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Constitutional Recognition, Treaty and the Next Steps

**Edited Transcript of Address given by
Ms Linda Burney, MP**

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NOTE: As Shadow Minister for Human Services, this address includes Ms Burney's description of, and comments about, issues with the Government's Centrelink debt recovery process that has been in the media during January/February 2017.

Introducing The Honourable Linda Burney, MP (Federal Member for Barton and Shadow Minister for Human Services in the Australian Parliament):

Prior to her election to Federal Parliament where she has the additional responsibilities of Shadow Minister for Human Services, Ms Linda Burney served in NSW State Parliament in many portfolios, many of them concurrently. Linda has acted as deputy and opposition leader at various times and held responsibilities in youth volunteering, fair trading, community services, women, the Hunter region, sport and recreation, planning, the Central Coast, banking, Aboriginal affairs, early childhood education, ageing and disability and for state planning.

Before her entry to NSW Parliament, Linda had a brilliant and distinguished career, particularly in education. She was a primary school teacher and then worked in Aboriginal education policy. She went on to be deputy director general of the NSW Department of Aboriginal Affairs and later the director general herself.

Linda Burney has received a number of awards and an honorary doctorate from Charles Sturt University. She also has a NAIDOC lifetime award.

Linda has been serving in many areas of society and she's one of those people who obviously can join the dots, can think laterally, can see cause and effect, having worked across so many areas. She's achieved so much and at the same time in her life has experienced great sadnesses. Linda has experienced shockingly ignorant discrimination but best of all she's had great love and has great love in her life. Linda is a fierce family person and has a wide extended family.

Linda is a woman who at 11 years old was told in her face that she would not amount to anything, but her inner response was, 'Oh yes, I will!' Linda loved and excelled at school in Whitton and at the same time strongly claimed her Aboriginal ancestry, her aboriginality. Linda is the woman who told Richard Fidler 'In Conversation' on ABC Radio National that her totem is the white cockatoo –a noisy messenger bird.



Ms Linda Burney MP:

Thank you Uncle Greg, for the wonderful welcome to country but more importantly, I think, the words you put around what aboriginality means and that aboriginality - unlike when you and I were growing up, when it was seen as a deficit – is actually a celebration.

Can I add here, that by recognising country - and I know that Uncle Greg has spoken to you all about why that's so important – one of the amazing things and one of the things I love about recognition of country is that we can all do it and we all do do it. It's not about an Aboriginal person doing it; it's about anyone who feels moved to do so when they're speaking in front of a group of people has absolutely that right to do it. There is no wrong thing to say to pay our respects and recognise.

Today I will cover three things - to make comment on constitutional recognition; to make comments around treaty and the next steps for those two issues.

I will also touch on my role as the Shadow Minister for Human Services in the issues around Centrelink and debt collection.

Three aspects of acknowledging country

First I will commence with acknowledgement of country from me. For me the acknowledgement is about three things. It is about the custodianship of land since the first sunrise. Human existence in Australia is the longest of all continuous existence. What is so extraordinary about that, is that it is not just our heritage, it's yours too. It is yours because you walk on this same earth as the first peoples. It is a special heritage to have. It exists nowhere else in the world. It also reminds us that this nation has many layers. Some are very ancient, with the hundreds of Aboriginal nations that cover our land; but some aren't so ancient. When I look at Australia I often think, and geography was my strongest subject at school, I often think of sedimentary rock. If any of you are good at that, sedimentary is rock that when you cut through it has many layers, and that is how I see our nation. Those layers are made by the amazing foundation of first peoples and it is built upon in many levels by the many waves of migration.



Uncle Greg mentioned some people who came 233 or 234 years ago who had no choice, of course, in chains. There is just layer after layer of migration after that, be it post-World War I, post-World War II, post-Vietnam, and of course some of our very recent layers of people from North Africa and more recently Syria and places like that.

It is an extraordinary place that we share. If you want to have a picture in your mind about this country then you can see that sedimentary rock does it for me.

