

# President's National Ministers' Conference Darwin – 29 June 2017

## Paper 3 The Doctrine of Discovery Pastor Ray Minniecon







# The Big Questions

**Who gave the British permission to invade our land?**

**Was God angry with us mob and therefore used this boatload of criminals to punish us?**

**Why is God allowing these people to commit these injustices upon us with such impunity which continue to destroy my people?**

# Five Propositions about the Bible from an Indigenous perspective

1. Invaded nations usually are forced to take on the values, culture and religion of their invaders.
2. The Bible and the Koran has been used as the instrument to justify the divine authority necessary to invade another country or territory.
3. The Bible and the Koran provides the impetus for nation building and re-building.
4. As an institution, The Church is one of the oldest, resilient and sustainable institutions on the planet.
5. One of the attractions of the Bible as narrative, is the observation that the narrative is told from the perspective of the poor, the victims, outcasts, marginalised, dispossessed. Not from the victors or conquerors viewpoint.

# Overview

1. Biblical Context.
2. International Context
3. Australian Context

# **Deuteronomy 32:7-8**

**Remember the days of old; consider the generations long past. Ask your father and he will tell you, your elders, and they will explain to you. When the Most High gave the nations their inheritance, when he divided all mankind, he set up boundaries for the peoples according to the number of the sons of Israel**

# **The Mabo Decision**

**To understand the Doctrine of Discovery: Two decisions:**

**1. Mabo Decision. 1992**

**2. Marshall Decision. 1834 (USA)**

# Marshall Decision 1823

Marshall based the decision on the “Discovery Doctrine,” referring to the way colonial powers laid claim to newly discovered land: in other words, title to the land lay with its discoverer. In *Johnson v. McIntosh* and other cases, the doctrine had the effect of ignoring aboriginal land possession. Piankeshaw Indians, sold some land to Thomas Johnson.

Supreme Court under Chief Justice John Marshall upholds the McIntosh family’s ownership of land purchased from the federal government. It reasons that since the federal government now controls the land, the Indians have only a “right of occupancy” and hold no title to the land. Other cases in the “Marshall Trilogy” are *Cherokee Nation v. Georgia* (1831) and *Worcester v. Georgia* (1832).



# Extract from The Plaintiff's Argument (1988)

1.

Since time immemorial the said laws, customs, traditions and practices of the Miriam people have included rights to land on the said Islands and rights to sea and sea beds extending to the fringing reefs surrounding the said Islands, and to the Great Barrier Reef, and the rights to the fringing reefs surrounding the said Islands and to the Great Barrier Reef.

# Extract from The Plaintiff's Argument (1988)

2.

According to the said laws, customs, traditions and practices since time immemorial, the Plaintiffs and their predecessors in title have owned and have had rights in, and the Plaintiffs continue to own and have rights in, particular areas of land on the said Islands and particular parts of the surrounding sea and seabeds and surrounding reefs. Further, the Plaintiffs and their predecessors in title have continued without interruption to enjoy the ownership, use and occupation of such land, surrounding sea, seabeds and reefs and to have questions decided concerning the same, in accordance with the laws, customs, traditions and practices of the Miriam people."

# The Order of the High Court (1992)

1. In lieu of answering the questions reserved for the consideration of the Full Court,

**declare that the land in the Murray Islands is not Crown land** within the meaning of that term in s. 5 of the Land Act 1962 (Q.);



# The Order of the High Court (1992)

2. putting to one side the Islands of Dauer and Waier and the parcel of land leased to the Trustees of the Australian Board of Missions and those parcels of land (if any) which have validly been appropriated for use for administrative purposes the use of which is inconsistent with the continued enjoyment of the rights and privileges of the Meriam people under native title, **declare that the Meriam people are entitled as against the whole world to possession, occupation, use and enjoyment of the lands of the Murray Islands;**

# The Order of the High Court (1992)

3. declare that the title of the Meriam people is subject to the power of the Parliament of Queensland and the power of the Governor in Council of Queensland to extinguish that title by valid exercise of their respective powers, provided any exercise of those powers is not inconsistent with the laws of the Commonwealth.

