

THE WAY FORWARD ON ULURU

Speech by Hon Linda Burney MP to the 2019 Annual Frank Walker Memorial Lecture
of the New South Wales Society of Labor Lawyers

8 October 2019

OPENING ADDRESS

Lewis Hamilton, NSW Society of Labor Lawyers President

Today we celebrate, for the fifth year in a row, the life of the late Hon Frank Walker QC, former Attorney-General of New South Wales and NSW Minister for Indigenous Affairs. Before we begin, I would like to acknowledge the Gadigal People of the Eora Nation, whose grounds this lecture is held on today, and pay respect to their elders both past and present.

My name is Lewis Hamilton, the President of the New South Wales Society of Labor Lawyers. Our Society brings together progressive lawyers from across this state who share a vision for a more just and humane legal system, and who recognise that by affiliation to a labour movement in Australia these objectives, over time, can be realised. Before I formally introduce our guest speaker, Linda Burney MP, it is fitting that I first pass over to Laurie Patton, a friend, former staff member, policy advisor and speech writer to Frank, to deliver a brief presentation on one of his many achievements.

Laurie Patton

Good evening everybody. I would like to begin by acknowledging again that we are on the land of the Eora Nation and make the point that the southernmost boundary of the Eora Nation is the Georges River, which is where I grew up, where I met Frank, and of course it was the name of the electorate that Frank represented in the NSW Parliament. I will be brief. In the weeks and months leading up to his death, Frank was very privileged to have a lot of his old friends come to say goodbye. I know, because he told me, that there was no group he was happier to see than the mob from the Lands Council. The good news is, the mob from the Lands Council didn't just turn up, they took a video camera with them. This is the last recorded interview with Frank Walker and it is appropriately titled "Legends of Land Rights".¹

Lewis Hamilton

Frank Walker's life was full of ambition and achievement. As we saw in the final interview before his passing, one of his crowning achievements was introducing the first state-based land rights legislation in Australia. His legacy has never been forgotten, but his legacy was

¹ To view the full "Legends of Land Rights" interview visit <https://www.youtube.com/watch?v=hV2waiocGog>. The Society thanks the NSW Aboriginal Lands Council for permission to use the recording.

only one step in the national move toward reconciliation which continues to this day. Much of that reconciliation movement is owed to the man who we celebrate this evening. For his foresight and willingness to right past wrongs, for his passion for others and his recognition that public office is not a place to be idle, but to advocate.

In the audience today we have friends of Frank, and esteemed guests, including former Attorneys-General of New South Wales the Hon Bob Debus and the Hon Terry Sheahan, the former Commonwealth Attorney-General Michael Lavarch, the former Attorney-General of South Australia Peter Duncan, and current Shadow Attorney-General Paul Lynch MP. I would also like to pay particular mention to Professor Larissa Behrendt who joins us this evening. In the audience we also have current and former Members of Parliament and judges. I would like to acknowledge you all, and those others here who were so involved in and important to the life of Frank Walker. Finally, I would like to acknowledge Frank's widow, Pam Walker, who could not be here this evening for health reasons.

I would also like thank the Sydney Mechanics School of Arts, who host this event this evening. The Sydney Mechanics School of Arts is historic. In 1850 John Dunmore Lang delivered a speech to the School of Arts in which he called for an Australian Republic, well before any national movement had taken flight. One and a half centuries on, the Republican referendum failed. It was a reminder, following a century of constitutional experiments, that a positive outcome in a national referendum is not a simple feat and is never guaranteed.

Tonight, we have the Hon Linda Burney MP delivering the Fifth Annual Frank Walker Lecture on how we navigate our way toward constitutional recognition. Ms Burney needs little introduction. As the Shadow Minister for Indigenous Australians Ms Burney is fundamental to the question of whether our constitution will be changed to deliver recognition and an indigenous voice in the Parliament. With the Federal Government recently announcing its intention to hold such a referendum in the next three years, Ms Burney's role will be crucial to the safe passage of the referendum questions through the ballot box, whatever form those questions may ultimately take.

