

RESPONSE TO INDIGENOUS VOICE CO-DESIGN PROCESS *INTERIM REPORT TO THE AUSTRALIAN GOVERNMENT*

Submission by NSW Uluru Statement from the Heart Youth Network

This submission is in response to the invitation to all Australians to provide feedback on proposals contained in the Interim Report to the Australian Government.

About the NSW Uluru Statement from the Heart Youth Network

The NSW Uluru Statement from the Heart Youth Network is a coalition of Indigenous and non-Indigenous young people committed to pursuing and advocating for the sequenced reforms contained in the Uluru Statement from the Heart – Voice, Treaty, Truth. The network was founded in 2020 by First Nations members of the Uluru Statement from the Heart National Youth Dialogue held in Cairns in December 2019. We are led by the Uluru Statement Senior Leadership Team through the Indigenous Law Centre at the University of New South Wales including Professor Megan Davis and Aunty Pat Anderson.

Since our inception, we have engaged hundreds of Australian youth to take up the invitation contained in the Uluru Statement to walk together in a movement of the Australian people for a better future. Our activities include publication and distribution of materials in support of the Uluru Statement from the Heart campaign, educational webinars, panel appearances, community workshops and submission writing.

Response to the Interim Report to the Australian Government

First and foremost, we acknowledge that Constitutional amendment with regard to an Indigenous Voice was excluded from the terms of reference.

We acknowledge that the Interim Report on Indigenous Voice Co-Design Process is anchored in the historic Uluru Statement from the Heart. However, the Interim Report has largely ignored the Uluru Statement from the Heart, and its set of sequenced and substantive reforms. We submit that the reforms contained in the Uluru Statement remain the most empowering and effective way to pursue a meaningful Indigenous Voice.

We support the following key messages championed by the Uluru Statement from the Heart campaign:

1. That the Australian Government honours its election commitment to a referendum once a model for the Voice has been settled.
2. That legislation enabling the Voice must be passed after a referendum has been held in the next term of Parliament.

3. 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.

A constitutionally enshrined Voice to Parliament has been endorsed by two former Chief Justices of the High Court of Australia

To emphasise the legal validity of a constitutionally enshrined voice, the NSW Uluru Statement Youth Network would like to draw upon the views of two former Chief Justices of the High Court, the Hon. Murray Gleeson AC QC (Chief Justice 1998-2008) and the Hon. Robert French AC (Chief Justice 2008-2017).

The Hon. Murray Gleeson AC QC made the following remarks regarding a constitutionally enshrined Voice in 2019:

“It would give Indigenous people a constitutionally entrenched, but legislatively controlled, capacity to have an input into the making of laws about Indigenous people or Indigenous affairs.”¹

“In our constitutional development we have arrived at the situation in which the Constitution confers on the Parliament a power to make special laws for the people of a certain race, and that power, supplemented by the Territories power, is used in practice as a power to make special laws for Indigenous people. A proposal that the Constitution should provide for Parliament to design, establish, and determine from time to time the make-up and operations of a body to represent Indigenous people, with a specific function of advising about the exercise of that power, hardly seems revolutionary.”²

“It is difficult to see any objection in principle to the creation of a body to advise Parliament about proposed laws relating to Indigenous affairs, and specifically about special laws enacted under the race power which, in its practical operation, is now a power to make laws about Indigenous people.”³

The Hon. Robert French AC endorsed Gleeson’s comments and noted the following in an opinion piece in *The Australian* newspaper:

“Recognition in the Australian Constitution would reflect an existing national growth of respect for our First Peoples and thus for the whole of the full, rich and long history of the people of this continent.”⁴

“the Constitution should provide, in spare terms, for the existence of the Voice as an advisory body. It should be left to the parliament to establish its detailed design by legislation.”⁵

¹ Murray Gleeson, ‘Recognition in keeping with the Constitution: A worthwhile project’ (Speech, Uphold & Recognise, 18 July 2019) <https://cdn.brandfolder.io/3R7TK3BV/as/putr90-7ew1ns-5sgfef/Indigenous_Recognition_-_Murray_Gleeson.pdf>.

² Ibid.

³ Ibid.

⁴ Robert French, ‘Voice of reason not beyond us’, *The Australian* (online, 31 July 2019) <<https://www.theaustralian.com.au/commentary/voice-of-reason-not-beyond-us/news-story/1e1715b36c7eeb49f3f1b98c3c377774>>.

⁵ Ibid.

“...given the existing support for and practice of constitutional and extra-constitutional recognition in many different ways throughout Australia, the creation of a national consensus should not be beyond our wit.”⁶

Our views on constitutional enshrinement

The NSW Uluru Statement Youth Network wholeheartedly supports the constitutional enshrinement of a Voice to Parliament.

A voice is necessary for empowering individuals and communities, for acknowledging the wrongs of the past and moving forward together, for promoting equality and generating a future in which all peoples of Australia are respected and have an equal say in the governance of this country

“A Voice to Parliament would empower me as an Aboriginal person, and promote faith in the government of Australia, that we are being respected and the wrongs of the past acknowledged, allowing all the peoples of Australia to move forward together and move beyond the past”

For years Indigenous people have been "encouraged" to participate in the political arena while constantly being ignored and restricted from actual participation. A constitutionally enshrined Voice to Parliament is the only way to guarantee that First Nation's voices are heard and continue to be heard in a meaningful way. Without the strength of a constitutionally enshrined voice, this important measure is vulnerable to legislative change, and lasting action will be

“A constitutionally enshrined Voice to Parliament is the only way to ensure the mandate of reforms enclosed in the Uluru Statement from the Heart are achieved”

difficult to achieve. Changing the Constitution to include a First Nation's voice means the question is posed directly to the Australian people, giving them the opportunity to engage with the gravity and importance of this action.

A Voice created by legislation alone will simply not fulfil the mandate of the Uluru Statement from the Heart. A statutory voice is vulnerable to legislative change, meaning that work towards the goals of the Statement may be easily eradicated with a change of government. We cannot subject the right to self-determination of our First Nations, peoples guaranteed under international law, to political indeterminacy. A constitutionally enshrined Voice to Parliament is the only way to ensure the Uluru Statement reforms are achieved.

Enshrining the Voice to Parliament in the Constitution is essential for providing certainty. As noted by Hon. Murray Gleeson AC QC, former Chief Justice of the High Court of Australia, the constitutional change would include the “minimum requirements necessary to guarantee its continued existence and its essential characteristics”.⁷ The details of the Voice to Parliament can be addressed in legislation, where attributes of the representative body can evolve as required.



Photo includes founding members of the NSW Uluru Statement from the Heart Youth Network

⁶ Ibid.

⁷ Gleeson (n 1) 12.

Thank you for considering our submission.

Kind regards,
NSW Uluru Statement Youth Network

April 2021

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