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**Media Release**

**IS AN INDIGENOUS ADVISORY BODY THE WAY FORWARD FOR THE  
CONSTITUTIONAL RECOGNITION PROJECT?**

The Indigenous constitutional recognition project is now dragging into its fifth year since the Expert Panel on Constitutional Recognition of Aboriginal and Torres Strait Islander peoples conducted a broad national consultation of the Australian people.

In addition to the recommendations of the Expert Panel, that included a racial non-discrimination clause known as section 116A, the idea for an Indigenous advisory body empowered by the Constitution has emerged.

Writing in a special edition of the *Indigenous Law Bulletin (ILB)* funded by UNSW Law, Australian constitutional law scholars have turned their attention to the proposal for an Indigenous advisory body. They say the proposal could improve the quality of decision-making in regards to Aboriginal and Torres Strait Islander Australians.

Professor Cheryl Saunders AO from the University of Melbourne described the proposal for an Indigenous advisory body as a “new and quite different approach to constitutional recognition.”

“In my view, this is a helpful and constructive proposal,” Prof Saunders wrote. “It is vastly preferable to a watered down, purely symbolic version of the Expert Panel’s proposals, if that proves to be the only alternative on offer.

“Many parts of the world already have in place much more formalised procedures for consultation with Indigenous peoples and other structural minority groups, not only in order to give effect to international obligations but, even more importantly, as an obvious way of providing good governance.”

However Prof Saunders’ paper raises challenges to the effectiveness of the body as currently proposed, noting that it should be designed to ensure that the Parliament genuinely and effectively consults with the advice of an Indigenous advisory body.

“If this proposal is to go forward it should be carefully designed in full understanding of the reality that the Australian political culture is indeed very bad at genuine consultation; either with the public at large or with groups affected by particular proposals,” Prof Saunders wrote. “The history of dealings with Indigenous peoples is testament to this reality.”

Similarly constitutional lawyer Dr Fergal Davis wrote that “proposals for the establishment of an Indigenous advisory body within the Australian Constitution are genuinely innovative and exciting.”

“Indigenous Australians constitute approximately 3 per cent of the population, therefore—even with proportionate reserved seats—such a micro-minority will struggle to assert itself in the Federal Parliament,” Dr Davis wrote.

However like Professor Saunders, he cautions that statutory bodies and even parliamentary committees are routinely ignored by the Parliament.

“To counteract these concerns it will be important to ensure that there is a political cost associated with ignoring the advice of the body.”

Professor Megan Davis, a United Nations expert on Indigenous peoples, described both the Expert Panel recommendations, especially section 116A and the Parliamentary advisory body, as substantive and carefully considered proposals for law reform that should be debated at Aboriginal constitutional conventions.

“Procedural democracies like ours calibrate politics to become attuned to ... the middle [and Indigenous peoples] fall outside the spectrum of what parliament, whose eyes are always attuned to the next election, is interested in,” Prof Davis wrote.

According to Prof Davis Australia is behind the world in addressing this challenge.

“Most liberal democracies temper majoritarianism in a variety of ways. These may include electoral systems that encourage more independent or minority voices, entrenching ‘rights’ in bills of rights or charters of rights or, in the case of Indigenous peoples, incorporating treaties, agreements or other constructive arrangements, reserved seats or Indigenous parliaments. Australia has resisted such structural accommodation of Indigenous peoples.”

Also writing in this special edition of the *ILB* are experts Prof Anne Twomey, Ms Melissa Castan, Ms Nicole Watson and UNSW’s Dr Gabrielle Appleby. UNSW Prof George Williams also wrote on the same topic in the May/June 8[18] edition of the *ILB*.

To access a copy of Prof Cheryl Saunders’ article [click here](#).

To access a copy of Dr Fergal Davis’ article [click here](#).

To access a copy of Prof Megan Davis’ article [click here](#).

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