members agreed they need to be clear about what they mean by recognition and queried if it is constitutional recognition or constitutional reform or both?
- Statements can be made non-justiciable (as the States have done), but this looks odd. It would not be legitimate to restrict the High Court in the use of the preamble in its legal determinations.
- whether recognition is in the preamble or in body of the Constitution makes no difference in terms of legal effect. If in the body it is easier to frame specifically to Aboriginal and Torres Strait Islander peoples, but is hard to be restrictive in that way in a preamble.
- getting rid of racist clauses needs to be looked at seriously, but it is not necessarily part of seeking recognition. We want to become a more tolerant nation, with a more positive focus, and we want a Constitution that does not permit or contemplate discrimination.
- does removing the race power affect existing legislation which identifies people as being 'of Aboriginal race'? If the race power is removed, what is the basis for legislating for Australia's first peoples? It could have unintended consequences for Aboriginal people's view of who they are in this nation. It is difficult to predict

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unintended consequences as it is not known what interpretations the High Court may take in the future.

- the best form of recognition would be substantive as well as symbolic. Although the report might say it is not the ideal time to proceed because more issues need to be worked through. Need to acknowledge the historical facts and the cultural contribution of Aboriginal people.
- some Aboriginal and Torres Strait Islander peoples are surprised and confused to find that they are not already recognised in the Constitution - they thought the 1967 referendum achieved that. In relation to this and other issues important to Aboriginal people and their country, the explanations given by government have been inadequate, and the Aboriginal people are confused. Amendment in the body of the Constitution is needed and 'common unity' identified, not rights.
- from an Indigenous point of view the unintended consequence of recognition could be that the only matters of substance (rights, values or recognition of Indigenous people) would be those prescribed in the Constitution and recognised by the Crown, and not those by virtue of Indigenous peoples' position in Australian life. Might end up removing Indigenous peoples' uniqueness in the pursuit of trying to achieve it.
- recognition will have no practical effect in assisting to preserve Indigenous cultures - would rather use terms about respect and valuing of cultural heritage, rather than preserving it. The contribution that Indigenous culture can make to Australian society and the rest of the world should be valued otherwise it will be lost. It belongs to us all as Australians.
- Australia is locked into a western legal structure, and we are struggling to find a way to acknowledge the Indigenous past. How do we give recognition without simply reinstating an ethnocentric system? Australia is no longer in an Anglo-Celtic mould – it has a multicultural population, but still has a Westminster system. Issues of sovereignty and human rights go beyond the remit of the Panel.

## ***Actions Arising***

- 3.1 Secretariat to pass the Panel's thanks on to the Attorney-General's department.
- 3.2 Executive Officer, media advisor and the Secretariat to put in place a process to engage an editor/writer to finalise the Discussion Paper.
- 3.3 Secretariat to advise the Government of the Panel's view that one of the options should be a preamble that includes not just a statement of recognition for Indigenous people, but also includes a broader statement of values.
- 3.4 brief seeking legal advice for the Panel to be amended to include:
  - broader reference to questions about the legal effect of a preamble/statement of recognition (justiciability); and
  - if removing the race power impacts on existing legislation which identifies people as being "...of the Aboriginal race".

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- Associate Professor Megan Davis and Mr Henry Burmester to be engaged to provide formal legal advice to the Panel in response to the brief.

3.5 Associate Professor Megan Davis, media advisor, Co-Chairs, additional editor/writer and Executive Officer to provide revised draft Discussion Paper to Panel in week commencing 28 March 2011.

- Panel members to provide comments on revised draft to Executive Officer and Secretariat by 1 April 2011.
- Discussion Paper working group (Associate Professor Megan Davis, Co-Chairs, Ms Josephine Bourne, Mr Noel Pearson & Ms Rachel Siewert) to develop and circulate final version (with layout) to Panel members by 8 April 2011.