Can I also say that what we saw in the Australian Parliament this past week was very important and it leads into about what I want to speak. Just this week in the Parliament, we saw a breakfast on Tuesday where all the political leaders came and signed up to the Redfern Statement. I am not sure some of those people realised what they were signing but they have signed it and we have photographs to prove it. Tuesday was also the delivery of the ninth Closing the Gap report and also the commemoration of the ninth anniversary since Kevin Rudd's apology in 2008.

That Closing the Gap report, I know, is a great concern for everyone. Of the seven indicators in that report, there is only one after nine years that is going to be achieved within the timeframes. It is the one, or part of one, I should say, that there is no gap between Aboriginal young people or older people who go to university and non-Aboriginal people in relation to getting a job after graduation. None of the other indicators is going to be achieved.

One of the things you might want to think about is what is the value of that annual report. Why is it that we find ourselves in this country in 2017 no closer or very much less close to closing the gaps around infant mortality, around the discrepancy in life expectancy, literacy and numeracy, and a range of other areas. I think that is just such an important social justice issue for us to think about, whether it's within the parliamentary processes or whether it's in civil society; whether it's within the faith community or anywhere else.

Centrelink debt recovery

The issues around Centrelink are that there are thousands of people in our community, most of them are working now or have worked, who have received a letter from Centrelink or a series of letters, saying that you have a debt. Some



of these debts are not \$500 or \$600; they are thousands and thousands of dollars. Some of them are \$30,000 or \$40,000.

The letters that have been sent out have been sent out on what's called a 'robo debt' automated system - in other words, 200,000 or 240,000 letters have been sent out with no human oversight. The algorithm was faulty. Let's use Uncle Greg as an example - he might be working and one of his relatives gets very ill and he goes on to a Centrelink carer's payment for six months. Instead of the robo debt automated system recognising that he's only worked for six months of that year, it is matched up with the Australian Tax Office algorithm which calculates income from working across the whole year. He gets billed [by Centrelink] for working for the whole year where, in fact, he's only worked for six months. That is what is happening.

There is nothing wrong with automated systems - and Labor used the same system - but there was always human oversight so that the letter that was sent out was not incorrect and did not strike fear into the hearts of people. It was the correct information because there was human oversight before the Centrelink letters were sent out.

By the current Government's own admission, they are saying that there is something like a 40% mistake rate. This means there are 40,000 people out there who have been accused of taking money that they were not eligible for and then being told that they have to pay it back. It has just been changed because of our pressure but up until last week people who received these letters could only get a review if they entered into a repayment system, even though they didn't owe the money.

Now that, to me, is immoral and if it were in the private sector it would be illegal, but because of the length and the breadth and the width of the social services legislation the Government could do it.

We have managed to get them to stop that and we have managed through a great deal of pressure to have a number of other changes. For example, the original letter that went out went out to people who were no longer living in those addresses but they were taking this robo debt collection back to 2010. Centrelink had said at the time that you only had to keep six months' worth of payslips. I don't have my payslips from 2010. I don't know about anyone else.



Centrelink have stopped that as well and are now accepting, as of last week, bank statements as evidence. These may sound like small concessions but they are really quite major ones.

The other thing, of course, is that if you didn't respond to the first letter that went out then you were deemed guilty and the next letter was delivered by debt collectors. They have now agreed that the first letter will go out by registered post. That costs \$4.60 a letter.

The insidious part is that the next phase of this robo debt recovery will be applied to people who are on disability support pensions and aged pensions. My position is very consistent. We want the system suspended until it is fixed. I am not asking for the minister to be sacked. I have been around too long to do that. I think it is so unfair and it has caused enormous stress.

The great news is that we've managed to establish a Senate enquiry into this which will travel the length and the breadth of this country taking submissions. The first hearing is in Canberra on 8th May 2017. Budget Estimates Committees are very soon and have I got some questions ready.