# The Order of the High Court (1992)

**Possession,  
Occupation,  
Use and Enjoyment .**



# NATIVE TITLE ACT 1993 - SECT 223

Native title. Common law rights and interests

(1) The expression native title or native title rights and interests means the communal, group or individual rights and interests of Aboriginal peoples or Torres Strait Islanders in relation to land or waters, where:

(a) the rights and interests are possessed under the traditional laws acknowledged, and the traditional customs observed, by the Aboriginal peoples or Torres Strait Islanders; and

(b) the Aboriginal peoples or Torres Strait Islanders, by those laws and customs, have a connection with the land or waters; and

(c) the rights and interests are recognised by the common law of Australia.

# **NATIVE TITLE ACT 1993 – Meaning?**

**Validation? Recognition? Protection of Entitlement of Native Title Rights?**

**vs**

**Extinguishments?**

# The *Wik Peoples v The State of Queensland* 1996

- In *The Wik Peoples v The State of Queensland & Ors; The Thayorre People v The State of Queensland & Ors* [1996], the High Court held that native title rights could coexist on land held by pastoral leaseholders. The High Court decided that:
- a pastoral lease does not necessarily confer rights of exclusive possession on the pastoralist
- the rights and obligations of the pastoralist depend on the terms of the lease and the law under which it was granted
- the mere grant of a pastoral lease does not necessarily extinguish any remaining native title rights
- if there is any inconsistency between the rights of the native title holders and the rights of the pastoralist, the rights of the native title holders must yield.
- So if there is a conflict of rights, the native title holders come off second best. If there is no conflict, the rights of each co-exist.



# HOWARD'S TEN POINT PLAN

## 1. Validation of acts/grants

## 2. Extinguishment of Native Title on "exclusive" tenures

## 3. Government services

## 4. Native Title and pastoral lease

Native Title rights over land held under agricultural and pastoral leases would be permanently extinguished if they interfere with the rights of the leaseholder.

## 5. Statutory access rights

## 6. Future mining

- the registration "test" for a Native Title claim would be more difficult
- there would be no negotiations over mining exploration

## 8. Water resources and airspace

## 9. Management of claims

## 10. Agreements

- Measures would be introduced to encourage the negotiation of voluntary but binding agreements as an alternative to formal Native Title agreements.

# QLD CONSTITUTION ACT 2001 - SECT 69

## Lands

(1) The *Constitution Act 1867*, section 30 gives the Parliament law-making power in relation to ***the waste lands of the Crown in Queensland.***

# Section 5 Land Act Qld 1962

**On and from the commencement of this Act all lands which were granted by the Governor in Council, in the name of Her Majesty, in fee-simple subject to the reservation in favour of the Crown that:-**

*"We do hereby reserve unto us, Our Heirs and Successors, all such parts and so much of the said land as may hereafter be required for making Public Ways, Canals, or Railroads, in, over, and through the same, to be set out by Our Governor for the time being of Our said Territory, or some person by him authorised in that respect; and also, all Sand, Clay, Stone, Gravel, and indigenous Timber, and all other materials, the natural produce of the said land which may be required at any time or times hereafter for the construction and repair of any Public Ways, Bridges, Canals, and Railroads, or any Fences, Embankments, Dams, Sewers, or Drains necessary for the same, together with the right of taking and removing all such materials; and we do hereby further reserve unto Us, our Heirs and Successors, the right of full and free ingress, egress, and regress, into, out of, and upon the said land, for the several purposes aforesaid, "*

shall be and are hereby discharged from such reservation.

The Registrar of Titles is hereby empowered to make any necessary entries or endorsements in the register books, as he deems fit, and to do and execute all such other acts, matters and things as he may deem necessary and proper to record the discharge from any deed of grant or certificate of title of such reservation.



# Terra Nullius.

- **Terra nullius (plural terrae nullius) is a Latin legal phrase deriving from Roman Law, meaning "nobody's land"**
- **Terra nullius is derived from the 1095 (922 years ago) Papal Bull, Terra Nullius, of Pope Urban II, which allowed Christian European states to claim land inhabited by non-Christians.**

# Terra Nullius.

**William Blackstone, 1765: "Colonies ... are either such where the lands are claimed by right of occupancy only, by finding them desert and uncultivated, and peopling them from the mother country; or where, when already cultivated, they have either been gained by conquest, or ceded to us by treaties. And both these rights are founded upon the law of nature, or at least upon that of nations."**

# Doctrine of Terra Nullius

## Australian experience

*In 1770 Captain James Cook landed in Botany Bay, home of the Eora people. He sailed up the East Coast. Claimed possession of the East Coast of Australia for King George III on Possession Island Wednesday 22<sup>nd</sup> August 1770, just before sunset, under the doctrine of 'terra nullius'*