## Agenda Item 4 – Statement of Recognition

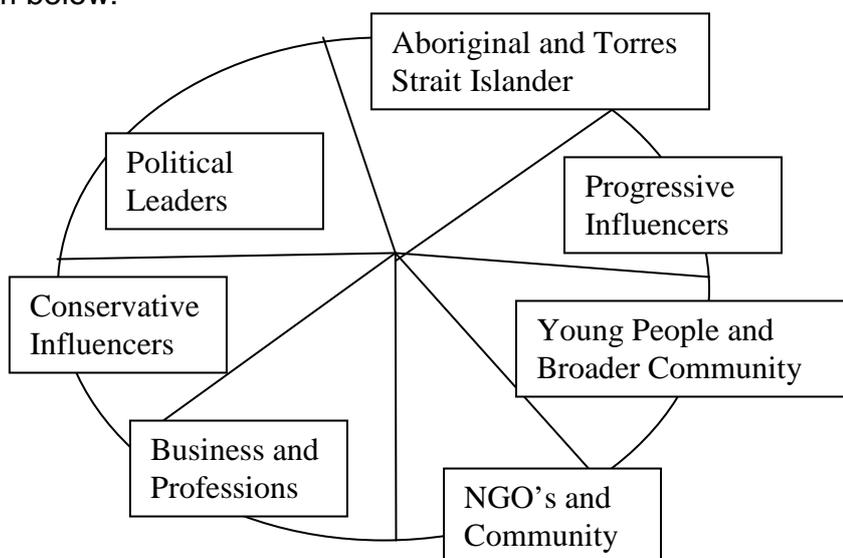
Further suggestions for the wording of a preamble or a statement of recognition were sought from all members. Members noted that Indigenous people in Australia are aware of the constitutional advances in Canada and other countries.

The question of whether Australians want or need a preamble was raised. It was noted that while it may not be adequate, the importance of the process of a preamble in bringing people together is a valuable step toward changing attitudes.

Members agreed that in discussing what recognition means it needs to be made crystal clear that recognising Aboriginal and Torres Strait Islander peoples in the Constitution will not be unfair to anyone or take anything away from any other Australian.

## Agenda Item 5 – Panel relationship matrix and engagement strategy

The Executive Officer spoke to his draft communications matrix paper and presented the diagram below:



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The diagram notes the audiences to be engaged - the top four groups are essential audiences and can determine whether the Panel's task succeeds but are the hardest audiences and need different strategies and approaches than the others. The bottom three are audiences the Panel can expect to have an impact on using Panel networks (these may be more of a focus for Reconciliation Australia although there would be overlap with Panel members with expertise in particular fields/sectors).

The following questions were posed by Mr Highland in relation to his paper:

- 1) Are the principles sound? How can they be improved?
- 2) Are the audiences appropriate and practical? Too many? Any gaps?
- 3) Are the messages appropriate and practical? Which need to be tested further or rejected?
- 4) Is the methodology useful?

Mr Highland suggested that the focus of communications should be on the 'how' and not just the 'what' of what is being said:

- should the principles be public and should it include informed and prior consent?
- ethos – how do we communicate that this is a Panel with integrity?
- logos – what problem is it solving? Don't want to mislead people or overstate what we can achieve. Need persuasive evidence of the benefits of change for the Australian people.
- pathos – use compelling stories, images and metaphors.

He suggested there are two phases to the Panel's work:

- first part (April to end of August) – articulate the problem and the benefits and build confidence and trust.
- second part (August to end of October) – brief stakeholders on research and feedback and test options.

The tone of communications should be warm, open and transparent and messages need to resonate with and be tailored to the audience. The communications table (and diagram) sets out the audiences but is notional only.