Constitutional recognition and treaty

The most important thing that I can say is that it is spurious and (I'm choosing my words carefully) mischievous for people to perpetrate this nonsense that it's either constitutional recognition or treaty. Rubbish. They are very different things.

All of you in this room, almost all of you, would remember or would have voted in the 1967 referendum that did two things: first of all, it legitimised people like John and Uncle Greg and myself because for the first time Aboriginal people were counted in the national census.

It also handed over the powers or gave the Federal Government the power to make law around or about Aboriginal people. Up until then, it was a mishmash of various laws and legislation in the states, which was why you saw things like the dreadful Aboriginal Protection Act in various places, the establishment of reserves, all that kind of stuff. The Commonwealth got those two powers.

What we're talking about with constitutional recognition is really the next or the finalisation or the great part or the craft of truth telling in our Australian



Constitution. In June-July this year, the Referendum Council that's currently doing a number of consultations will deliver its report to the Parliament.

This is what many people don't understand. It is the Parliament that makes the decision about what the question will be that will go to the Australian people for the referendum and the decision on the timing, so it will become quite a political process mid-year. What we will see will be a series of propositions for change that are put to the Parliament and then the Parliament will decide what the Australian people will vote on.

There are two things that I want to see. Firstly, I want to see the aspirations of Aboriginal people reflected beautifully within the Constitution - our right to country, our rights to language, the fact that we have been here since time immemorial, those sorts of things. I think the Australian people would vote for that.

Where it gets more complex, and the second thing that I want to see, is I want to see one of the clauses or one of the head of powers within the Constitution changed, and it's what you will commonly hear called 'the race power'.

Currently in the Australian Constitution there is a head of power that says the Federal Government can make laws about races of people. The argument will be: Why change that? Of course governments are going to make positive laws for some groups of people. What a lot of codswallop! We only have to look around the world at some of the laws that are being made about Muslims at the moment. You only have to look in our country at the decision of a law around the Hindmarsh Island case in South Australia several years ago which made a decision that was a very negative decision for Aboriginal people. We are arguing that that heads of power [in the Constitution] needs to say that the Commonwealth Government can make laws around individual groups of people that are advantageous for those groups of people. Take race out of it. Does that make sense?

But there will be other propositions, which I won't go through now because it takes too much time, that will come to the Parliament. Our job, and this is where you are so important because you are the advocates in the community, in your faith circles, wherever, for this is to have forums, have the



conversations, have people come along and explain it to you. Become champions for what you believe is right.

The challenge will be that we cannot afford to lose this referendum. Of the 44 referenda that have been presented to the Australian people, only 8 have been successful. We're not very good at passing referenda - very wisely, in some cases.

Believe it or not, the last referendum that was successful in Australia was about the retirement age of judges. I think we got to 70. I still intend to be working at 70, I can tell you that.

Aspiration of sovereignty and treaty

The last thing I just want to mention quickly is that this spurious argument that constitutional recognition will kill off the debate around treaty, or that it should be one or the other, is a nonsense, and I will say that loudly from the rooftops as much as I can.

The aspiration of sovereignty and treaty are fundamental to Aboriginal people. It is our aspiration and has always been. Aboriginal people in our hearts, in our minds, have never ceded sovereignty. We weren't asked whether [Captain Arthur] Phillip could plant that [British] flag [in 1788]. There was never any negotiation, and it was not until the Mabo decision in 1993 when the law was beginning to be made around land issues federally between Aboriginal people and the state. That is why you are seeing such an amazingly strong, beautiful thing now - where you are learning, finally, and Aboriginal nations' names are becoming part of our normal conversation. Think about five years ago, ten years ago - if I said I'm from Wiradjuri country, would you know? Of course you wouldn't, but you probably know now. Same with what Uncle Greg's talking about, about *Burramattagal* people. Parramatta? You can even hear it.