# James Cook 1770

- *“Notwithstand[ing] I had in the Name of His Majesty taken possession of several places upon this coast, I now once more hoisted English Coulers and in the Name of His Majesty King George the Third took possession of the whole Eastern Coast*
- *. . . by the name New South Wales, together with all the Bays, Harbours Rivers and Islands situate upon the said coast, after which we fired three Volleys of small Arms which were Answerd by the like number from the Ship.”*



# James Cook 1770

**We became British subjects and property of the Crown overnight without our knowledge and permission, or prior informed consent.**

# Doctrine of Terra Nullius

**In International Law it is used to describe territory which has never been subject to the sovereignty of any state, or over which any prior sovereign has expressly or implicitly relinquished sovereignty.**

**Sovereignty over territory which is *terra nullius* may be acquired by occupation, (peaceful settlement) though in some cases doing so would violate an international law or treaty.**

# DOCTRINE OF DISCOVERY

The United Nations Permanent Forum on Indigenous Issues noted that the Doctrine of Discovery ***“was the foundation of the violation of their [Indigenous peoples] human rights.”***

# IMPACTS

## DOCTRINE OF DISCOVERY

Theologically and politically, the Doctrine of Discovery provided the spiritual rationale and political authority for European nations to:

- Conquer non-Christian lands
- Confiscate other nation's lands,
- Treat indigenous peoples as animals;
- Provide no (European) title to the land on which they lived.
- Justified removing our children.
- Justified Killing and committing genocide.



DOCTRINE OF DISCOVERY

AUSTRALIA'S  
FIRST NATIONS IMPACT  
AND EXPERIENCE

Author: Pastor Ray Minniecon

# The Affects of the Doctrine of Discovery

- **Affects First Nations Peoples people worldwide to this day**
- **Lost sovereignty.** The Doctrine's assumption about who is sovereign underpins the imposition of policies on Aboriginal peoples that they reject.
- **Loss of human rights.** Aboriginal peoples' human rights are less protected. For example, [there is no Aboriginal jurisdiction](#) over crimes committed on their lands by non-Aboriginal people.
- **No recognition as a nation.** Under the Doctrine Aboriginal peoples have a diminished and impermanent status which is contrary to the right of Aboriginal peoples to sustain themselves in perpetuity as distinct peoples, a right affirmed in the UN Declaration on the Rights of Indigenous Peoples.
- **No treaties.** The Doctrine considers Aboriginal people as only "occupying" but not owning the land. This is a barrier to [negotiating treaties](#) which, in the USA are the highest law of the land, equal to the constitution and made between sovereign states.
- **No self-determination.** [Self-determination of Aboriginal peoples](#) brings them into conflict with governments and corporations that rely on the legal lineage of the Doctrine to assert claims to natural resources, such as coal, oil, uranium, other minerals, natural gas and water.

# DOCTRINE OF DISCOVERY

## The Australian Impact:

- Excessive poverty,
- High teenage suicides,
- High Alcohol and other drug usage.
- Extreme incidences of Type II diabetes,
- High unemployment rates.
- High imprisonment rates
- Decrease in communal living,
- Domestic and family violence.
- Racism.
- Non recognition of sovereignty.

# Papal Edict: Dum Diversas. (Extract)

Given in Rome at St. Peter, in the year of the Incarnation of the Lord  
1452 on June 18th, in the sixth year of our Pontificate. Posted by  
Boniface at 9:19 PM



# Papal Edict: Dum Diversas. (Extract)

To the dearest son in Christ Alfonse, illustrious King of Portugal and the  
Algerians, Greetings and Apostolic Blessing

# Papal Edict: Dum Diversas. (Extract)

...you intend to subjugate the enemies of Christ, namely the Saracens, and bring [them] back, with powerful arm, to the faith of Christ, if the authority of Apostolic See supported you in this...

...those rising against the Catholic faith and struggling to extinguish Christian Religion must be resisted by the faithful of Christ with courage and firmness,

# Papal Edict: Dum Diversas. (Extract)

Your Royal Majesty in the most sacred intention of this kind, we grant to you full and free power, through the Apostolic authority by this edict, to invade, conquer, fight, subjugate the Saracens and pagans, and other infidels and other enemies of Christ.....

..... we grant, by the power of your sacrifice, a plenary forgiveness of all and individual sins, crimes, trespasses, and digressions....