Panel discussion on relationships and engagement raised the following points:

- to achieve its task in the limited time available the Panel will need a strategic and intense focus, and identify 'blankets' where a large number of people can be reached in any one effort - media identities both positive and negative can have a large impact – consideration needed of how and when to approach them and how to use them: e.g. include in consultations; use radio - Ian McNamara has been approached by Mr Lawson, and he is interested; use television - the ABC 'Q&A' program; use sports - the AFL and NRL Indigenous Rounds; using true stories is valuable. Pick the opportunities where they can make a big impact.
- it is more than just communications – it is also about seeking peoples views: the Panel needs to consider from whom it wants to invite submissions.
- early messages could be about getting involved (not pre-empting the outcome), and later messages would increase in intensity – may need to seek

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advice on the potential impact of particular messages - arguments/messages need to be measured and balanced, not emotive, so they apply to everyone in a meaningful way.

- for people wanting to do something now: encourage them to support the process and recognition in the Constitution, get them to talk to their local member and build a groundswell of support - avoid getting people to support specific options.
- local politicians should be invited to consultations and engagement meetings.
- the paper is a good guide for proceeding however the matrix needs to:
  - be trimmed back to key foci in the first and second phases, to the priorities and to what's achievable in the timeframe available;
  - add more generic organisations under social and welfare sectors and Indigenous education;
  - identify key groups and/or influencers for each category; and
  - be revised and redistributed following feedback from Panel members.

## ***Actions arising***

- 5.1 Executive Officer to confirm by 1 April 2011 the organisations and key influencers within each sector with whom it is suggested members should meet.

## **Agenda Item 5a - Reconciliation Australia (RA) presentation**

Professor Patrick Dodson invited Ms Leah Armstrong and Ms Karen Mundine to make their presentation.

Ms Armstrong reported that RA had revised its strategy based on the Panel members' feedback at the first Panel meeting. She also confirmed that RA would complement the Panel's work and consultation schedule, and would seek to generate public education and build support for the process by actively engaging all Australians in the conversation about constitutional recognition. She advised RA's strategy is to build a stronger supporter base (the information army) that can be leveraged. Ms Armstrong spoke to a PowerPoint presentation (see attached) indicating:

Between March and December 2011 RA proposed four streams of activity:

- Undertake survey and focus group research and map stakeholder groups;
- Develop and design public information;
- Engage and ignite influential networks; and
- Run an effective public education unit and online social engagement.

Key discussion points raised by RA during the presentation included:

- There are some organisations like Rio Tinto who have strong investment in supporting Indigenous issues, and may be good advocates.
- Identifying networks and geographic areas requires provision of resources. An action kit is important - need to give people something to do to stay engaged and continue advocating up to December 2011 and beyond.

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- Developing a visual identity is important for reaching different audiences (e.g. mobile displays) – especially for those people who don't read newspapers or listen to the news. Get messages into newsletters and put posters on walls, and have the messages coming from people that are trusted.
- Keeping 'on message' and keeping abreast of misinformation is very important.
- National Reconciliation Week will be important for engagement. Theme this year is 'Lets talk recognition'. A key aim is getting existing partners to engage and hold events themselves.
- Existing Reconciliation ambassadors may be suitable vehicles to engage at some point.
- Using the RAP networks (480+) will reach over 1 million people through trusted sources that they are already engaged with.
- A dedicated website is critical – and a key repository for information.
- Is important to capture/monitor what people are saying at consultations and engagements.

Ms Armstrong confirmed that RA was in a position to commence engagement immediately following Panel's endorsement of RA's strategy, which had been developed around existing funding for the 9 months to December 2011.

Mr Leibler indicated that RA support is very important and if funding is inadequate, the Panel may be in a position to approach the Minister to advocate for more.

Ms Armstrong advised that after December there would be a holding phase of approximately 6 months while the government responded to the report - RA is also seeking further funds for the holding phase.

RA's strategy is built on accessing support through other networks (such as the RAP network), with only 6 on-ground events (direct local activations) planned. If the Expert Panel required them to do more local events, RA would need to seek additional funds.

