

Hon. Christian Porter MP  
Minister for Social Services  
Parliament House  
PO Box 6022  
Canberra ACT 2600

7 December 2017

Dear Minister,

Thank you for your detailed letter.

Your account of the facts of our engagement on Indigenous constitutional recognition, and specifically the proposal for a constitutionally guaranteed Indigenous advisory body to provide advice on laws and policies with respect to Indigenous affairs, is full of errors. Your central assertions – that you were not aware that Noel Pearson, myself and others were advocating a constitutionally entrenched Indigenous body, that it was not specifically raised in our discussions with you, and that you expressed to us no support for the proposal – are not factual or credible.

Before I remind you of the facts and evidence, let's be clear on the proposal.

In your letter you refer to the “specific proposal of the type put in the Uluru declaration, notably; for a constitutionally enshrined additional parliamentary process meant to scrutinise all legislation relevant to indigenous Australians, by indigenous Australians”. You then repeatedly describe the proposal as a “constitutionally enshrined additional parliamentary process”.

It is incorrect to characterise the proposal called for in the Uluru Statement from the Heart in this way. This appears to be intentional spin, designed to conjure fears about a “third chamber of Parliament” as propagated in the Prime Minister's dishonest press release rejecting the Uluru Statement.

With regard to this misrepresentation, I make two points.

First, the Uluru Statement *does not specify* the type of constitutional amendment to establish the First Nations voice. It calls for “a First Nations Voice enshrined in the Constitution”. It does not call for “an additional parliamentary process”. The proposal discussed in the Referendum Council's discussion paper, dialogues and at Uluru was a voice *to* Parliament, not *in* Parliament. As the Referendum Council's final recommendation makes clear, the proposal leaves the nature of the constitutional amendment open and ultimately for Parliament to legislate.

Second, there are several ways the Constitution could be reformed to enshrine an Indigenous voice in Indigenous affairs. Professor Anne Twomey put forward a proposal for a constitutionally guaranteed Indigenous advisory body to provide advice on Indigenous affairs. Warren Mundine put forward amendments that would focus on local First Nations voices, with no advice function in the Constitution. Professors Rosalind Dixon and Megan

Davis have written about a duty to consult as a qualification to the head of power. One can also imagine a modest amendment, simply requiring an Indigenous advisory body be legislated. Neither the Uluru Statement nor the Referendum Council proposed a “constitutionally enshrined additional parliamentary process” or “third chamber of Parliament”.

It is your government that is pushing this dishonest characterisation.

Cape York Institute advocated Professor Anne Twomey’s draft amendment for a constitutionally enshrined Indigenous advisory body, which in your letter you claim you were not aware of and never supported. Your claims are incorrect. Let me remind you of the timeline and the facts.

The Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples was set up in December 2013. According to its Final Report, you were a member of the Committee until 11 February 2015. You were therefore formally engaged on Indigenous constitutional recognition as part of your parliamentary responsibilities. That you were aware of Cape York Institute’s advocacy for a constitutionally enshrined Indigenous advisory body is objectively evident.

Cape York Institute’s proposals for a constitutionally enshrined Indigenous advisory body and a Declaration outside the Constitution were devised in collaboration with constitutional conservatives, namely, Professor Greg Craven, Julian Leaser, Damien Freeman and Professor Anne Twomey. We advocated the proposals publicly and they were reported in the media:

- Noel Pearson first raised the proposal for an Indigenous body in the Constitution in his Quarterly Essay of September 2014 – while you were on the Committee.
- Cape York Institute made three submissions arguing for a constitutionally guaranteed Indigenous body and attended hearings to explain the proposals:
  - Our October 2014 submission proposed the Indigenous constitutional body as a constitutionally conservative alternative to a racial non-discrimination clause – it was submitted while you were on the Committee.
  - On 6 November 2014, Fiona Jose and myself as representatives of Cape York Institute advocated the proposals at a hearing in Cairns – you may have been absent but it was while you were on the Committee. A transcript was recorded.
  - On 19 December 2014, Noel Pearson, Professor Marcia Langton and myself advocated the proposal at a private hearing in Sydney – you may have been absent but it was while you were on the Committee. A transcript was recorded.
  - In January 2015, Cape York Institute submitted a supplementary submission including design principles for the body, on the request of the Committee – it was submitted while you were on the Committee.

- In May 2015 Professor Anne Twomey released her proposed constitutional drafting (<https://theconversation.com/putting-words-to-the-tune-of-indigenous-constitutional-recognition-42038>).
- Cape York Institute then helped organise a symposium on the proposed amendment at Sydney University Law School on 12 June 2015. You were specifically invited by email from Professor Anne Twomey on 23 April 2015. You responded on 24 April 2015 saying you couldn't attend, but emphasised you were still very interested in the issue. The email flyer stated the symposium topic clearly: "INDIGENOUS CONSTITUTIONAL RECOGNITION AND THE IDEA OF AN INDIGENOUS CONSTITUTIONAL BODY". Noel Pearson was a speaker.

