



GOLDFIELDS LAND AND SEA COUNCIL

Aboriginal Corporation (Representative Body)

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Hon Michael Mischin, MLC
Committee Chair
Joint Select Committee on Aboriginal Constitutional Recognition
Parliament House, Perth
Western Australia 6000

and

Via email: jscacr@parliament.wa.gov.au

Dear Hon Mischin,

Inquiry into the appropriate wording to recognise Aboriginal people in the Constitution of Western Australia

The Goldfields Land & Sea Council ('GLSC') endorses the recognition of Aboriginal people in the Constitution of Western Australia.

Background

The Western Australian Constitution ('Constitution') sets the tone for this State's relationship with its Aboriginal population. Constitutional recognition of Aboriginal Australians would go a long way towards righting the wrongs of the past, by forging a new pathway and changing attitudes and behaviours between Aboriginal and non-Aboriginal Western Australians.

What's at stake? Western Australia's credibility would be compromised by the State's reluctance to address the wrongs of its history. Our standing would be improved by Constitutional recognition, bringing Australia in line with other States and Territories. But the most crucial

benefits would be delivered here at home. Constitutional recognition would allow Aboriginal men, women and children to take part in Western Australian society on their own terms: not as the invisible inhabitants of *terra nullius*, not as conquered people forced to assimilate to a foreign identity, not as a 'dying race', but rather as members of living communities that existed long before British settlement. Constitutional recognition would, for the first time, correct the long-standing untruth in the country's founding myth – that Western Australia's social and political institutions were painted on a blank canvas. In historical fact and recognised legal doctrine,¹ Australia's British-inherited system of laws was superimposed on pre-existing systems of law and custom.

The most appropriate form of wording to recognise Aboriginal people in the Constitution of Western Australia

The GLSC would commend the following words as most appropriate to recognise Aboriginal people in the Constitution of Western Australia:

"CONSTITUTION ACT 1889 - SECTION 1A

Recognition of Aboriginal people

- 1. The Parliament acknowledges that the events described in the preamble to this Act occurred without proper consultation, recognition or involvement of the Aboriginal people of Western Australia.*
- 2. The Parliament recognises that Western Australia's Aboriginal people, as the original custodians of the land on which the Colony of Western Australia was established -*
 - a) have a unique status as the descendants of Australia's first people;*
and
 - b) have a spiritual, social, cultural and economic relationship with their traditional lands and waters within Western Australia; and*
 - c) have made a unique and irreplaceable contribution to the identity and well-being of Western Australia."*

Legal matters that need to be considered when incorporating such words

A legal matter to consider would be around the creation of any legal right that may give rise to any civil cause of action by giving force to incorporating such words as above.

¹ *Mabo v Queensland [No 2]* (1992) 175 CLR 1.

Conclusion

As long as the Constitution remains silent about Constitutional Recognition, Aboriginal peoples will be excluded from full membership of the Western Australian political community. In this way, Constitutional recognition can set the platform for a tangible partnership of reconciliation, solidly founded, in addressing the unique position of Western Australia's *first peoples*.

Yours sincerely,



Lawrence Thomas
GLSC Chairperson