Ms Burney has been in a public life for a long time. Prior to her time in Federal Parliament, she was the Member for Canterbury, a State Minister, and later Deputy Leader of the Opposition in the state. She is a trailblazing figure in both the Australian Labor Party and the Indigenous community. It is also of note that she is the Member for Barton – a federal

electorate that includes parts of the former boundaries of Frank's own electorate of Georges River. We are honoured to have Ms Burney here this evening delivering the Fifth Annual Frank Walker Lecture.

KEYNOTE ADDRESS
The Hon Linda Burney MP

'The way forward on Uluru'

Good evening everyone and thanks so much for coming to the fifth Frank Walker Memorial Lecture.

I recognise the traditional owners of this part of the world, the Gadigal people of the Eora Nation. It's significant that we have this lecture on Gadigal country. The Gadigal hold a significant place in the Australian narrative. They were the first to experience the brunt of British colonisation. We know they were absolutely devastated by Small Pox in the initial phase of the invasion.

Thank you to NSW Labor Lawyers for this invitation and this opportunity, and for putting this lecture series together and for inviting me to speak at the Annual Frank Walker Lecture.

We know that the people who have spoken at this lecture before me are held highly in the pantheon of the Labor Party. Judge Greg Woods gave the first lecture; the Hon. Bob Debus gave the second; the Hon. Penny Wong – who leads Labor in the Senate – gave the third; and Bruce Hawker who has been such a stalwart of the Labor Party for so long, gave the fourth.

I have been asked to speak about the portfolio that I am responsible for – Indigenous Australians – and in particular, the Uluru Statement: Constitutional recognition, a Voice to Parliament, and truth-telling and agreement making. I will also of course speak about Frank's contribution to political and civil life in Australia – both at a state and federal level.

Frank was presented with great challenges and tragedy in life. He lost both of his sons in their early 30s, as I did my own son – just two years ago. And in retirement Frank was President of the Schizophrenia Fellowship. These things shape a person and they certainly give you a perspective on what is important and what is not important in life.

Frank possessed a profound sense of fairness and justice. But he was also pragmatic – able to navigate the structures of power to deliver tangible real-world outcomes. And he was able to inject a sense of calm and reason in the big ticket items of reform which too often are subsumed by the hysteria of reactionaries.

At six years old, Frank travelled with his father and brother to Papua New Guinea – his father had been black listed as a communist and was unable to find work in Australia. Perhaps it was this early experience of persecution that added to Frank's layered sense of fairness and justice. There, Frank and his brother were raised among local Indigenous children, and learned the local Indigenous dialect.

So it must have seemed very strange – incomprehensible even – that when Frank and his family moved back to Australia at the age of 12, to the Coffs Harbour region, that local Aboriginal people would be subjected to such discrimination and hatred. The removal of Indigenous children from their families and country remained common practice. Aboriginal people were prohibited from practising culture or speaking language. This gives you a small sense of the Australia that Frank and his family were returning home to; the sense of outrage and injustice be treated in such an unacceptable manner.

It is little wonder then at the age of 13 – and I know many of you here would have heard this story so many times – but it is worth repeating for a reason – that at the age of 13 he was incensed by the practice of segregating Aboriginal people in the local Coffs Harbour picture theatre, and many other picture theatres.

His first political act was simple, pacifist and straight to the point – he sat in the segregated section of the theatre. He became involved in more 'sit-ins' throughout the region, including at the notorious Bowraville Theatre, as well as theatres in Moree and Walgett. At the Bowraville Picture Show he was beaten by the police for this simple and peaceful act of solidarity.

What particularly outraged Frank however, was the theft of Aboriginal land. He witnessed local Indigenous people being moved off their land to make way for a golf course. An experience which played a significant part in Frank's determination to deliver land rights.

At 19, as a law student, he joined the Labor Party – in 1961.

While undertaking his articled clerkship, Frank participated in the famous ‘Freedom Rides’ of February 1965. He was inspired by this kind of activism in the United States. Led by leaders like Charles Perkins, Jim Spigelman, Ann Curthoys and Darce Cassidy – bussing it to Walgett, Gulargambone, Kempsey, Bowraville and Moree – names we know well especially all of you gathered here this evening.

While protesting outside the segregated Moree Municipal Baths, Frank was again beaten by the police. So severely that he suffered broken ribs. But Frank was not deterred. This experience made him even more determined. Determined to use his knowledge of the law and our system of government to achieve meaningful, structural change.