Panel members expressed some confusion about the relationship between RA and the Expert Panel, including whether there would be two different websites, and whether the Panel can be directive to RA:

- Members noted that RA's role is to educate and advocate support for recognition without promoting any particular model for change. RA sees its role as acting independently, to influence behind the scenes, and to support the Panel. It will provide regular updates to the Panel and other stakeholders on its activities. There will be a single website and RA will contribute content.

The Panel endorsed Reconciliation Australia's revised strategy on the basis it supports the Panel's work.

Mr Leibler invited the Indigenous members of the Panel to share their views on the best way of communicating with remote Indigenous communities – how to go about the

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process, how to generate interest, and how to get the message across? The discussion raised the following points:

- consultation with Indigenous communities is multifaceted and there isn't a single answer
- mobilising people is an issue - variations in numbers attending engagements will occur
- using radio networks with short advertisements (including in the local Aboriginal language) is an effective way of reaching both Indigenous and non-Indigenous audiences but can be complex
- divisions in the Indigenous community and the potential for confrontation may impact on the Panel's consultation outcomes. It was noted the Panel cannot do its job if it doesn't know what Indigenous leaders are thinking. It was suggested that the Panel:
  - undertake one-on-one meetings, focus groups or round tables with selected influential Indigenous people who have a history with this issue. These people could become future ambassadors in the process.
- a number of suggestions for sectors, key influencers and events to be included in the Panel's consultation strategy and schedule were made including: Aboriginal legal services, large corporations, Aboriginal land councils, Garma, the AIATSIS Native Title conference (June 2011), NACCHO's AGM, NAIDOC week (significant week of events nation-wide), the NPY Women's Council meeting, major Indigenous and mainstream/non-Indigenous festivals, areas of high Indigenous urban populations.

The invitation from Mr Yunupingu to attend the Garma Festival and meet with the dilak was noted.

## ***Actions arising***

5.2 Secretariat to contact all Panel members regarding availability to attend Garma, 5-8 August 2011:

- Secretariat to draft letter for Co-Chairs to send to Mr Yunupingu thanking him for the invitation and advising Panel attendees.
- Secretariat to prepare an updated festivals schedule that includes all Aboriginal and other festivals, seek feedback from members on who can attend, and liaise with festival convenors.

## **Agenda Item 6 - Wrap up**

Further discussion points were raised regarding Indigenous consultation, including:

- the potential for people to be reluctant to commit as work progresses,
- that people will say that there was not enough time or enough consultation,
- that Indigenous people need to decide if they want constitutional recognition,
- a lack of clarity behind the messaging: is it about 'unfinished business; or that this will settle the Indigenous problem; or its another stage in the journey

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Members agreed that these different elements will need to be drawn together and discussions held about what might succeed before the Report is put forward.

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## DAY 2 – Thursday 17 March 2011

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### **Agenda Item 8: Welcome and recap**

Professor Dodson noted that, following from the preceding day's discussions, the Panel would need to further discuss:

- what the Panel means by 'recognition' as a concept;
- what alternatives exist if section 51(xxvi) of the Constitution was to be changed or abolished. Although the Panel will be getting legal advice on this question, clarity is needed about what would happen to that head of power; and
- how will the Panel be kept abreast of the outcome of the various engagement encounters of Panel members.

Professor Dodson introduced Mr Brian Craighead (Red Bean Republic) and Mr Martin O'Shannessy (Newspoll), inviting them to outline the proposed digital strategy, and the outcomes from the latest Newspoll on Constitutional Recognition.

### **Agenda Item 9: Key messages and Agenda Item 10: Online presentation (Treated as joint agenda item and discussion)**

Mr Brian Craighead thanked the Panel for the opportunity to attend and to offer for the Panel's consideration, Red Bean Republic's proposal for a digital communication strategy. He noted that he and Martin O'Shannessy had been liaising with a small group of Panel members on concepts.