It is therefore incorrect to suggest you were in any way unaware of the Cape York Institute proposal for an Indigenous advisory body in the Constitution when you met with Noel Pearson and myself on 22 June 2015. You were clearly aware.

You also assert the proposed constitutionally guaranteed Indigenous advisory body was not specifically raised at this meeting. This is incorrect and illogical. Noel Pearson and I are representatives of Cape York Institute. The proposed Indigenous body has been Cape York Institute policy since 2014. This was public knowledge. Discussing the proposal was the very purpose of the meeting. We discussed it with you.

You assert you "never offered support for such a specific model either publicly or privately". This is incorrect. While you never offered support publicly, you privately expressed support to Noel Pearson and I, then later to Damien Freeman and myself.

At the June 2015 meeting, we discussed the proposals and you were amenable to the approach – so much so that Noel Pearson suggested you should "be a champion" for the reforms in your party and Parliament. Why would Pearson suggest this, if you had not expressed support for the key proposed constitutional reform? You encouraged us to keep going and your feedback buoyed our efforts.

By March 2016, Damien Freeman and I published a book of essays, *The Forgotten People: liberal and conservative approaches to recognising indigenous peoples* (Melbourne University Press) exploring these proposals. A constitutionally guaranteed Indigenous advisory body was the main theme, together with a Declaration outside the Constitution. On the basis of your positivity, Freeman asked you to contribute an essay. Initially you agreed. You then, as you say, ran out of time, but agreed to write an endorsement of our book instead which appears on the MUP website. You did not provide a "forward" as you describe. Pearson wrote the foreword. Did you read, or perhaps skim, the book you endorsed?

On 4 April 2016, Damien Freeman sent an email to your adviser, Charlie Donovan, to confirm you had received a copy of the book. The book includes an essay by Professor Anne Twomey, which sets out and explains her constitutional drafting for an Indigenous advisory body. It also includes essays by Professor Greg Craven, Chris Kenny, Cardinal George Pell, Julian Leeser MP, Dr Fergal Davis and myself – *all arguing for the constitutional advisory body*. And, in case you or your advisers did not have time to read these essays, Freeman's

email also included a link to a book review by George Williams in *The Australian*. As that review notes, in the book:

“Some central ideas do emerge... Strong support is also voiced for the idea championed by Pearson of a new body composed of indigenous peoples to advise the parliament. These ideas have already been well ventilated in public debate...”

George Williams is correct: the proposal was “well ventilated in public debate”. To insinuate you were unaware that Pearson, Freeman and I specifically advocated such reforms, given your former position on the Joint Select Committee and given your endorsement of our book, is absurd.

You also assert the proposal was not specifically raised at the 19 April 2016 meeting with Freeman and myself. This is incorrect. Damien Freeman was representing Uphold & Recognise, a conservative organization established by Freeman and Julian Leeser MP to promote constitutional recognition that upholds the Constitution and meaningfully recognises Indigenous peoples. Their charter supports a Declaration outside the Constitution and an Indigenous advisory body within the Constitution. This has been public knowledge since Noel Pearson launched Leeser and Freeman’s Declaration proposal in April 2015. The very purpose of this meeting was to discuss these proposed reforms.

Freeman and I discussed with you our book and the proposals. You called the proposals an “elegant solution”. You seemed more positive about the Indigenous advisory body proposal than in the previous meeting with Pearson and I. Freeman and I were so encouraged by your remarks, we asked if you would launch our book in Perth. You agreed. You also helped organise other speakers, as you noted. We spent the next several months liaising with your office to find a launch date that suited you.

Why would Freeman and I ask you to launch our book, if you didn’t support the key proposed constitutional amendment advocated in the book – an Indigenous body in the Constitution? And why would you agree? We asked you to launch it precisely because you indicated you found the solutions elegant. In good faith, we took you to be a supporter of the reforms.

You seem to assert you never saw specific constitutional drafting of the constitutional amendment. On the facts, this is incorrect. It was in Twomey’s essay in the book you endorsed, and which you agreed to launch. It was online and in legal articles. We also provided it in a Cape York Institute booklet.

Further, on 12 August 2016, in anticipation of the WA Liberal conference at which a motion to reject constitutional recognition was likely to be raised, Noel Pearson emailed all WA Liberal party members about the proposals – including you. Attached to the email was the Cape York Institute booklet, which contained Twomey’s drafting. On Friday 12 August 2016 at 2.42pm the email was sent to [christian.porter.mp@aph.gov.au](mailto:christian.porter.mp@aph.gov.au) via mailchimp. The program indicates the email to you was opened – five times.

Your assertion that the specific proposal was never raised with you is untruthful.

