

Indigenous recognition 'miles away'

Interview Porter says Uluru statement must first meet key criteria

Michael Pelly

Attorney-General Christian Porter has dampened hopes for an Indigenous voice in the constitution based on the Uluru statement, saying it does not meet the criteria for a successful referendum and there is a risk of Brexit-style "mess".

He said he was "a full-blown supporter" of Indigenous recognition, but did not back any move to enshrine additional parliamentary processes or advisory committees in the constitution.

In an interview at his Sydney office with *The Australian Financial Review*, the Attorney-General and Industrial Relations Minister made it clear the government felt it had a mandate to press ahead with policies it pursued before its unexpected victory in the May 18 election.

Mr Porter referenced reforms that were thwarted in Parliament in relation to family law, religious discrimination, a federal ICAC and laws that will allow for the deregistration of rogue unions such as the CFMEU.

He also indicated he would use his authority to advance the cause of a national legal profession and to push for limits on "low-level" defamation cases and controls on social media.

Mr Porter said the "first and last question" for an Indigenous recognition referendum had to concern what it meant "in terms of precise changes in the words of the Constitution".

"If you are to successfully change Australia's constitution, you've got to do three things: you've got to precisely describe the words of the text that you intend to adopt, you have to precisely describe what that textual change does do, and you have to precisely describe what that textual change does not do," he said.

"The Uluru statement is, unfortunately, miles away from meeting those three necessary criteria for any successful constitutional change."

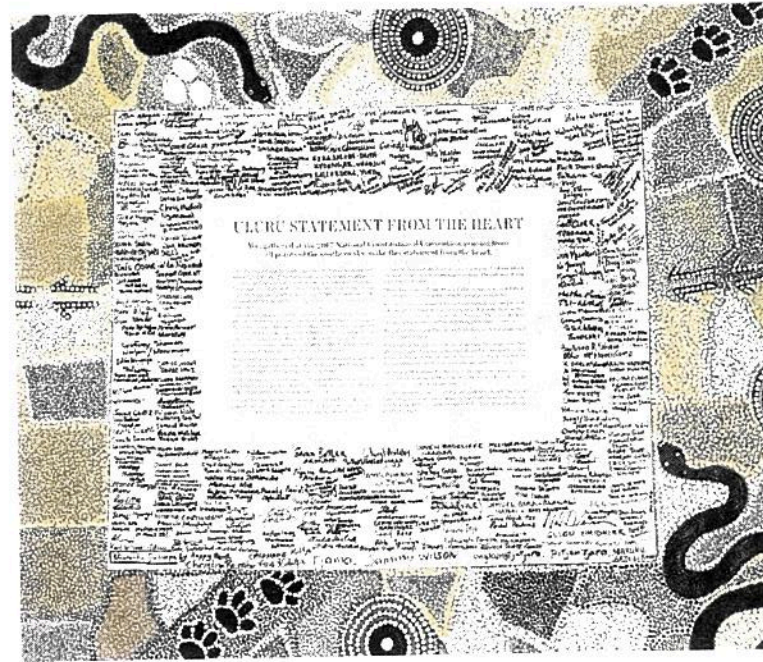
Sorting out the detail later would not work, he said.

"That is the way the mess that is Brexit occurred. It is like saying to an average Australian, 'You need to decide now whether or not you're going to move house, yes or no, but I'm going to tell you where you're going to live afterwards after you've made that decision'."

"People don't buy that with the constitution."

Mr Porter said he was confident of gaining support for a merger of the Family Court and Federal Circuit Court (FCC), which he described as "a very, very high priority".

He said he would resist the temptation to revisit the final version he put to Senate crossbenchers before the election. The Family Court division would have a minimum of 25 judges and hear



The Uluru Statement from the Heart, and right, Christian Porter. PHOTO: CLIVE SCOLLAY FOR MAKUTU ARTS



all appeals, he said. Those from the FCC division would be heard by only one judge.

However, the first cab off the legislative rank will be a religious discrimination act, which Mr Porter said was "a not insignificant issue during the election campaign".

"We're following a well-known structure, which works in the context of disability, age, sex, race ...

"If we protect people from exclusion or discrimination or unfair conduct, that might be levied upon them because of their age or their sex or their race, then it seems completely reasonable and fair that you offer the same types of protections under the same types of structure for people who might be experiencing unfairness or discrimination because of their religion."

Mr Porter said he was not minded to rethink his opposition to public hearings for a federal ICAC or anonymous complaints. He hoped to take a proposal to cabinet before the end of 2019 and introduce legislation early in 2020. He also needed to seek advice on whether judges could be included in the public sector division.

"The body that we're proposing is fundamentally investigatory, and they will hand briefs on to the DPP. So the ultimate public hearing would be a court hearing."

While he suggested that a judge could serve as a commissioner, he resorted to pop culture to explain why he hadn't even considered who might be suitable.

"One of the golden lessons I've learnt about politics is do not ever get ahead of yourself. My favourite part of the Star Wars trilogy is when Yoda is complaining about being required to teach Luke Skywalker on Dagobah and he says: 'Always his mind on the future and the horizon, never on the here and now'."

"There's so much here and now to get across in this portfolio."

Mr Porter welcomed Western Aus-

tralia's entry into the national legal profession from July 1, 2020. "I think it's time has come and if I can be of any assistance I will be."

That included holding talks with the legal profession in Queensland, which has steadfastly resisted attempts to bring it into a project that now includes three states and about 75 per cent of the nation's lawyers. South Australia is believed to be close to agreeing to join.

The issue is likely to be raised at a meeting of the nation's attorneys-general next week, which will also feature a progress report on the national defamation law reform project.

He offered some solace to journalists who fear they may be prosecuted as part of the current police investigations into public service leaks, pointing to the public interest defence that was included in 2018 amendments.

The attorney-general must sign off on any prosecutions and Mr Porter indicated that was a long shot. "It's difficult to conceive of the circumstances where you would approve that type of prosecution or the Director of Public Prosecutions would ever recommend that type of prosecution."

"The first question that you would ask yourself is, is the publication in question a reasonable, fair-minded publication, consistent with the principles of public interest journalism? Everything to me would stem from asking that."

The interview took place shortly after the High Court handed down a ruling that confirmed a sperm donor had parental rights. The man involved in the case had his name on the birth certificate, had cut the umbilical cord and played an active role in the child's upbringing.

Mr Porter intervened because Family Court appeal judges backed state laws, which say a donor could never be a parent, over federal legislation, which offer a much wider definition.

"What the federal law said is that parenthood requires a court to consider all of the broad range of circumstances that might exist in the individual practice."

"And this was a pretty individual and unique set of facts and circumstances."