

Indigenous constitutional recognition faces tough battle post Uluru

The final report from the meeting of more than 250 Aboriginal and Torres Strait Islander delegates is only the start to any referendum or treaty



East Arnhem Land dancers at the opening ceremony for the Uluru constitutional convention in May. Photograph: Lucy Hughes Jones/AAP

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The Referendum Council handed its final report to the prime minister, Malcolm Turnbull, and the opposition leader, Bill Shorten, on Friday afternoon but the real battle will begin weeks later when its authors must convince the Australian public, both Indigenous and non-Indigenous, of the case for constitutional reform.

The report is intended to detail proposals put forward in the Uluru statement, which was drafted and agreed upon by a meeting of more than 250 Aboriginal and Torres Strait Islander delegates at a meeting at Uluru last month.

The Uluru statement contained a contention and two proposals: that Aboriginal and Torres Strait Islander people never ceded sovereignty over what is now Australia; that Indigenous people should be given a constitutionally enshrined voice to parliament; and that a Makarrata commission, using the Yolngu word for coming together after a struggle, should be established to perform the role of a truth and justice commission, and to explore options for a national agreement.

The exact shape of that voice to parliament, its roles and functions, and the fate of other proposed constitutional reforms, like removing or modifying the power to make laws for specific races of people, will be detailed in the final report.

It is then up to parliament to decide whether to hold a referendum to amend the constitution to include the proposed changes and decide what form the referendum question should take. Some proposals, like establishing a Makarrata commission and even negotiating a treaty, do not require constitutional change.

Requiring unanimity from Indigenous groups is a sure-fire way to avoid having to do anything Prof Kevin Washburn

The one-page Uluru statement was supported by all but seven of the more than 250 Aboriginal and Torres Strait Islander delegates at Uluru, who called for unity under the banner “One voice Uluru”.

But it instantly drew the ire of conservative columnists, politicians and thinktanks, who argued it was radical and divisive; a number of Aboriginal and Torres Strait Islander people, who said it was weak and amounted to ceding sovereignty; and Indigenous MPs, who argued it ought not disregard proposals like a constitutional preamble recognising Indigenous Australians.

Last week, a number of Aboriginal and Torres Strait Islander people opposed to or excluded from the Uluru meeting gathered at the Aboriginal Tent Embassy in Canberra, saying the Uluru statement is a meaningless proposal.

The expectation that Indigenous people would speak with one voice could be a problem, said Prof Kevin Washburn, a Cherokee man and adviser to former US president Barack Obama on native American affairs.

On a recent visit to Australia, Washburn told Guardian Australia that indigenous peoples around the globe had more diversity in language, culture and needs within countries than their non-indigenous countrymen, and it was unrealistic to expect total agreement.

“Requiring unanimity from Indigenous groups is a sure-fire way to avoid having to do anything, because that will never happen,” he said.

When the final report is publicly released by Turnbull in the coming weeks, the criticism is likely to get louder as it reflects underlying conflicts both between Indigenous and non-Indigenous peoples and within Indigenous communities around issues of treaty, sovereignty and power.

Tasmanian Aboriginal lawyer Michael Mansell, who was one of the delegates at Uluru, said criticism from conservatives was inevitable and unavoidable, and urged Aboriginal and Torres Strait Islander people to be pragmatic in their demands to government.

Mansell’s own model for a treaty settlement goes beyond any proposals put forward by the Referendum Council, including a return of all crown lands that do not host vital

community infrastructure, a 3% share of GDP to control Indigenous affairs – about 100 times more than is allocated to Indigenous-specific programs in the budget – and seats in parliament.

There is no suggestion such a proposal has been put forward in the final report and Cape York leader Noel Pearson, who put forward the voice-to-parliament proposal, has said it would not involve designated Indigenous seats in parliament.

“It’s a voice to the parliament rather than a voice in the parliament,” he told ABC’s Q&A.

Mansell said it would be a disappointing result for some Indigenous people and was “likely to be attacked by non-Indigenous Australians”.

“That’s why the expectations are going to be shelved,” he said. “People think a treaty is a panacea for all of the ills we have suffered. It’s not. It’s very much a compromise.

“A treaty is going to have to accept that all of the institutions in Australia remain intact. The lifestyles, the houses of 24 million Australians are unchanged.”

Completing the report was the last act of the Referendum Council, which disbanded on Friday and passed the task of lobbying for the proposed reforms to a working group of 29 people elected from the Uluru delegates.

The task of coordinating that group has fallen to Thomas Mayor, a Torres Strait man whose organisational skills as Northern Territory branch secretary of the Maritime Union will be put to use wrangling with meetings across three time zones.

The working group also hasn’t seen the Referendum Council’s report and members will consult their own communities before deciding whether to give it their public support.

Mansell urged people to remain focused on the result, even if it meant that important points, like a concession from the Australian government that Aboriginal and Torres Strait Islander people retained sovereignty, were not won.

“We need power, we need land, we need a sense of justice, we need self-determination,” he said. “People like me are less concerned about the symbolic gesture or the acknowledgement than about actually getting the return.”