He explained that the recent research done by Newspoll helped to frame the presentation and informed suggestions for the overall tone and approach of the Panel's 'conversation' with Australia.

Mr Craighead noted that Red Bean Republic's role in helping to develop and maintain a simple accessible digital environment is only a small part of the Panel's bigger communications strategy, and that as the Panel goes about its other engagement activities Red Bean Republic will augment that work so that it reaches everyone.

Mr Craighead noted the message from the first meeting that "our goal is not to fail" and advised the work over the year is about education and communication. He recommended that the online platform (website) stand aside from the Expert Panel and involve both an online presence and social media (facebook, twitter, youtube channel).

He explained that the Panel needs to engage the whole nation and in every single area addressed, people will be at a different level of understanding. He cautioned that when

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online conversations occur, they are conversations with everyone at once, as well as millions of different conversations occurring.

Mr Craighead pointed out that the Panel Members themselves are the ultimate trust mark for integrity. It is also important that there is an emotional content to the conversation, but most important of all is the tone of the conversation - the language and 'feel' of the conversation must be contemporary, hype free and low key. The aim is to encourage and engage in a low temperature adult conversation.

Ultimately, achieving this tone and character goes to the brand and the focus on this being just about having a conversation - that the online space is a safe trusted place to hear different view points and to talk about the issues.

Mr O'Shannessy provided an analysis of findings from a poll conducted on 12-14 March 2011, about constitutional recognition of Indigenous Australians. He explained that the poll used the Newspoll Omnibus of more than 1200 people who answered questions online.

Mr O'Shannessy advised that he had been asked to test items around the brand for the website. Newspoll presented the following brand options: You Me Unity; Message Tree; iCon; and Step Forward and asked the participants to identify their first and second choices. Two 'strap lines' were also tested: Recognising Australia's First People's; and Equality for all Australians.

## Findings:

- high levels of understanding and positive support for the brands: Step Forward and You Me Unity.
- Step Forward with the strap line: Equality for All Australians was the most preferred.
- anything that didn't clearly eliminate favouritism was very unsuccessful.
- approaches that involve a "Call to Action" are most effective.
- there is very high capacity for polarising the nation.
- WA, NT/SA & Tasmania were all very negative to all concepts and early caution is advised.
- Favoured logos will: reinforce unity/equality; will not suggest differential recognition and must be understandable as propositions in their own right.

The Panel then discussed the findings, raising concerns that 'Step Forward' might be too similar to "Moving Forward" which has attracted a lot of public ridicule. Members asked what proportion of the participant group was Indigenous. Mr O'Shannessy advised that that information wasn't collected.

Members asked if the research suggested that the very exercise of talking may harden attitudes against constitutional recognition and Mr O'Shannessy advised that was a very real risk.

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At the conclusion of the general discussion Mr Craighead tabled options for how the two most popular brands might look. He explained that the two different styles set the language and tone, and make the conversation transparent and inclusive. He observed that the designs were by no means finished but that they are close. The website could be operational within 4 – 5 weeks.

Panel discussion on the branding raised the following points:

- the final colour scheme should avoid the use of rainbow colours because they could raise negative associations. It was suggested that perhaps the Australian colours would be better.
- Panel Members noted the very tight timeframe and were concerned to avoid any unnecessary delay. Following a query Mr O'Shannessy advised it would be better to promote equality and not special treatment.
- It was agreed the Panel's task is to find a way to recognise Aboriginal and Torres Strait Islander peoples and while emphasising equality may be the quick path to getting a good result, members were concerned that this approach will not meet the Panel's set task of recognising the first Australians.
- This is the story of our country and we are, as a nation, writing it, but early indications are that broader Australia doesn't yet care because they are not aware. If there is no groundswell that the time is right to change the constitution, it may be that this is not the right time.
- The lack of groundswell support may be linked to confusion about "how come we are doing this now I thought we fixed it in 1967?". That this confusion is shared by people from all age groups and points to the need for people to understand that it wasn't fixed in 1967. Mr O'Shannessy noted that around 50 per cent of the adult population was born after the 1967 referendum and that immigration has also contributed many more people to the Australian population who have no knowledge of or awareness of the significance of that referendum.
- In response to a question on how long people's positive opinions last, Mr O'Shannessy advised that once people have formed an opinion it will only be at risk if it comes into competition with another idea. Mr Craighead noted that when it comes to these things which are partly rational and mostly emotional, there is basically no drop off. Nevertheless, you don't want to raise expectations and you don't want to lose an opportunity to leverage support. Panel members noted that it was possible that their recommendations to Government could include advice around the timing of the referendum.
- To address the issue of recognition, what was needed was a conceptual framework that allowed for both citizenship and recognition of Indigenous Australians without violating either concept.
- British heritage is implicitly embedded in Australia's constitution and the question is how can Aboriginal culture be embedded in the Constitution for the benefit of everybody? Can the heritage of culture be recognised rather than the politics? Because the moment politics is identified the issue of differential treatment and divided citizenship emerges.

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- The question is: “can we expand this concept of the Australian culture to explicitly reflect the Indigenous cultural heritage, the British cultural heritage and the diverse cultural heritage of immigrants?” Mr Craighead indicated that the key will be to find the concept and language that people feel is intuitively correct and the idea of separating the idea of “different people” and focusing on cultural heritage is intuitively easier to reconcile.
- On the role of the Expert Panel and Reconciliation Australia in relation to the website: Mr Craighead advised that Red Bean Republic would seek direction from the Panel and so was highly dependent on the Panel providing a quick approval turnaround. At least in the short term, he anticipated that Reconciliation Australia would provide the majority of content. As the Panel’s engagement activities progressed, more content would be derived from that.
- Mr Craighead stated that Red Bean Republic would create the website shell and work with Reconciliation Australia and others who can pull together content which Red Bean Republic will prepare to go online.
- Ms Armstrong noted that RA would work with the Panel to ensure the messaging was in line with Panel’ messages. She also noted that RA will work with Red Bean Republic around monitoring of blogs etc, although Panel members might like to think about that as well.
- In considering the proposed website, Panel members: were very impressed with the presentation and advice provided by both Red Bean Republic and Newspoll. The Panel invited Red Bean Republic to develop the digital media strategy to December, and also agreed to continue to engage Newspoll from time to time to conduct special purpose polling.
- The issue of timely approvals for online content was discussed and it was agreed it would be most efficient to appoint a small group to represent the Panel. It was agreed the website working group would comprise Lauren Ganley, Alison Page, Rachel Siewert and Mick Gooda working with Gary Highland and the Secretariat.
- Mr O’Shannessy advised that he would volunteer his time for the rest of the year as a “friend of the Panel”. He also noted that Newspoll can be engaged for a variety of things including polling people on concepts. The panel returned to the discussion of recognition noting: it was important for the nation as well as for Indigenous peoples. The need to conceptualise the vision and what is the most desirable, the most practical outcome and what can be achieved. There are people that have achieved recognition, for example the South Africans. At the moment recognition is focussed on the pioneers and the removal of the native.
- The Panel should be clear about Australia’s position in the world and the sort of Australia we are aiming for and how to achieve that.
- Progressive community members want change. Conservative community members are thinking about how to give an Aboriginal person a job. The tension is between practical versus symbolic. The language is needed to reach that dichotomy.
- In response to a query on the value of consultation versus polling Mr O’Shannessy advised that public consultations do offer stumps for people to stand on and state their views, and there is a process called deliberative polling that could be used to

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find out what people are thinking. The Panel may have to do some public consultation, but if it looks tokenistic or too limited it will attract criticism and a perception that people's views are not important. From a consultation perspective the Panel should spend a lot of time working out what Indigenous community wants.

