

Submission to Consultation on Proposals for a First Nations Voice

30 April 2021

Submitted online

I am writing to express my personal support for the *Uluru Statement from the Heart*, which was a generous invitation by First Nations people to non-Indigenous Australians to walk together 'in a movement of the Australian people for a better future.'

This includes whole-heartedly endorsing the three key elements of the Uluru Statement:

- Voice
- Treaty, and
- Truth.

As the Statement itself outlines, the first element – a First Nations Voice – must be 'enshrined in the Constitution'.

Constitutional enshrinement is essential to ensure the independence of the Voice, and protect it against political intervention by the Government of the day, something which has unfortunately occurred in relation to past Aboriginal and Torres Strait Islander bodies.

Constitutional enshrinement will also provide the Voice with stability, as it would not be able to be abolished through the passage of simple legislation, as happened with the Aboriginal and Torres Strait Islander Commission (ATSIC).

I therefore urge the Commonwealth Government to honour its election commitment to hold a referendum to establish the Voice once the model has been settled.

The referendum process itself has the opportunity to be a unifying moment, as a step along the long journey of genuine Reconciliation.

A successful referendum, with what I would hope would be a large majority of Australians voting in favour, would also provide the Voice with additional authority and legitimacy as it fulfils its Constitutional responsibilities.

Holding a referendum in the near future would also take advantage of what I believe is growing momentum towards embracing the *Uluru Statement from the Heart* and the opportunity for substantive progress which it presents.

On the other hand, I strongly oppose the creation of a Voice via legislation prior to such a referendum.

This approach – 'legislation first, referendum later' – is weak for the same reasons a 'referendum first' approach is strong.

‘Legislation first, referendum later’ means the Voice would lack true autonomy in its formative years, at the very time it would need to be establishing its credibility with First Nations people.

It would operate under the constant threat of being abolished, just like its predecessors, while delays to any referendum could squander the community goodwill which has been built in support of the Uluru Statement.

All of that is before considering the real possibility of the current, or a future, Government walking away from their commitment to hold a referendum at a later date.

The order of events to create the Voice must therefore be a constitutional referendum first, followed by the passage of enabling legislation.

The above position reflects the first two ‘key messages’ of the Indigenous Law Centre at the University of NSW, and the Uluru Dialogue.ⁱ

I also endorse their third ‘key message’:

‘The membership model for the National Voice must ensure previously unheard Aboriginal and Torres Strait Islander people have the same chance of being selected as established leadership figures.’

In relation to this principle, I would like to make a comment about one of the proposed elements of a First Nations Voice as highlighted in the Indigenous Voice Co-design Interim Report, provided to Government in October 2020 and underpinning the current consultation.

Specifically, Chapter Two of that Report proposes two options for the Voice on page 37:

Option 1 – equal representation (preferred option), which features 18 members with ‘two members of different gender for each state, territory and Torres Strait Islanders’, and

Option 2 – scaled representation, which features 16 members with ‘two members of different gender for each state and the Northern Territory’ and ‘one member each for the ACT and Torres Strait Islands with a member of a different gender selected following each completed term...’

The discussion on page 38, under the heading ‘Gender representation’, then states:

‘The National Co-design Group agreed unanimously to the importance of gender balance. All options reflect the principle that there must be a requirement for balanced representation of different genders in the National Voice membership.’

In response, I begin by welcoming the use of the term ‘different gender’ rather than the exclusionary phrase ‘opposite sex’ in these options.

I obviously also support efforts to ensure the National Voice is not male-dominated, and certainly not in the same way that Commonwealth Parliament currently is.

Despite this, I question how these options would operate in practice, especially the requirement there 'must' be 'gender balance' (with some of the materials supporting the current consultation describing this as 'guaranteed gender balance').

In particular, how does such a requirement apply with respect to non-binary people or other First Nations people with gender identities that are not male or female?

I suspect most people reading the Interim Report and associated consultation materials would interpret proposals for two members per jurisdiction being of different genders, reinforced by an overall requirement for *gender balance*, as involving one female and one male member in each state or territory.

However, that outcome would mean non-binary First Nations people may be prohibited from serving on the National Voice (which is contrary to a goal of 'ensuring previously unheard Aboriginal and Torres Strait Islander people have the same chance of being selected as established leadership figures').

On the other hand, if non-binary people are allowed to serve as members of the National Voice, this may result in the numbers of male and female members being different or unequal, and not satisfy some people's notions of 'gender balance'.

I raise this issue as a long-term advocate for the lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ) community.

Nevertheless, I am conscious that I am not Indigenous, and believe that the core features of the Voice, including criteria for membership of the National Voice, are matters for First Nations people.

In this context, I am not proposing a solution to this issue (concerning requirements for gender balance and their potential adverse impact on non-binary and other gender diverse First Nations people), merely bringing it to the attention of those responsible for this consultation and suggesting that it be considered further.

Thank you in advance for taking this submission into consideration.

Sincerely

Alastair Lawrie



Footnotes:

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- ⁱ 1. The government must honour its election commitment to a referendum once a model for the Voice has been settled.
 2. Enabling legislation for the Voice must be passed after a referendum has been held in the next term of Parliament.