

APPENDIX E: QUALIFYING STATEMENT FROM AMANDA VANSTONE

Qualifying Statement

The proposal to hold a referendum to insert into the constitution a requirement for an indigenous voice to Parliament is not one I can recommend to the Prime Minister and Leader of the Opposition at this point without this clarifying qualification. I hope we can get to the point where such a referendum is successfully put.

A New Journey

The Referendum Council undertook, through the Indigenous sub committee , a very significant consultative process to ascertain what form of recognition Indigenous Australians want. It is clear that the single constitutional change wanted expressed through those consultations is a voice to Parliament enshrined in the constitution. If Parliament and the Australian people want to progress with constitutional recognition of first Australians the consultations have made clear that a voice to Parliament is not so much the best shot at it but that it is the only shot in the locker.

This is a relatively new development. If that were not the case indigenous leaders speaking on behalf of indigenous Australians would have said so some time ago. That means despite all the effort, contributions and time expended over a number of years we now find ourselves at a new starting point. Exhausting as that may seem to some that's where we are.

Polling, to the extent that we can rely on it in these days, indicates there is significant support for recognition of indigenous Australians in our constitution.

My own experience leads me to conclude that Australians think it only fair and just to do so. That they were thinking of symbolic recognition in the constitution is an indicator, in my view, that Australians inherently understand the importance of the constitution and regard recognition in that as important. I believe that is because they expect that, over time, symbolic constitutional change can and does both reflect and bring about better understanding and positive change .

We now understand through the Indigenous consultations that Indigenous Australians do not attach the same importance to that type of recognition and in fact reject it. The outcome of the consultations has thus taken us to new territory. In one sense we are all at the start of a new journey.

Broad Australian Community Support

It would be a folly to take the support previously expressed by Australians for Constitutional Recognition in the Constitution to be unconditional. Whilst one would expect that Australians would not support something which Indigenous Australia did not endorse it is not clear that they would automatically endorse whatever indigenous Australia prefers. The substantive change contemplated is quite different from what had been contemplated by everyone and everyone will have to refresh their thinking.

I listened carefully to the Indigenous members from both sides of politics and both Houses of Parliament. They clearly expressed a view that in pursuing change a softly softly approach was required and that a radical proposal for change would not succeed. They were offering helpful insight. Whether they still hold that view I do not know. However that others do I am certain.

Parliamentary Control

The report highlights that the details of the nature and scope of an indigenous voice to Parliament would be the province of Parliament. That would mean that once there was a constitutional requirement for such a body it would be established through an Act of Parliament and could be changed over time by subsequent Acts of Parliament.

We need not be concerned here with what future Parliaments may choose to do. They would have the authority of being elected by us. We do however need to be concerned with what would be initially put forward to Parliament as the first such body. Australians need to see a reasonable, relatively non contentions and largely agreed plan as to what they would be voting for in the first instance.

The Difficulty of This New Journey

Members of the Council, other than myself, believe that in saying that the details are within the province of Parliament one is acknowledging just how much additional work needs to be done. I do not agree. Those words merely point out in the most general terms possible that there is more to be done and that it is up to the parliament. In one sense that is true as it would be for any referendum proposal.

However those words do not make clear some factors I think it important to spell out. A much wiser person than myself might ask the question as to whether this fruit (the proposal) is ripe. The newness of the idea in broad public debate means there is a tremendous amount of work to be done before Parliament and the broader community will consider this proposal's time has come.

For example , there is no point in pretending that there are not expectations as to the nature and scope of such a voice. Those expectations may well not accord with what either the Parliament or the Australian people see as appropriate.

What I can envisage as such a voice, that I imagine a majority of Australians would be prepared to endorse, might be considered unacceptable to indigenous Australians. On the other hand a model, which has been discussed, is not one I believe would be acceptable to the majority of Australians.

Not every detail of a proposed voice would need to be settled but the major structural ones would. The report acknowledges some of these difficulties.

What is called for is a representative voice. To some that means elected, to others appointed but in both cases by indigenous Australians. Some would envisage it may include indigenous Australians appointed by either Parliament or the government. It could mean a combination of all of the above. Questions as to voting eligibility would need to be resolved.

One of the reasons for seeking a body enshrined in the constitution is so that it cannot be removed, as ATSIC was, without being replaced by another body. It is important to reflect on the fact that in terms of electing representatives to an indigenous body Indigenous Australians have not in the past shown great enthusiasm. An incredibly low proportion of indigenous Australians voted in ATSIC elections. If voting were compulsory it would raise the question of whether there should be elections simultaneous with Federal elections and if so terms of office.

Australians would, in my view, need to be assured that any such body, whilst intended to be a step towards coming together would not in fact be an inbuilt dissonance within our system. The advice to parliament would be public and thus any disagreement would feed into the public debate. Advice opposing a proposal before parliament would in effect be perilously close to a veto. It would be important that such a body did not become another combatant in a frankly all too combative political arena.

The Task Ahead

The task therefore is to find a version of an indigenous voice to parliament that will be acceptable to indigenous Australians and the parliament of the day. That debate, the one that gets to the basics of what would be acceptable to both indigenous Australia and the Parliament should be had before a referendum is contemplated.

Without finding that common ground before a referendum Parliament may find itself with significant Indigenous voices dissatisfied with what is subsequently proposed and yet be in a position that the constitution requires a body to be set up. What was intended to be a unifying and progressive move forward could turn into a lightning rod for discontent. That would be a terrible outcome for everyone.

What is the Difference?

The Council members clearly do understand that an enormous amount of work would need to be done before a referendum could proceed. The report from the consultations also acknowledges in the proposed roadmap how much work needs to be done. The Indigenous members in particular through the consultations understand how hard it can be to bring together diverse views. The consultations have shown everyone how engaging substantively can produce unexpected results.

The broader community consultations and the call for submissions cannot be said to have captured the imagination of the broad Australian community. The electorate is not all fired up, let alone set alight with enthusiasm at this point. For a referendum to pass we will need to get close to that point.

To recommend to proceed to a referendum whilst acknowledging that the shape et cetera is within the province of parliament seems to me to assume that we are close to that point and that agreement between the Parliament and indigenous Australians can be found. Bearing in mind we are on a new journey that assumption cannot be made. To use a much overused idiom, it is putting the cart before the horse. A voice in the constitution is the only option we now have. Recommending a referendum is the last step. The first is finding the common ground.

I recognise that some will say my remarks are just another example of non indigenous Australians responding to a positive policy for Indigenous Australians by “kicking the can down the road”. To pick up on the kicking aspect of that metaphor let me say it was the indigenous consultations that put a relatively new “can” on the field. That “can” will not get through the goal posts unless we all work together as a team and get the right game plan.

A recent discussion in the Council highlighted for me the need to spell out these concerns. The reality of Australian politics is an unknown world to some people. A suggestion that we could, with political will, move to a referendum in January 2018 is testament to that. The roadmap in the Uluru statement, whilst recognising that much needs to be done only serves to highlight the gap between how people think the parliamentary process could work and the day to day reality of its operation.

Calls for courage and leadership are easy to make. Substantive change however is not easy to achieve. It is hard and frustrating work. Poetry and polemics will not overcome the necessary practicalities. They must be dealt with first. Unless that happens a referendum would be lost.

A loss would set back by a decade, probably more, the opportunity to move forward together as a nation in both coming to terms with our past and building a better future. It would do a great disservice to indigenous Australians.