Panel members returned to how best to address the **issue of recognition** and what Aboriginal and Torres Strait Islander people think about it. General discussion followed during which it was noted that:

- a genuine way to acknowledge and recognise Aboriginal and Torres Strait Islander peoples is needed;
- 'race' is a dreadful concept and perhaps culture is the key;
- according to the latest RA Barometer, two thirds of Australians people accept that Aboriginal and Torres Strait Islander culture is important;
- a very effective 'No' campaign could be organised around who is Aboriginal and Torres Strait Islander and who is not;
- if the conversation is framed in terms of Aboriginal and Torres Strait Islander culture, then you can start to have real conversations, race is a divisive concept.
- that people can hold two contrary ideas at once when giving their views about culture and their views about individuals or people;
- there is a need for a re-engagement at a national and international level that resets the relationship between Indigenous and non-Indigenous peoples, a rapprochement of sorts;
- it gets back to the issue of what does reconciliation mean. It has to affect the national psyche in some way without necessarily consuming the uniqueness of Indigenous people – culture may be an appropriate way forward;
- it is important not to discount the consequences that failing this referendum will have for the nation. People are not as secure as they seem in their national identity;
- need to find a set of words to give people a hope that we can go forward in a constructive way without diminishing Aboriginal and Torres Strait Islander cultures – it is not a special right, it's necessary.
- John Howard is arguably typical of a lot of non-Indigenous Australia. In some contexts can be defensive, but in other contexts can make some surprising statements. The question is how we engage with this psychology – there is some 'whispering in their hearts' but you can have a very negative reaction if you strike the wrong chord, but this can also be an engine of change.

## ***Actions arising***

10.1 Panel agreed to proceed with engaging Red Bean Republic to provide a digital media strategy (content and moderation to be worked out by website working group – Lauren Ganley, Alison Page, Rachel Siewert and Mick Gooda).

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10.2 Discussion paper working group to invite feedback on the draft Discussion Paper from Martin O'Shannessy (as friend of the Panel) as it is being developed.

## **Agenda item 11: Expert Panel members – consultation activities**

Mr Leibler thanked Panel members for their responses to the Engagement Questionnaire observing that he could appreciate that it might be difficult for some to advise their availability as far in advance as was being asked. He then invited Ms Cath Halbert, A/g Deputy Secretary, FaHCSIA, to address the Panel on the consultation schedule provided.

Ms Cath Halbert noted that Panel members may recall that at the first meeting they were provided with an initial draft consultation schedule that was somewhat overwhelming. Following that meeting a questionnaire was circulated to Members seeking their ideas for engagements and their availability. The draft Consultation schedule provided for this meeting is an attempt to reflect that advice in a revised schedule.

Ms Halbert advised the Panel that FaHCSIA will ensure that all logistics support will be provided to meet Panel needs. FaHCSIA has a network of Indigenous Coordination Centres, Regional Officers, State offices and Government Business Managers able to provide local advice and information. Ms Halbert noted that the Secretariat has also developed some templates/tools to assist the Panel, including a template to collect feedback from consultation activities.

Panel members asked if there was information available about the rationale for the locations chosen, and which of the communities has significant Indigenous populations? It would help to have a map that showed Indigenous populations against the locations chosen. The Panel also requested the secretariat to prepare which organisations would be approached.

Mr Leibler also noted that the Panel needed to see and approve any information kits, templates or other communication products and at least 2 or 3 Indigenous Panel members need to be involved in the clearance process. A consultation working group established comprising: Marcia Langton, Mick Gooda and Alison Page.

The discussion moved to the nature of the consultation activities and Panel members noted:

- face-to-face consultation would get the flavour of the consultation away from the written approach.
- many Aboriginal and Torres Strait Islander peoples enjoy local radio and music has a long reach, it's a friendly safe medium;
- need to use a whole range of mechanisms: face to face, radio, surveys, emails, facebook; twitter, website, pre-prepared radio programs to give to radio stations.