# Papal Edict: Dum Diversas. (Extract)

..those departed from this world, we restore you and those accompanying you, remaining in sincerity and unity, through the present letter, to pure innocence in which you and they existed after baptism..



Papal Edict: Dum Diversas.

An extract on how Spain  
interpreted the Pope's edict in  
Southern Americas.

# The Spanish Requerimiento

## *An Excerpt*

*Of all these nations God our Lord gave charge to one man, called St. Peter, that he should be Lord and Superior of all the men in the world, that all should obey him, and that he should be the head of the whole*

*“One of these Pontiffs, who succeeded that St. Peter as Lord of the world, in the dignity and seat which I have before mentioned, made donation of these isles and Tierra-firme to the aforesaid King and Queen and to their successors, our lords.”*

*“So their Highnesses are kings and lords of these islands and land of Tierra-firme by virtue of this donation.”*

*“If you do not do this, and maliciously make delay in it, I certify to you that, with the help of God, we shall powerfully enter into your country, and shall make war against you in all ways and manners that we can, and shall subject you to the yoke and obedience of the Church and of their Highnesses.”*

Biblical Basis of the Papal Decrees And  
The Doctrine of Discovery

**Matthew 16:18**

***And I tell you, you are Peter, and on this rock I will build My church,  
and the gates of Hades shall not overpower it.***

# Treaty Now

Author: Pastor Ray Minniecon



# Treaty Cautionary Insights

1. Marshall Decision: Piankeshaw. (*Johnson v. McIntosh* in 1823)
2. Cherokee Nation

# The Treaty of Holston 1792.

## Between Cherokee and US Govt.

- This treaty mentions the following:
- Establishment of perpetual peace and friendship between the two peoples.
- Cherokees acknowledge protection of United States.
- [Prisoners of war](#) to be returned.
- Boundaries established between the Cherokee lands and the United States.
- Stipulation of a road by the United States.
- United States to regulate trade.
- Guarantees by the United States that the lands of the Cherokee people have not been ceded to the United States.
- No U.S. citizens may settle within the Cherokee lands; those who do may be punished by the Cherokee.
- No U.S. citizens may hunt within the Cherokee lands.
- The Cherokee must deliver up criminals to the United States.
- U.S. citizens committing [crimes](#) within the Cherokee areas are to be punished.
- Retaliation restrained by both nations.
- Cherokees to give notice of pending attacks by other tribes against the United States.
- United States to make presents to the Cherokees for the promotion of having the Cherokees take up an agrarian culture.
- Both peoples to cease any animosities held against each other.

# Trail of Broken Treaties

## Trail of Tears

Treaty lasted 46 years

The Cherokee Nation removal occurred in 1838.

Approximately 2,000-6,000 of the 16,543 relocated Cherokee perished along the way

# Treaty Now (Australia)

1. Beads and trinkets.
2. On 1 May 1835 Batman....asked for the draft of a treaty with the Port Phillip natives. (He was a merchant)
3. In February 2016, Aboriginal people in Victoria called on the Victorian Government to negotiate a treaty.
4. “I believe Treaty presents a significant opportunity for Aboriginal South Australians”. **Dr Roger Thomas** Treaty Commissioner. April 2017.
5. Treaty of Union between Sovereign First Nations of the Murray-Darling Basin.

# Treaty Now

1. *On 3 August 2013 in Dirranbandi, Queensland, a meeting of key Euahlayi family members and Elders concluded that a letter be forwarded to Her Majesty Queen Elizabeth II, informing her that the People of the Euahlayi have asserted their pre-existing and continuing Statehood.*
2. The Sovereign Yidindji Government, whose lands stretch south of Port Douglas, through Cairns, inland across the Atherton Tablelands.
3. Yolngu Nation Building.
4. Uluru: (1) Treaty commission? (2) Truth and Reconciliation commission?



# Where to from here? Personal Reflections

1. Suzerain arrangement? (a sovereign or state having some control over another state that is internally autonomous.)
2. International Treaty arrangement?
3. What are we voting for?
4. Declaration of independence?
5. Aboriginal Republic?
6. Act of Supremacy? (see next slide)
7. Entrism Sui Generis.
8. Surrender?

# Act of Supremacy 1554

Elizabeth declared herself Supreme Governor of the Church of England, and instituted an Oath of Supremacy, requiring anyone taking public or church office to swear allegiance to the monarch as head of the Church and state.

