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8 March 2017

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

Via email: christian.porter.mp@aph.gov.au

Dear Minister,

Thank you for taking the time to participate in the Perth book launch of *The Forgotten People* at the University of Western Australia.

I was, however, disappointed to hear that you expressed opposition to the proposal for a constitutional amendment ensuring the First Peoples of Australia a voice in their affairs – a proposal devised in collaboration with Julian Leaser MP, Professor Greg Craven, Professor Anne Twomey and Damien Freeman.

When you met with Shireen Morris and I at Parliament House on 22 June 2015, you told us that, as a constitutional conservative, you supported our approach, including the approach taken by Professor Twomey to the constitutional drafting.

Almost a year later, at a meeting with Damien Freeman and Shireen Morris on 19 May 2016, and after giving your written endorsement to *The Forgotten People*, you again expressed support for the proposal, which you described as an “elegant solution”.

It was on the basis of your support that you were invited to speak at the Perth book launch, to help build enthusiasm for the ideas in Western Australia. I was therefore disappointed to hear that instead of expressing support, you attempted to publically pick the proposal apart by raising a number of technical concerns, making the case instead for a minimalist model.

This was a significant change of position on your part, which you had not alerted us to. I feel it would have been more honourable to raise these concerns with us in private, so that they could be constructively discussed and addressed, rather than at a public book launch.

In relation to the concerns you raised, they are valid questions which have sensible answers. It should be remembered that Professor Twomey’s drafting was only one example of how the proposal could work. As she made clear, it was intended to facilitate further discussion, not to be a definitive set of words.



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I have no doubt the drafting can be improved upon and refined. As with any proposal for constitutional change, there will be technical concerns. I believe these can be addressed if the parties are willing to work constructively together to seek a noble compromise on this issue. But compromise requires both parties to have open minds. It does not work if Government is not willing to hear Indigenous views on the matter.

As is becoming ever clearer through the regional dialogues, Indigenous Australians do not want a purely symbolic and minimalist amendment. Our people do not buy the idea that a minimalist model (removing s 25, rewording the Race Power to become an Aboriginal and Torres Strait Islander power, and possibly inserting some symbolic words) amounts to meaningful constitutional reform that will ensure them fairer treatment.

Our people do not seek a mere “mention” in the Constitution, in the same way inanimate objects like lighthouses are mentioned. We seek fairer constitutional rules in relation to our people, to improve the way the nation does business in Indigenous affairs. This is not an ambitious objective, but a completely sensible one. Any constitutional reform should improve the systems governing our nation – otherwise why contemplate constitutional reform at all?

Indeed, I am surprised a respected constitutional conservative such as yourself could support a change to the Constitution which operatively changes nothing. An amendment intended to change nothing is, as you would know, ripe for High Court implied change. A change that has a clear and intended practical consequence, and which omits uncertain symbolic words, leaves far less room for High Court creativity.

This is the logic underpinning the proposed symbolic Declaration outside the Constitution, together with a modest, practical and non-justiciable amendment within the Constitution, requiring Parliament to establish an Indigenous advisory body.

As Andrew Forrest said at the event, it is not asking much to consult with Indigenous people. Indigenous people should be guaranteed a voice in laws made about them.

Despite the opposition expressed, in Perth you still described this proposal as an “elegant solution”. I think you still see the intellectual merit in this approach. My guess is that your change of heart is more political than intellectual.

I urge you to keep an open mind on the politics, for you as a Minister, can influence the political situation with your respected leadership. I urge you not to lose hope that an intellectually robust compromise may yet be achieved – one which gives Indigenous people the practical reform they seek, which upholds the Constitution, and which is capable of passing the onerous test of a double majority referendum.



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Intellectual elegance is the first step. Practical workability is the second. The proposal can now be improved and refined. If the parties work together, we can bring this elegant solution into practically workable fruition.

We stand ready to work with you on this, if you are willing.

Yours sincerely,

Noel Pearson