The idea that there can be one treaty between the Australian Government and the Aboriginal peoples of this country flies in the face of Aboriginal culture and the way in which we are structured as nations. The Victorian Government has entered into treaty negotiations down there. The South Australian Government is beginning to talk about an Aboriginal Treaty Council, but not at the expense of and very differently from constitutional recognition.



There are already treaty-like arrangements, many of them, in this country. They are called Indigenous Land Use Agreements. I think it is the word 'treaty' that is emotive; it's not the actual structure that's in place. If you think about the arrangement of the Larrakia people who have traditional ownership of all of Darwin and Darwin Harbour - that's a treaty. It's between the Larrakia and the Northern Territory Government.

These discussions are very important and we'll have to grapple with them.

Thank you.

Q: After the wonderful 'sorry' in 2008, when we had tears in our eyes, Noel Pearson at the time said, black fellas would get the words, but white fellas would keep the money. Was he right?

Linda: That's a very good question. No, Noel, wasn't completely right but I do think it's instructive to ask the question about the amount of money that's gone into Aboriginal affairs over the last ten years and why we aren't seeing better outcomes.

But I think it's not about the amount. It is about the way in which it's used. I think it's about the way in which Aboriginal people do not have a say on how that money is spent. That's the issue and that is where the agenda is very much at the moment, and that's what the Redfern Statement is saying - that we have got the solutions.

What I have watched over the last three years is a move back to absolute paternalism in the Aboriginal space. The big catchphrase at the moment, this is what the Prime Minister said in his Closing the Gap report, that he's going to put \$50 million into evaluations. Well, that will be \$50 million into Ernst & Young or PWC or those big outfits. It will not be into Aboriginal community-based organisations or Aboriginal advocacy groups which have been stripped slowly and surely of funding.

Q: All State constitutions in Australia now recognise the Indigenous presence in the country before European settlement. We don't generally know that. The process for national constitutional recognition to date has been about consultation with the Aboriginal nations by Recognise and Reconciliation



Australia. There seems to be a lot of work that still needs to be done so that we are all fully informed and prepared for the referendum. Where's the process for that? Are we just going to get a question announced in July?

Linda: I think that is a fantastic observation and something that has troubled me. I know that some of us have been involved over the years. Do you remember the 'Women for Wik' campaign? Those great sweaty town halls full of people having fabulous conversations. It seems to me that that is what's missing in this process and all I can say is that I have a fair bit of say these days in my party about what's going on. I will raise what you've said.

I hope that what we will see is that once we know the question and once we know the date [for the referendum], then the conversation can begin in earnest. That's why I'm saying that those of you in this room who have the capacity to organise - whether it's a reading group or small groups - to have discussions is so very important. For the timing for the actual referendum decision, we're not going to make that September this year. The next timeframe is about February and then the one after that is in May 2018. I think it is really important that civil society takes up that discussion about the question and timing of the referendum as a very important part of their work.

Q: You mentioned the Referendum Council and did not know that we had that organised and already operating. I did find a discussion paper from October 2016 which I think is excellent in setting out what's possible. Can you comment on the Council and it's work. The other part of my question is about whenever sovereignty is mentioned, the reaction we'll often get is 'this is one country, one law', and why are you trying to introduce Aboriginals having law. What do you say to that?

Linda: These are very brave and very honest questions. I don't mention sovereignty to worry people. It is that in our hearts we've never ceded our sovereignty because there was no treaty. You will all remember this, of course, that Australia's legal status when the British came was *terra nullius* and that literally means 'empty land', so it negated our complex story and it negated 60,000 years or more of human occupation of Australia. That is what I mean by that importance of truth telling for us as a country. This is the context that I mention sovereignty in.



I also understand that from a legal perspective and an international perspective sovereignty would be seen very differently because in that context Australia is a sovereign nation with a set of laws and international or treaty arrangements.

The other part of your question was around the fact that there is a Referendum Council and for me to make comment on that.