# Remember Naboth

## 1 Kings 21:3

**“The Lord forbid that I should give you the inheritance of my ancestors.”**

# Constitutional Recognition

Author: Pastor Ray Minniecon

# South Africa Constitution 1996

## PREAMBLE

*We, the people of South Africa,  
Recognise the injustices of our past; Honour those who suffered for justice and freedom in our land; Respect those who have worked to build and develop our country, and  
Believe that South Africa belongs to all who live in it, united in our diversity.  
We therefore, through our freely elected representatives, adopt this Constitution as the supreme law of the Republic so as to -*

*Heal the divisions of the past and establish a society based on democratic values, social justice and fundamental human rights;  
Lay the foundations for a democratic and open society in which government is based on the will of the people and every citizen is equally protected by law;*

*Improve the quality of life of all citizens and free the potential of each person; and  
Build a united and democratic South Africa able to take its rightful place as a sovereign state in the family of nations.*



# Switzerland Constitution 1999

## Preamble

In the name of Almighty God!

The Swiss People and the Cantons, mindful of their responsibility towards creation, resolved to renew their alliance so as to strengthen liberty, democracy, independence and peace in a spirit of solidarity and openness towards the world, determined to live together with mutual consideration and respect for their diversity,

conscious of their common achievements and their responsibility towards future generations, and in the knowledge that only those who use their freedom remain free, and that the strength of a people is measured by the well-being of its weakest members; adopt the following Constitution<sup>1</sup>:

# Australian Constitution 1901: Preamble

## **Commonwealth of Australia Constitution Act**

### **An Act to constitute the Commonwealth of Australia**

[9th July 1900]

WHEREAS the people of **New South Wales, Victoria, South Australia, Queensland, and Tasmania**, humbly relying on the blessing of Almighty God, have agreed to unite in one indissoluble Federal Commonwealth under the Crown of the United Kingdom of Great Britain and Ireland, and under the Constitution hereby established:

And whereas it is expedient to provide for the admission into the Commonwealth of other Australasian Colonies and possessions of the Queen:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

# Powers of the Constitution

## Chapter I—The Parliament

### Part I—General

#### 1. Legislative power

The legislative power of the Commonwealth shall be vested in a Federal Parliament, which shall consist of the **Queen, a Senate, and a House of Representatives**, and which is hereinafter called *The Parliament, or The Parliament of the Commonwealth*.

#### 2. Governor-General

A Governor-General appointed by the Queen shall be Her Majesty's representative in the Commonwealth, and shall have and may exercise in the Commonwealth during the Queen's pleasure, but subject to this Constitution, such powers and functions of the Queen as Her Majesty may be pleased to assign to him.

# Australian Constitution

## 1. Short title

This Act may be cited as the Commonwealth of Australia Constitution Act.

***2. The provisions of this Act referring to the Queen shall extend to Her Majesty's heirs and successors in the sovereignty of the United Kingdom.***

# Australian Constitution Missing piece

**“We the people”**

**Is it pure democracy?**

**Our creator**



# Australian Constitution Missing piece?

**A few international examples.**

**Switzerland.**

**South Africa.**

# Switzerland Constitution 1999

## Preamble

In the name of Almighty God!

The Swiss People and the Cantons, mindful of their responsibility towards creation, resolved to renew their alliance so as to strengthen liberty, democracy, independence and peace in a spirit of solidarity and openness towards the world, determined to live together with mutual consideration and respect for their diversity,

conscious of their common achievements and their responsibility towards future generations, and in the knowledge that only those who use their freedom remain free, and that the strength of a people is measured by the well-being of its weakest members; adopt the following Constitution<sup>1</sup>:

# South Africa Constitution 1996

## PREAMBLE

*We, the people of South Africa,  
Recognise the injustices of our past; Honour those who suffered for justice and freedom in our land; Respect those who have worked to build and develop our country, and  
Believe that South Africa belongs to all who live in it, united in our diversity.  
We therefore, through our freely elected representatives, adopt this Constitution as the supreme law of the Republic so as to -*

*Heal the divisions of the past and establish a society based on democratic values, social justice and fundamental human rights;  
Lay the foundations for a democratic and open society in which government is based on the will of the people and every citizen is equally protected by law;*

*Improve the quality of life of all citizens and free the potential of each person; and  
Build a united and democratic South Africa able to take its rightful place as a sovereign state in the family of nations.*