In his first speech to the federal parliament in 1990, Frank said:

“It was the cause of Aboriginal land and civil rights that first involved me, as a teenager on the north coast of New South Wales, in the political process and led to the membership of the Labor Party. My strongest ambition is to be part of a Labor government that finally delivers land rights to those long suffering and oppressed people.”

This balance of idealism and pragmatism that would serve him well in his parliamentary and ministerial career.

Frank was elected to the NSW Parliament in 1970 representing the electorate of Georges River, at the age of just 28. A seat that included Kogarah and Hurstville – areas I now represent, as the Member for Barton. In 1976, Frank was appointed Attorney General in the new Wran Labor Government. The youngest person appointed to that role.

Frank abolished the Summary Offences Act – which had been a tool of persecution for the poor, and for Aboriginal people across the State. Policing has been changed since that time.

Frank was eventually be appointed the first ever NSW Minister for Aboriginal Affairs. Frank’s most significant legacy was as the driving force between Land Rights legislation in New South Wales. An example of how to achieve ambitious and lasting reform. Especially as we embark on the national discussion of constitutional recognition and the Uluru Statement from the Heart.

When we think of Indigenous Land Rights today, in New South Wales, or any state – we don't think twice about it really – that's not to say we don't think much of it – what I mean is, that Land Rights have become an accepted as necessary and largely a non-controversial. The legislation is fairly technical, but in essence, it functions to provide land rights for Aboriginal persons in New South Wales.

It may be difficult to envisage or imagine today, but at the time of the introduction of this legislation, there was vicious opposition from both sides. From the National party of course, but also from Indigenous groups, who campaigned against a proposal that would limit the ability to claim traditional lands.

In fact I myself, participated in protests outside of the Parliament against the bill in 1982-83. A bill, I ironically became responsible for administering some years later as Director General of the Department of Aboriginal Affairs.

But Frank had the foresight and aptitude to anticipate opposition to the Aboriginal Land Rights Bill – especially among the property developers and the press at the time. But he also knew enough to know where he would find his allies – grass roots activists who would take to the streets.

In his speech to the parliament in 1983, introducing the Aboriginal Land Rights Bill, he said:

“Land rights for Aborigines is the most fundamental initiative to be taken for the regeneration of Aboriginal culture and dignity, and at the same time laying the basis for a self-reliant and more secure economic future...

“Western culture, with its exploitative view of land and all of its constituent parts, is vastly different from the Aboriginal view.”

Frank was a man ahead of his time in the sense that he was able to articulate the relationship that First Nations people have with the land, at a time this concept was very alien to mainstream Australia. This fear was not helped – in fact, it was compounded – by the fact that scare tactics and mistruths were being used and spread to stir opposition to this Bill.

Does sound familiar to you? But Frank hit back at the critics with the simple moral truth:

“Members of the National Party continually harp on the theme of preferential treatment for Aborigines. They say they object to Aborigines being given preferential treatment. If they walked round some of the reserves in their electorates, they would see conditions that only Bangladesh and a few African States could match. The conditions are so horrible when it comes to health, housing and education, that no decent, Christian Australian—certainly not the honourable member for Northcott—could oppose the bill.”

The NSW Aboriginal Land Rights Bill ultimately passed the NSW Upper House 21-18.

In the 1988 election, Frank lost his seat of Georges River - following the defeat of the Unsworth Government. But Frank would have more to contribute – especially on land rights. At the March 1990 election, Frank was elected the Federal Member for Robertson. He served as Special Minister of State, Vice President of the Executive Council, and Minister for Administrative Services.

For Frank, Federal Parliament represented another - wider sphere - through which to advance the cause of Indigenous land rights.

The High Court handed down the Mabo decision in 1992 and the Keating Labor Government shortly after sought to implement the Native Title Act of 1993. Frank was responsible for coordinating Labor’s response to the High Court decision. He was integral to manoeuvring into line uncooperative states such as New South Wales, Victoria and Western Australia. Again, the Native Title legislation, which was ultimately watered down by the Howard Government, is something we take for granted.

