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12 June 2015

Committee Secretary
Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples

Dear Committee Secretary

Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples

I attach by way of a submission a speech delivered today at a constitutional law symposium on an Indigenous advisory body. This material has been accepted for publication and will appear shortly in issue 8(18) of the *Indigenous Law Bulletin*.

The attached does not deal with the related idea of recognising Aboriginal and Torres Strait Islander peoples not in the Constitution, but by way of a non-legal declaration. Having considered that proposal over the past several weeks, I have come to the view that it is not an appropriate means of providing recognition. In summary, my opinion on this is:

- recognition of Indigenous peoples is found in many constitutions around the world;
- Australia's Constitution already recognises a number of people and concepts, including the people of the Commonwealth, those of the colonies and the like, and is difficult to see why Indigenous peoples do not warrant similar mention;
- in light of this, including recognition of Indigenous peoples outside of the Constitution risks sending the signal that their interests are in some way secondary or otherwise not worthy of being referred to in Australia's foundational legal document;
- as the March 2015 report of the Select Committee on Aboriginal Constitutional Recognition of the Western Australian Parliament makes clear, even in the absence of non-justiciability clause, Indigenous recognition can be included in a constitution without giving rise to fears about the interpretation and application of such words; and
- a declaration will not likely produce the same community recognition and impact as constitutional recognition. An exception is the American Declaration of Independence, but that is an entirely different document born out of a revolution. It also preceded, and was a catalyst for, the drafting of the American Constitution.

Yours sincerely

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