# **Recommended Constitutional Change**

Author: Pastor Ray Minniecon

# Two Section With Race Powers

**Section: 25. Provisions as to races disqualified from voting.**

***For the purposes of the last section, if by the law of any State all persons of any race are disqualified from voting at elections for the more numerous House of the Parliament of the State, then, in reckoning the number of the people of the State or of the Commonwealth, persons of that race resident in that State shall not be counted.***



# Section 51: 26 (1900)

- *(xxvi)*
- ***The people of any race, other than the aboriginal race in any State, for whom it is deemed necessary to make special laws:***

# Section 127 (1900)

**Aborigines not to be counted in reckoning population.**

***In reckoning the numbers of the people of the Commonwealth, or of a State or other part of the Commonwealth, aboriginal natives shall not be counted.***

# Constitutional Recognition

- **Remove** Section 25 – which says the States can ban people from voting based on their race;
- **Remove** section 51(xxvi) – which can be used to pass laws that discriminate against people based on their race;

# Constitutional Recognition

- **Insert** a new section 51A – to recognise Aboriginal and Torres Strait Islander peoples and to preserve the Australian Government’s ability to pass laws for the benefit of Aboriginal and Torres Strait Islander peoples;

# Constitutional Recognition

- **Insert** a new section 116A, banning racial discrimination by government; and
- **Insert** a new section 127A, recognising Aboriginal and Torres Strait Islander languages were this country's first tongues, while confirming that English is Australia's national language.



# QLD Constitutional Recognition (2001)

## Preamble

**The people of Queensland, free and equal citizens of Australia**

**(a) intend through this Constitution to foster the peace, welfare and good government of Queensland; and**

**(b) adopt the principle of the sovereignty of the people, under the rule of law, and the system of representative and responsible government, prescribed by this Constitution; and**

# QLD Constitutional Recognition (2011)

## Preamble

**(c) honour the Aboriginal peoples and Torres Strait Islander peoples, the First Australians, whose lands, winds and waters we all now share; and pay tribute to their unique values, and their ancient and enduring cultures, which deepen and enrich the life of our community; and**

**(d) determine to protect our unique environment; and**

**(e) acknowledge the achievements of our forebears, coming from many backgrounds, who together faced and overcame adversity and injustice, and whose efforts bequeathed to us, and future generations, a realistic opportunity to strive for social harmony; and**

**(f) resolve, in this the 150th anniversary year of the establishment of Queensland,**

# QLD CONSTITUTION ACT 1867 - SECT 30

30 Legislature empowered to make laws regulating sale and other disposal of waste lands

*Subject to the provisions contained in the Imperial Act of the 18th and 19th Victoria chapter 54 and of an Act of the 18th and 19th years of Her Majesty entitled An Act to repeal the Acts of Parliament now in force respecting the Disposal of the Waste Lands of the Crown in Her Majesty's Australian Colonies and to make other provisions in lieu thereof which concern the maintenance of existing contracts it shall be lawful for the legislature of this State to make laws for regulating the sale letting disposal and occupation of the waste lands of the Crown within the said State.*

# QLD CONSTITUTION ACT 2001 – SECT 69

## Lands

(1) The *Constitution Act 1867*, section 30 gives the Parliament law-making power in relation to ***the waste lands of the Crown in Queensland.***

# NSW Constitutional Recognition (2011)

## Preamble

- 1) Parliament, on behalf of the people of New South Wales, acknowledges and honours the Aboriginal people as the State's first people and nations.**
- (2) Parliament, on behalf of the people of New South Wales, recognises that Aboriginal people, as the traditional custodians and occupants of the land in New South Wales:**
  - (a) have a spiritual, social, cultural and economic relationship with their traditional lands and waters, and**
  - (b) have made and continue to make a unique and lasting contribution to the identity of the State.**
- (3) Nothing in this section creates any legal right or liability, or gives rise to or affects any civil cause of action or right to review an administrative action, or affects the interpretation of any Act or law in force in New South Wales.**



# REASONS FOR SUPPORTING CONSTITUTIONAL CHANGE

The most common reasons for supporting constitutional recognition of Aboriginal and Torres Strait Islander peoples are that:

**The unique status of Aboriginal and Torres Strait Islanders as the 'First Australians' should be enshrined in our nation's founding legal document**

**The Constitution should be amended to ensure the equality of all Australians, and to remove potentially discriminatory clauses**