Debate at the time was rancorous, and news reports indicated some federal bureaucrats were warning of outbreaks of violence. But again, Frank lifted the tone and appealed to fundamental fairness. He said:

“There are strong lines of logic between a response to the High Court’s decision and the issue of past dispossession, and that Mabo can be an important stepping stone in the process of reconciliation.”

I think there are three things we can learn from Frank’s life and legacy. First, his willingness to make personal sacrifices for fairness and justice. Second, his pragmatism - to know the

best possible outcome when you see it, and to not let it go. Third, to be able to provide a calm and sensible voice, in the midst of emotion and hysteria. These lessons are no more relevant than to the current national discussion about the Uluru Statement, constitutional recognition and an Indigenous Voice to Parliament.

As I did in the Nugget Coombs Memorial lecture in Darwin last week, I want to step you through why acting now on the Uluru Statement is so urgent - and the opportunity that News South Wales, in particular, has to help move the Uluru Statement forward.

When the Prime Minister appointed the first Aboriginal person to the portfolio of Indigenous Australians, he sent a clear message that he was prepared to act on the Uluru Statement. That he intended to use his election win to make history. We were all overjoyed – Ken Wyatt is a good and thoroughly decent human being.

The Uluru Statement called for – three things:

1. A constitutionally enshrined Voice to Parliament;
2. Truth telling; and
3. Agreement making – through a Makarrata Commission.

Agreement making is, of course, code for Treaty.

Labor embraces the Uluru Statement in its entirety. The central premise of the Uluru Statement is forward looking.

On the 10th of July, when Ken Wyatt spoke at the Press Club. He set out a path for delivering on the Uluru Statement from the Heart and committed the Government to:

1. Starting a co-design process for a First Nations Voice to Parliament;
2. Establishing a Parliamentary working group – so we could move forward in the spirit of bipartisanship; and
3. Truth-telling.

Fellow travellers – as I said in Darwin last week – it is five minutes to midnight on this issue. In particular, because just hours after Ken delivered his speech, the Prime Minister backgrounded the media – ruling out a constitutionally enshrined Voice to Parliament. He is now saying – I think – that he would support a referendum to recognise First Australians

symbolically, but not enshrine a Voice in the Constitution. We still don't know how the co-design process will work. There is still no Parliamentary Working Group. And we don't yet know what the Government plans to do to take the next step on truth telling.

I, along with my Labor colleagues, continue to offer bipartisanship and collaboration. But we are running out of time - especially if the Government is to deliver on their commitment of a referendum this term. And there is a real risk the Uluru Statement will fade into the pages of history. That it will be remembered as a noble moment, but not a turning-point.

It really is five minutes to midnight. The next federal election is due in the first half of 2022. And a referendum would most likely take place by the second half of 2021. Before holding a referendum, there would need to be time for a successful campaign. This will take months and would need to start in 2020. Prior to a campaign, time needs to be allowed for the co-design of a voice, consultation and agreement on a question. This can't be unreasonably rushed. And there must be time to pass an Act of Parliament to set the referendum question.

It is now the final quarter of 2019 – and the window of time we have is narrowing. Bipartisanship is still on the table – contingent on the broad support of First Nations people. We will work with the Government, but we will not wait for them. I say to the Prime Minister very directly: this could be your moment. A great legacy. Something to be truly remembered by.

As I said in Darwin, if a proper process of co-design is not started by early next year, Labor will start our consultations with communities across Australia on the way forward. We will listen to First Nations people. Labor has already stated the principles on which we think a Voice should be based.

1. It should be democratically elected;
2. Gender representation should be equal;
3. Young people should be at the table;
4. It should be advisory only and non-justiciable – in line with the Uluru Statement;
5. It must be secure and permanent.

Security of the voice is paramount – that is why the Uluru Statement called for it to be constitutionally enshrined. Because we have seen before how easily the institutional voice of

First Nations people has been taken away, by the Government of the day. We all know what happened to ATSIC.

And in the spirit of bipartisanship – I have set out a starting point for the co-design process the Government has promised. And as I have made clear - this is not a policy prescription.

Ken Wyatt has said the Voice should be multi-layered. He is correct. Its basis must be regional – a reflection of the great diversity in First Nations peoples and cultures. As a starting point, the Voice could be based, for example, broadly on the old ATSIC boundaries. There would need to be adjustments, of course, to accommodate existing organisations.