My understanding of your position, as relayed through discussions with myself, Freeman and others, was that you viewed the proposed advisory body amendment as “the least

worst option". This is a very constitutionally conservative observation, and entirely correct. A constitutionally enshrined Indigenous voice of the kind proposed by Twomey would be less legally uncertain than inserting symbolic language into the Constitution. And it would be less legally uncertain than a racial non-discrimination clause. You understood this. While as a constitutional conservative, you would perhaps prefer no constitutional change at all, you indicated willingness to help make it happen, if that's what Indigenous people wanted.

After the Uluru Statement from the Heart, we now know that an Indigenous voice in the Constitution is the only constitutional reform with the backing of Indigenous consensus.

But things seemed to change when Turnbull elevated you to the Social Services Ministry. In November 2016, as explained in my Guardian article, Turnbull let slip to the Referendum Council his opposition to an Indigenous constitutional body. He said it had a "snowflake's chance in hell". Your attitude thus changed too. In my observation, you abandoned support for an Indigenous advisory body in the Constitution, in favour of advancing your career.

In the lead up to the Perth launch of *The Forgotten People* on 23 February 2017, you indicated you no longer wished to be the key launcher at the event. Instead you would just join the discussion panel. You told Freeman this was because your position as a Minister was constraining. We accepted that explanation. If we had misunderstood your support for the proposals in previous meetings, this was your chance to correct the record, tell us you changed your mind, or at least politely withdraw from the event. You didn't.

Instead, without telling us of your change of heart, you turned up at the event and publicly opposed the Indigenous body proposal. You denigrated it in front of the audience, at the launch of the book you had endorsed. Your whole attitude had changed.

I went head to head with you on that panel in defence of the proposal. You raised readily answerable technical concerns that you'd never raised with us before. That evening I said, "Let's work together to refine it, Minister. Don't just reject it. Let's work together to make it work" – the audience applauded my suggestion. You didn't budge.

You said at the launch your preference was for a purely symbolic insertion into the Constitution. This was Turnbull's preference too, as expressed in November 2016 – minimalism. It was a significant change of position on your part.

No genuine constitutional conservative could support the insertion of flowery words into what is fundamentally a rule book. You never told us you supported symbolism in the Constitution before.

In my view, you didn't just sell out Indigenous people by abandoning the Indigenous body proposal. You also sold out your own constitutional conservatism.

You seem to have forgotten Noel Pearson wrote to you after that launch, on 9 March 2017. Was that letter not received, or are you conveniently overlooking it? I attach the correspondence, in which Pearson expressed disappointment at your dishonourable behaviour at the Perth launch. He reminded you that you previously supported the proposal, which is why you were asked to launch the book. Reiterating my comment, Pearson asked you to work with us to refine the proposal rather than simply rejecting it.

You never replied.

Minister, I can understand you are disappointed by my critique of your conveniently changeable views with respect to a constitutionally enshrined Indigenous body. Your letter tells me your conscience is ill at ease.

Your dishonest dismissal of the proposal, like that of Malcolm Turnbull and Tony Abbott, demonstrates how callously politicians treat Indigenous Australians in this country. It shows how Indigenous progress and the national good always come second to the personal and political gain of self-interested politicians.

You are correct: my Guardian article was filled with disappointment and frustration. That is not why I wrote it, however. I wrote it because Australians needed to know about the duplicity of their elected leaders in this matter. The fickleness and lies needed to be called out. The betrayal and injustice was too great to remain silent.

Neither your disappointment nor mine, however, matches the disappointment and sorrow now being expressed by the First Nations, and Australians at large, at the Turnbull government's unfair rejection of this modest proposal for constitutional reform. You are a government Minister. You have power, resources and influence. The First Nations have no such power, influence or resources. They are still the most disadvantaged sector in our society, and they struggle to be heard when Ministers like you make decisions about their lives – decisions like the mandatory detention policies you implemented as Attorney-General of Western Australia, which helped make Indigenous youth incarceration rates in your home state the worst in the country and indeed across the world. If there was proper Indigenous input into those policies, they would likely be improved and outcomes would be better. Indigenous people asked for a voice so they might improve such policies. As Andrew Forrest remarked at the Perth launch – that's "not much to ask".

Minister, it was open to you to stand by your principles as a constitutional conservative, to stand up for Indigenous people, and to stand by your support for an Indigenous body in the Constitution as an "elegant solution" and "the least worst option". You chose to toe Turnbull's minimalist line instead. You hedged your bets, moving from support to opposition according to your calculations concerning your political advancement.

One cannot claim to have the convictions of a constitutional conservative, or even a conservative, without demonstrating a principled willingness to stand by one's convictions. Whatever your long term ambition to lead this country, your leadership was exposed to a basic moral shortcoming in this sorry episode.

Good luck with your conscience. I hope you feel you made the right decision in the end.

I think Australians will agree that you and your government made the wrong one.

Yours sincerely,



Shireen Morris