# **(Cont.,) REASONS FOR SUPPORTING CONSTITUTIONAL CHANGE**

**Constitutional recognition is well overdue and will more accurately reflect Australia's national identity**

**Constitutional recognition is important for recognising Aboriginal and Torres Strait Islander peoples as custodians of the world's oldest continuing culture, and is needed to protect Indigenous heritage, cultures and languages**

**Constitutional recognition will go some way to redressing past wrongs and improving relations between Indigenous and non-Indigenous Australians.**

# REASONS FOR Not supporting constitutional recognition

**The most common reasons for not supporting constitutional recognition are that:**

**All Australians should be treated equally and no one race should be given special treatment**

**Constitutional change is not necessary because the rights of Aboriginal and Torres Strait Islander peoples are already adequately protected**

**Constitutional recognition will not result in any real change for Aboriginal and Torres Strait Islander peoples**

**Constitutional recognition may involve incorporating Aboriginal and Torres Strait Islander peoples, who never ceded their sovereignty, into Westminster systems.**

The Uniting Church and Treaty

# Covenant Documents

# Uniting Church Australia

## Preamble

- The Uniting Church in Australia was formed on 22 June, 1977 by the union of the Congregational Union of Australia, the Methodist Church of Australasia and the Presbyterian Church of Australia after the approval of “The Basis of Union” by the Councils and Courts of those three churches, guided by the belief that they had been called by God into this union.
- The Church in accordance with the Basis of Union accepts that the responsibility for government in the Church belongs to the people of God by virtue of the gifts and tasks which God has laid upon them and so organises its life that locally, regionally and nationally, government is entrusted to representatives, men and women, bearing gifts and graces, with which God has endowed them for the building up of God’s Church and that therefore the Church shall be governed by a series of inter-related councils, each of which has its tasks and responsibilities in relation to the Church and the world.
- ***The Church in accordance with the Basis of Union acknowledges that the demand of the Gospel, the response of the Church to the Gospel and the discipline which it requires are partly expressed in the formulation by the Church of its law, the aim of which is to confess God’s will for the life of Christ’s Church. As the Church believes God guided it into union so it believes that God is calling it to continually seek a renewal of its life as a community of First Peoples and of Second Peoples from many lands, and as part of that to***
- RECOGNISE THAT



# Uniting Church Australia Preamble

- 1. When the churches that formed the Uniting Church arrived in Australia as part of the process of colonisation they entered a land that had been created and sustained by the Triune God they knew in Jesus Christ.
- 2. Through this land God had nurtured and sustained the First Peoples of this country, the Aboriginal and Islander peoples, who continue to understand themselves to be the traditional owners and custodians (meaning 'sovereign' in the languages of the First Peoples) of these lands and waters since time immemorial.
- 3. The First Peoples had already encountered the Creator God before the arrival of the colonisers; the Spirit was already in the land revealing God to the people through law, custom and ceremony. The same love and grace that was finally and fully revealed in Jesus Christ sustained the First Peoples and gave them particular insights into God's ways.

# Uniting Church Australia Preamble

- 4. Some members of the uniting churches approached the First Peoples with good intentions, standing with them in the name of justice; considering their well being, culture and language as the churches proclaimed the reconciling purpose of the Triune God found in the good news about Jesus Christ.
- 5. Many in the uniting churches, however, shared the values and relationships of the emerging colonial society including paternalism and racism towards the First Peoples. They were complicit in the injustice that resulted in many of the First Peoples being dispossessed from their land, their language, their culture and spirituality, becoming strangers in their own land.
- 6. The uniting churches were largely silent as the dominant culture of Australia constructed and propagated a distorted version of history that denied this land was occupied, utilised, cultivated and harvested by these First Peoples who also had complex systems of trade and interrelationships. As a result of this denial, relationships were broken and the very integrity of the Gospel proclaimed by the churches was diminished.

# Uniting Church Australia Preamble

- 7. From the beginning of colonisation the First Peoples challenged their dispossession and the denial of their proper place in this land. In time this was taken up in the community, in the courts, in the parliaments, in the way history was recorded and told, and in the Uniting Church in Australia.
- 8. In 1985 Aboriginal and Torres Strait Islander members of the Uniting Church in Australia formed the Uniting Aboriginal and Islander Christian Congress.
- 9. In 1988 the Uniting Aboriginal and Islander Christian Congress invited the other members of the Church to join in a solemn act of covenanting before God.