The regional functions of a voice should be significant – helping to shape, co-ordinate and influence service delivery, across all levels of government. These regional bodies could be like a clearing house – providing accountability, direction and co-ordination for service delivery. They could be an authoritative point for consultation and help ensure the overall investment of public funds into communities gets results. They would not be responsible for service delivery. They could fill a gap that currently exists, give communities insight and influence. The national Voice to Parliament could be elected from regional bodies.

At the national level, the Voice could provide the Parliament with advice on legislation and programs that impact First Nations Australians. It would be a point of accountability of government effort. But it could also deliver annual statements of priorities, and respond to requests from the Parliament for advice and direction. The Voice could also scrutinise the effectiveness of programs from a First Nations perspective, something that is fundamental to practical self-determination. And it could work in partnership with other organisations, like the Productivity Commission, universities and departments and peak First Nations organisations.

The Voice must remain grounded and accountable to the regional bodies from which it is drawn. We need to reinvigorate our national process of truth telling. As our holders of stories pass on, so too do the stories.

Truth telling is most effective when it is local, because that is where the stories are. State and Local Governments should play a big part in truth telling. And there is no need to wait for the Commonwealth – or for a referendum. That is the beauty of truth telling, it can start wherever and whenever people are ready.

There are some brilliant examples of local governments taking the lead. Last week I was on the Eyre Peninsular in South Australia and was told the story of the Waterloo Bay massacre. And the unveiling one year ago of a monument that tells the story of up to 200 defenceless Aboriginal people being forced off a cliff at gun point. There was intense debate in the community about this monument – with some wanting to use the word ‘incident’ rather than ‘massacre’. In the end, the Elliston Council decided, by a single vote, to tell the truth. This was not easy. It was painful and difficult. But it was important for the whole community. And I am told that the process has been healing.

Without openly talking about the past, and understanding it, it is almost impossible to understand some of the barriers, the intergenerational trauma and how to move forward.

The recognition of Myall Creek massacre in the Gwyder region of New South Wales is another powerful example of the transformative power of truth. On the 10th of July 1838, a group of Wirrayaraay people were attacked by convicts and settlers when they were preparing a meal. They were slaughtered and their bodies burned. One boy survived. But now, the descendants of those who murdered, and the descendants of those who were killed come together each year. I attended the first year of the commemoration. It is an incredibly raw, moving and brave acknowledgement that is pulling together the edges of the great tear that has occurred in that community. Myall Creek was also the first time in Australia that perpetrators were brought to justice – they were hung.

There are stories of truth to be told in the midst of our biggest city too. In April each year, the Wyinga Myamly Reconciliation Group with the support Campbelltown City Council as well as many other local organisations. Hold a memorial at Cataract Dam to remember the Appin Massacre of 1816. In the early hours of 17 April 1816, Governor Lachlan Macquarie ordered a military reprisal against local First Nations people in the area at the command of Captain James Wallis. They were ordered to track down, capture or kill all local Dharawal, who were shot at and ordered off the edge of a cliff into the gorge of Cataract River. The Appin Massacre is often said to mark the end of hostilities of the Cumberland Plain. It is significant that this massacre is remembered as a mark of respect each year by local government and local organisations – which includes a flag raising ceremony. This is a good example of how local government and local community groups can remember difficult aspects of our history. I have attended this ceremony many times at the site of where their bodies would have fallen. It is moving because it is something like 300 people who sing songs – local schools, local people, local SES, local MPs, including Paul Lynch - come

together and it is a wonderful example of the power of truth-telling and peace can come to the land. We should commemorate this. We should never forget. We should do this, not to victimise ourselves, but to acknowledge that incidences such as these have very much coloured and shaped the place of First Nations People in our history and in our country.

If we cannot acknowledge the injustices of the past, we cannot heal the pain. The laws may have changed but the game has very much stayed the same. We still see First Nations People being pursued by the authorities. We still see First Nations People being locked up and removed at record rates. The shocking part of this story is that Governor Macquarie who started out as such a friend of First Nations people actually justified this massacre as a means of preserving the peace and rule of law.