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- there is a need to identify and engage key Aboriginal and Torres Strait Islander leaders and targeted, small group meetings with influential leaders was proposed as important.
- organisations such as SNAICC should be added to the list of Indigenous organisations.
- could identify community simply by Indigenous population but would be important not to miss iconic communities e.g: Palm Island; Redfern; la Perouse. Other important communities include: Moree, Lismore, Weipa.
- National Congress of Australia's First People's held consultations recently. The communities' visited provided the basis for the communities identified for the Panel's meetings. Many Congress consultations were not well attended, nevertheless the wide coverage contributed to the lack of backlash against Congress. Important not to compete with NAIDOC week.

Following the discussion Mr Leibler advised the Panel that several members needed to leave the meeting early so for their benefit he noted:

- The Panel's agreement to proceed with capital city meetings in each State and that Gary Highland, would work with the Secretariat and the consultation working group, to revise the general and Indigenous community consultations.
- That where Panel members receive any invitations or proposals for engagement activities that they please provide them to the Co-Chairs, preferably in writing, who would then circulate to get the Panel's full sign-off.
- That issues with some Panel members not receiving sitting fees were being resolved and if any further problems were experienced Panel members should notify Mr Leibler and he would ensure the matter was quickly resolved.
- The next meeting would be held in Sydney on 4 May and the Secretariat would approach each Panel member regarding their availability to determine the dates for all other future meetings

In general discussion following, Panel members noted:

- In light of discussion earlier in the day it seemed that Panel members may not agree to follow the path suggested by the Newspoll research noting that perhaps the tag line "Equality for all Australians" is not appropriate.
- Indigenous people have to grow their capability in order to keep our culture. There must come a point where special assistance comes to an end. This might lead to greater community support. Most of the resentment is around the perception of special treatment.
- Not sure there is a widespread perception that Australians feel secure in their British heritage. Increasing immigration has contributed to a sense of insecurity which gives rise to the One Nation syndrome. There has to be a bit of self interest to motivate people toward change. Reinvigorating the sense of belonging and national pride could be the motivating factor – 'this is our constitution this is our country'.

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- There are two ways to approach recognition: 1) an affirmation which affirms the British foundations and the importance of Aboriginal Cultural heritage; or 2) or repudiation. The facts are, Australia has an Indigenous heritage, then it has a British heritage layer and then a multicultural layer on top of that.
- There is a possibility for a narrative that really tells Australians they are.

The Panel moved onto discussion of the Panel's budget with some concerns expressed about the lack of information available to the Panel. Ms Halbert gave an undertaking to provide a detailed breakdown of the Panel's budget, including expenditure to date, for the Panel's next meeting.

## ***Actions arising***

- 11.1 A consultation working group comprising Marcia Langton, Mick Gooda and Alison Page to provide guidance to Gary Highland and the Secretariat on a revised Consultation schedule and DIY Consultation Kits for out-of-session consideration by Co-Chairs and Panel members by 8 April 2011.
- 11.2 Secretariat to provide detailed budget position, including expenditure to date, at next Panel meeting.

## **Agenda item 12: Communiqué**

A Draft Communiqué was circulated to all Panel members for comment.

## **Agenda item 13: Next steps and next meeting**

Members discussed proposed dates for future meetings, with Mr Leibler observing that his preference is that the Panel not meet in June. As a consequence, subsequent meeting dates could be:

4 May (Sydney – confirmed);  
26-27 July;  
7-8 September;  
5-6 October;  
9-10 November.

Mr Leibler advised the Panel that the Co-Chairs would ensure Panel members are kept informed about any mini-consultations and progress of the three working groups.

## ***Actions arising***

- 13.1 Next Panel meeting to be held in Sydney on Wednesday 4 May 2011:
- Secretariat to contact Panel members individually to confirm their availability for future Panel meetings.
  - Secretariat to circulate proposed dates for Panel meetings July - Nov 2011.

## **Meeting close**