

## BOARD PAPER

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### **Executive Summary:**

By publicly supporting the Uluru Statement ACC Australia will be supporting Constitutional recognition of Australia's first peoples. This furthers the association's goals of supporting equality, racial justice and social responsibility.

### **Background**

#### **What is the Uluru Statement?**

The Uluru Statement from the Heart was released on 26 May 2017 by delegates of the Aboriginal and Torres Strait Islander Referendum Convention, a convention process that was established with bipartisan support. The statement calls for three things, in sequence:

1. Voice - Enshrining a First Nation's Voice in the Constitution;
2. Treaty - A Makarrata Commission to supervise agreement or treaty making; and then;
3. Truth - the Makarrata Commission to oversee a process of truth telling for the nation.

This is laid out in the Uluru Statement:

*We seek constitutional reforms to empower our people and take a rightful place in our own country. When we have power over our destiny our children will flourish. They will walk in two worlds and their culture will be a gift to their country.*

*We call for the establishment of a First Nations Voice enshrined in the Constitution. Makarrata is the culmination of our agenda: the coming together after a struggle. It captures our aspirations for a fair and truthful relationship with the people of Australia and a better future for our children based on justice and self-determination.*

*We seek a Makarrata Commission to supervise a process of agreement-making between governments and First Nations and truth-telling about our history.*

The full statement is available at <https://fromtheheart.com.au/uluru-statement/the-statement/>

#### **Why is a First Nation's Voice in the Constitution needed?**

Aboriginal and Torres Strait Islands people were not considered people by the Australian founding fathers, a treatment that was not remedied until the 1967 referendum which amended the Constitution to include them as citizens of Australia. However, the "Race Power" of section 51 grants federal parliament the right to make laws specifically about them, based on their race. There is no mechanism to ensure that these decisions and laws consider the perspectives and needs of the very people about whom they are made. While First Nations

representative bodies have been established by various federal governments, they have always been abandoned or repealed as political shifts have occurred, accordingly it is critical that this voice be enshrined in the Constitution.

The principle that Indigenous people be given a voice is found at Article 18 of the UN Declaration on the Rights of indigenous People, which was adopted by Australia in 2009:

*Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.*

The Uluru Statement does not set out a model for the voice, as that would be provided in the referendum (in direct consultation with First Nations people) and detailed in legislation after the high-level Constitutional amendment is enacted.

#### **What is a Makarrata Commission and how would it operate?**

Makarrata is a Yolnu for “coming together after a struggle.” The Makarrata Commission would be a means for striking federal agreements and treaties and would have a second role in truth telling, much like the process of the inquiries, investigations and hearings that culminated in the apology to the Stolen Generations in 2008.

#### **Why should ACC Australia support this?**

The Leading Environmental and Social Sustainability (LESS) and the Diversity Equality and Inclusion (DEI) subcommittees support this resolution. The LESS and DEI committees are helping our members to lead in terms of their company’s and organisation’s social responsibilities. This is a role that lawyers are well positioned to advocate for and one that will benefit their employer. **It is no longer enough, (it likely never was enough), for in-house counsel to simply answer legal questions. To do their jobs optimally they must take a broad approach which considers societal impact. No consideration of impact on Australian society can omit the impact on our First Nations people.**

Many of our member companies and organisations are already supporting the Uluru Statement (<https://ulurustatement.org/our-support>) as does the Australian Bar Association and the Law Council of Australia. Accordingly, while there might be a small minority of members that would not support this initiative, there is little risk of alienating our membership by taking this position.

Supporting this statement is consistent with the goals of and principles on which ACC operates. In her June 2, 2020 statement following the death of George Floyd, Veta Richardson, our President and CEO, stated:

*To help bridge that divide, ACC joins with leaders in the corporate and legal communities worldwide to affirm with one voice that social injustice and inequality cannot and must not be tolerated. We must also*



*make clear that any kind of discrimination, be it race, ethnicity, age, gender, sexual orientation, religion, or disability, has no place among supporters of a free and democratic society.*

*In the days ahead, we will work with our members and partners to establish opportunities for the in-house community to discuss and develop best practices and resources to promote racial understanding and diversity.*

This is our opportunity in Australia to take a step forward to support and remedy injustice and develop a best practice for our members.