State, federal and local governments need to urgently resource truth telling. Libraries, museums and cultural institutions must be better able to help communities capture the stories that have shaped our nation. And the New South Wales Government has an opportunity to do more.

To building a shared and truthful understanding of the past. Because the role of Government goes beyond building roads, schools and hospitals. We must reach out to the many wonderful multicultural communities that call our state home, and including them in the next phase of truth-telling. Because telling the truth isn't only a black-white issue. It is something relevant and important to all parts of our multicultural society. And in my discussion with multicultural communities, there is a real hunger to participate in a deeper and more inclusive understanding of our past. Truth telling is difficult. But it can build for Australia a stronger, collective national pride: we are all custodians of the oldest continuing culture in the world. It is for everyone.

The Uluru Statement also called for agreement making – for Treaty. This will require long-term commitment, with the first step being communities and governments getting Treaty-ready. Ultimately, there will probably be many treaties. Ken Wyatt is correct about this. Many states and territories have started down the path towards Treaty and Truth, in one way or another. The ACT has an Indigenous voice to Parliament and government – and Western Australia has announced a plan for this too. Victoria is now three years into its Treaty process, and is at the stage of electing First nations delegates to the assembly which will advocate on behalf of traditional owners. South Australia's path to Treaty has been put on hold – temporarily – by a change in government. Queensland has launched a 'Tracks to Treaty' partnership. The Northern Territory has appointed Mick Dodson and Ursula

Raymond as Treaty Commissioners. Here in New South Wales, the Labor Party spokesperson for Indigenous Affairs is also spokesperson for Treaty – by way of David Harris. And we can't forget the Noongyar agreement which covers part of the West Australian landscape, and is working well to bring about a closer relationship, a relationship as equals, in terms of Treaty and agreement making.

Governments in other states have started the Truth and Treaty process in one way or another. But New South Wales – the state with the biggest Indigenous population in Australia – has not. New South Wales Labor is committed to the Uluru Statement and Treaty. I would like to see the State Liberal Government to also adopt that position, and make Treaty a bipartisan commitment. Firstly, because the process of negotiating Treaty will take time, and outlast individual governments. And Secondly, because with New South Wales' backing, the momentum for a Voice, Treaty, and Truth –

Momentum for the Uluru Statement would be unstoppable. Because New South Wales, more than any other state or territory, has the moral and political weight to make sure we get this done. And to make sure the Uluru Statement delivers on its potential and on its promise.

Of course, the Commonwealth can't wash its hands of Truth and Treaty. In fact, it is critical we remember that the Federal Government does not need a referendum to establish a Makaratta commission, to begin the very long and complex process in establishing a National Treaty. As Mick Dodson has made clear, a National Treaty could act as an overarching guide to the standards and expectations of local treaties.

The Uluru Statement is a tangible and modest ask. And today, without being prescriptive, I have made some suggestions about how to bring the Uluru Statement to life – as I did the Nugget Coombs Memorial Lecture last week. I have put forward a tangible proposal for a Voice with a clear regional basis, an electoral process and gender parity. My advocacy is simply that – suggestions in the public domain in an attempt to breathe life and energy into this debate. And to inspire our leaders - in Parliaments, in the First Nations community, and the broader Australian community – to keep this issue on the agenda.

Labor remains absolutely committed to bipartisanship. And we remain committed to the process of co-design. There is no point in allowing this to descend into political scrabble. That would be a terrible tragedy.

The stars are aligned, now, in this moment. There are advocates within conservative politics, Labor is absolutely on-board with the Uluru Statement, business is ready and willing, states are leading, and eminent legal minds like Justice Murray Gleeson have also lent their support. As well as my dear from Mem.

But we are running out of time to deliver on the Uluru Statement. Which is why I am calling for the intervention of the New South Wales Government. With its might and moral authority, as the representative of the largest group of Indigenous people in Australia - to encourage the Prime Minister to make history.

This could be Scott Morrison's greatest legacy. It could indeed be Gladys Berejiklian's too. Both leaders have just won elections, and both have enormous political capital. I encourage them to do what Frank Walker would have done, and use some of that capital to make a long-overdue and long-lasting change for the better.

8 October 2019