# Uniting Church Australia Preamble

- 10. After much struggle and debate, in 1994 the Assembly of the Uniting Church in Australia discovered God's call, accepted this invitation and entered into an ever deepening covenantal relationship with the Uniting Aboriginal and Islander Christian Congress. This was so that all may see a destiny together, praying and working together for a fuller expression of our reconciliation in Jesus Christ.
- AND THUS the Church celebrates this Covenantal relationship as a foretaste of that coming reconciliation and renewal which is the end in view for the whole creation.

# Uniting Church Australia Covenant with First Nations Peoples

This Covenant Statement was read by the President of the Uniting Church Assembly to the Chairperson, the Uniting Aboriginal and Islander Christian Congress on Sunday 10 July, 1994.



# Uniting Church Australia Covenant with First Nations Peoples

In 1988 you invited us non-Aboriginal members of this church to enter a covenant with the members of the Congress.

We seek to journey together in the true spirit of Christ as we discover what it means to be bound to one another in a covenant.

Christ has bound us each to himself, giving himself for us, and he has bound us to each other with his commandment 'Love one another as I have loved you'.

It is our desire to work in solidarity with the Uniting Aboriginal and Islander Christian Congress for the advancement of God's kingdom of justice and righteousness in this land, and we reaffirm the commitment made at the 1985 Assembly to do so.

# Uniting Church Australia

## Covenant Response from First Nations Peoples

When God created the heavens and the earth He gave humankind his habitation and placed him within his bounds.

When He did this He gave humankind stewardship over the bounds of his habitation.

We are also told in the Bible that when God had finished creating it was good.

# Uniting Church Australia

## Covenant Response from First Nations Peoples

- For many thousands of years Aboriginal people moved in harmony with creation ....
- Our laws were developed by our relationship with the land our intricate system of inter-tribal government.
- In 1788 this relation with creation was violently disrupted by the invasion of the European which robbed us of our stewardship of the land which God gave to us.

# Uniting Church Australia

## Covenant Response from First Nations Peoples

...Because it is pleasing to God to love one another, and it is our commitment to do so, we invite you on behalf of Congress members to develop a new relationship by entering into the struggle of those issues that presently are the cause of continuing injustice resulting in broken relationships.

# Uniting Church Australia

## Covenant Response from First Nations Peoples

We come to this covenanting table with our gifts of Aboriginal spirituality, our culture, our Aboriginal way of loving and caring, our instinctive concern and a willingness to share and teach our history and every good aspect about being Aboriginal and Islander...

Our commitment to walk together with you as equals will be measured by our willingness to share with you our friendship and our love for God's creation. ...



# Uniting Church Australia

## Covenant Response from First Nations Peoples

We pray that God will guide you together with us in developing a covenant to walk together practically so that the words of your statement may become a tangible expression of His justice and love for all creation. We ask you to remember this covenant by remembering that our land is now also sustaining your people by God's grace.

# More questions

We started with deep questions. After our 200 plus years together we are left now with a number of other challenging questions.

Uniting Church Australia  
Covenant Response from You  
**WHAT CAN WE DO TOGETHER?**

**What is our**  
***Communication Strategy?***

Uniting Church Australia  
Covenant Response from You  
**WHAT CAN WE DO TOGETHER?**

How do we build the *Capacity of the Church* to enable us to bring this prayer to reality?

**“We pray that God will guide you together with us in developing a covenant to walk together practically so that the words of your statement may become a tangible expression of His justice and love for all creation.....”**

Uniting Church Australia  
Covenant Response from You  
**WHAT CAN WE DO TOGETHER?**

**How do we create opportunities that empower the spirit and intent of the **Covenant to** connect with our deepest Christian hope and desires for deeper meaningful trusting and loving relationships with each other?**



# Habakkuk's Complaint

Justice Is a Joke

*The problem as God gave Habakkuk to see it:*

God, how long do I have to cry out for help before you listen? How many times do I have to yell, "Help! Murder! Police!" before you come to the rescue? Why do you force me to look at evil, stare trouble in the face day after day? Anarchy and violence break out, quarrels and fights all over the place. Law and order fall to pieces. Justice is a joke. The wicked have the righteous hamstrung and stand justice on its head.

God Says, "Look!"

"Look around at the godless nations. Look long and hard. Brace yourself for a shock. Something's about to take place and you're going to find it hard to believe....."

# 1 Corinthians 2:5

***That your faith should not stand in the wisdom of men, but in the power of God.***