

Paul Lynch MP
Minister for Aboriginal Affairs
Level 13, Tower B, Centennial Plaza
280 Elizabeth Street
SURRY HILLS NSW 2010



10 August 2010

Dear Mr Lynch

Draft Amendment to *Constitution Act 1902* (NSW)

The Public Interest Advocacy Centre (*PIAC*) appreciates the opportunity to provide comment on the proposed draft preamble to the *Constitution Act 1902* (NSW).

The Public Interest Advocacy Centre (*PIAC*) is an independent, non-profit law and policy organisation that works for a fair, just and democratic society, empowering citizens, consumers and communities by taking strategic action on public interest issues. *PIAC* identifies public interest issues and, where possible and appropriate, works co-operatively with other organisations to advocate for individuals and groups affected.

A major area of *PIAC*'s work is its Indigenous Justice Program, which aims to identify systemic wrongs affecting Indigenous Australians and to advocate for the elimination of those wrongs, and to strengthen the capacity of Indigenous Australians to engage in public policy making and advocacy.

PIAC welcomes the proposal of the NSW government to include a preamble to the NSW Constitution, and applauds its decision to acknowledge and honour the Aboriginal people in the preamble. *PIAC* supports the draft preamble in principle, but would like to offer two recommendations in relation to its wording.

Inclusion of statement of regret

While *PIAC* supports the draft wording of the preamble, *PIAC* is of the view that the preamble could go further in acknowledging the Aboriginal people of NSW, including recognising the hurt and pain caused by restrictive policies of previous governments. On 18 June 1997, the then Premier of NSW, Bob Carr, moved a motion that was carried without dissent in the NSW Parliament which contained a public apology for the treatment of Aboriginal people in NSW, particularly in relation to the removal of children from their families. *PIAC* is of the view that a similar sentiment should be included in this preamble, to adequately acknowledge the past experiences of Aboriginal people in NSW.

PIAC recommends that the wording used by Mr Carr at that time could be appropriately inserted into this draft preamble, at the end of section a), so that it would read:

"The People and Parliament of New South Wales acknowledge and honour the Aboriginal people as the first people and nations of the State, and acknowledge and regret Parliament's role in enacting laws and endorsing policies of successive governments whereby profound grief and loss have been inflicted upon Aboriginal Australians." (additional wording emphasised)

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Wording relating to legal rights and liabilities

PIAC appreciates that the NSW government has included section c) in the draft preamble to limit any suggestion that additional causes of action or legal rights are created by this preamble. However, PIAC is of the view that the wording of this section appears unnecessarily harsh in comparison to the rest of the preamble, and could perhaps be better expressed to cover the same issues in a more sympathetic style. The Discussion Paper to the draft amendment includes examples of the Victorian and Queensland constitutional amendments, and PIAC notes that both of these states worded a similar clause in a way that maintains the status quo of the law without detracting from the overall positive spirit of the preamble.

PIAC therefore suggests that a similar wording could be used in the NSW preamble, such as:

“The Parliament does not intend by this section:

- a. to create in any person any legal right or give rise to any civil cause of action; or
- b. to affect in any way the interpretation of this Act or of any other law in force in New South Wales.”

Please contact Laura Brown, Solicitor, Indigenous Justice Program, on (02) 8898 6539 or email lbrown@piac.asn.au if you would like to discuss any of these recommendations further.

Yours sincerely



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Acting Chief Executive Officer

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