We have the Recognise campaign, a part of Reconciliation Australia, which is different from the Referendum Council. The Council is under the co-leadership of an Aboriginal woman called Pat Anderson. Some of you will think I've heard that name before; the reason you've heard that name before is that she was one of the co-authors of the 'Little Children are Sacred' report in the Northern Territory. Mark Liebler was one of co-chairs of Reconciliation Australia and he's a very well known lawyer from Melbourne, and he and Pat are the co-chairs of what's called the Referendum Council. Their job was to bring everything together: the expert panel's report, the Parliamentary Inquiry report, and work out what the question and the timing would be for the referendum.

The Referendum Council is made up of some very significant Australians, both Aboriginal and non-Aboriginal. Some of the people who jump to mind are Amanda Vanstone, Kristina Keneally, Noel Pearson, and a range of other people. That's the kind of level of people who are – Professor Megan Davis is on it, and it's a very high level group of people who need to hurry up and deliver us their report, quite frankly.

I understand that they are going through a series of community consultations across the country at the moment. I think there are 13 of them. A penultimate one will coincide with the 50th anniversary of the 1967 referendum in Uluru at the end of May. They have been politely advised that they need to make a decision on what they will deliver to the Parliament very soon after that.

Q: Harking back to the Centrelink issue, you mentioned in passing that the next round is on pensions. Can you comment about that, because I think many of us here would be interested.

This round of robo debt automated debt recovery has focused on people who were receiving Newstart or young people who were Austudy or Youth Allowance recipients. That is why there is so much frustration and anger in the community, because many of those young people, who are now running our Emergency



Departments and teaching our children, who were students, have been caught up in this - and carers, as well.

The next tranche is going to be the same arrangement for people who are now on the Aged Pension and people who are on Disability Support Pensions. There are three million people on the Aged Pension and many of those people will get a little bit of work. What's been so dreadful with this is that all of the people my office has dealt with and other people have said, we've reported faithfully to Centrelink when we've worked because you can work to a certain degree. They have reported it properly, which is why using the ATO algorithm has got it so wrong.

I am told that some of the letters have already started to people who are on Disability Support Pension but I am not sure about that. I am not clear whether the concessions that we have been able to get out of the Government will actually apply to this next round of debt recovery.

This is not about penalising people who have done the wrong thing. This is about gouging money back from some of the most vulnerable people in our community. When it comes to people on Aged Pensions, people who have worked all their lives, people who have contributed all their lives, they are not going to get the decency of human oversight in the Centrelink process.

There has also been a memo, and I have a copy of it, sent out to people who are working in Centrelink saying that you are not to assist people who come in.

I keep saying to the Government: people don't choose to have a sick relative, people don't choose to be unemployed, people don't choose to have disability, and yet you want to kick those people.

Q: What do we do in order to prepare ourselves for the referendum proposals in June? How do we as a group talk about the importance of making the constitutional changes for recognition and removing reference to race?

Linda: I think what would be terrific is to be really familiar with this [Referendum Council] discussion paper on constitutional recognition of Aboriginal and Torres Strait Islander peoples [of October 2016]. There is a Parliamentary Report of the joint select committee inquiry that was led by Ken Wyatt and Senator Nova Peris [of 25 June 2015]. Have a look, just read the



executive summary. Also the Expert Panel report [of January 2012]. It is all on the internet. Also have a look at Recognise's website which has got some fantastic stuff. Just get yourself informed on the various aspects of what the likely proposals for constitutional recognition will be.

There will be one proposal at the end of the day that will come to the Australian public but that may be not until August-September 2017. Then once there is the proposal and the timeframe, I think organising a forum would be amazing, a really good thing to do for whoever's involved with the group.

Once the Referendum Council has finished it's work there will be a set of proposals that will come to the Parliament for discussion. Be involved in that discussion process because you all have a local member of parliament and your job is to talk to them and make sure that you're engaged with this discussion. Write to Members of Parliament because they will be the people at the end of the day who will make the final decision.

If there are other forums, and I'm sure that they will pop up like mushrooms, go to them.