

***Indigenous Voice Co-Design Process: "*
*Interim Report to the Australian Government, October 2020 ****

Submission from the Henry Parkes Foundation

The Henry Parkes Foundation was set up in December 1998 by Parkes' descendants and others, both to honour Sir Henry himself — the man dubbed 'Father of Federation' — and to carry forward his ideas in ways relevant to today.

The Foundation's activities aim to enhance Australians' understanding of the political and constitutional systems that underpin Australian democracy, and encourage people to participate productively in civic life.

The Foundation strongly supports the creation of a First Nations Voice to Parliament, as expressed in the Uluru Statement from the Heart.

We do not see it as our place to offer opinions on the design of the Voice itself; this is for First Nations peoples to consider. As their Voice, it must spring from their own deliberations. We support their efforts on this and commend the work already conducted in compiling the Interim Report. We regard the development of the Uluru Statement as a model of informed community consultation and deliberative decision-making, and there is every reason to expect that the membership model arrived at through the co-design process will continue to facilitate real engagement of First Nations communities at all levels, from previously unheard voices to established leaders.

However, we do want to register our view that the First Nations Voice must be enshrined in the Constitution.

This is not only important in ensuring the Voice's ongoing existence beyond the politics of the day, but it would also represent substantive recognition of the unique place in Australian society held by its First Peoples – not token recognition, as would be the case with a new preamble, however aspirational this might be.

Further, because it would require a referendum, a Constitutionally-enshrined First Nations Voice would have the authority of the Australian people, and the act of bestowing that authority would have the potential to fundamentally shift the way Australians see themselves and their country.

The idea of the Voice stems from an acknowledgment that First Nations people have a unique right to be heard. As Stan Grant has observed, this is not a special right, but an inherent right – they were here first. "It diminishes no one," he says, "to acknowledge and protect that unique status in keeping with the spirit and limits of our constitutional democracy".

In summary, once a model for the Voice has been settled, we call for the Government to hold a referendum to ensure that a First Nations Voice to Parliament is protected by the Constitution; and following that, legislation to enable the Voice must be passed without delay in the next term of Parliament.

Henry Parkes Foundation
30 April 2021

Appendix: Extracts from Henry Parkes Orations

One of the Foundation's key activities is to sponsor an annual oration, with a distinguished speaker focusing on challenging social/political issues in Australian society, with some reference to the ideals and objectives of Parkes. Extracts from some relevant orations are provided here.

Professor George Williams, University of NSW (2012) "

Mission impossible? Achieving social justice through constitutional change "

Across many fields, Henry Parkes was a reformer, and an extremely successful one at that. He demonstrated the qualities needed to achieve social justice in a tumultuous and unforgiving political process. He showed that this can be realised when it is backed by a **clear vision, sound political judgement, persistence and a willingness to convince the community of the need for change.**

These lessons can be too easily forgotten, and we can still learn much from Parkes today. This is particularly true when it comes to changing the Australian Constitution.

Parkes was embroiled in a number of constitutional debates, beginning with the creation of self government in New South Wales in 1856. **He recognised that longer term goals such as equality and justice demand a continuing commitment to democratic and constitutional reform.**

This insight was true in Parkes' time, and it is just as true today. Unfortunately, we have lost sight of this to our detriment.

Rather than being seen as a living document that fosters our national aspirations, the Constitution has faded into the background of public debate. As a result, we maintain a structure of government that is generally sturdy, but which reflects popular values and common understandings of government that made sense in the 1890s, but not today. These include the idea, written into Australia's constitutional DNA, that governments should discriminate between people on the basis of their race.

By not updating and improving the Constitution, we have failed to ensure that we have the structure of government that best meets our needs. This has many costs, including especially when it comes to social justice.

The Constitution

At first blush, the Australia Constitution is a dry and boring document. ... not written as a people's constitution... The Constitution produced by the end of the 1890s was a lawyers' document containing the nuts and bolts of how our system of government was to operate. ...

On the surface, Australia's 111-year-old Constitution would seem to have little to do with current questions of public policy such as how to fix the Murray Darling Basin, or matters of social justice such the human rights of asylum seekers or how to provide everyone in the community with access to first-rate schools and hospitals.

In fact, the Constitution has everything to do with these things. We must simply look deeper, often beyond the dry words on the page, to understand how fundamentally the Constitution continues to shape the nation and our capacity to realise our collective goals. Among other things, the Constitution:

- establishes lines of power in our society (such as who can do what to whom);
- establishes relationships and the legitimacy of people and organisations; and
- provides recognition of groups and national aspirations.

In these ways, as Parkes would have anticipated, the Constitution has a profound, ongoing impact on the nation and community well-being.

Full speech at <https://parkesfoundation.org.au/2012-george-williams/>

Professor Megan Davis, UNSW (2018)

Re-imagining a nation: Indigenous recognition, constitutional reform and a future Australian republic

[T]he significance of Uluru [is that it] has started the process of peace and it has invited the Australian people to join us, to join the First Nations. ...

The Uluru Statement from the Heart was issued to the Australian people. It was not issued to politicians and it was not issued to parliamentarians. We uninvited them to the Rock.

We deliberately issued the Uluru Statement to the Australian people, because it is we who can change the Constitution. The Constitution is built to change. The amendment mechanism placed into the Constitution was for us.

We knew after the Uluru work – and we were getting the vibe from Canberra that they weren't happy with recognition – we knew that we had to work now with our fellow Australians and ask them to help us persuade them of the exigency of reform.

It sounds strange emphasizing this exclusion of politicians, given that the Oration is for Henry Parkes, but I do see great synergies with him, and as a constitutional lawyer, I enjoyed reading the multiple articles and biographies that have been devoted to his life and his work.

Of course, there's not a lot of mentions in relation to Aboriginal people, or Aboriginal rights, which is a relic of the time. But he shares much in common with the struggle. His frustration at the amount of time it takes to explain to people law reform proposals. The length of time that it takes to understand vision.

The most difficult thing that happened in the dialogues was walking into the regions and into communities – communities that had been devastated by policies like the Indigenous Advancement Strategy. They did not want to talk to us. It was not an easy thing to do. It was so difficult that we had to build in an extra day to manage the anger.

We had to ask people to suspend their disbelief that the country can't change, and that's a difficult thing to do out there in the regions. We had to say to people, law reform is about vision and you have to imagine that Australia can be a better place. You have to imagine a reform and you have to imagine that we can achieve it.

So I really enjoyed reading about how exhausting it can be to continually have to argue and prosecute the same arguments until eventually people understand what it is that you're trying to say. About his frustrations at the setbacks that come with legal and political reform.

But on the other hand, as we try to teach our young people who've come along on this journey and were devastated after Turnbull's rejection, you just have to pick yourself up and keep going, which is what we've done. Don't settle for no.

There were a lot of things about Parkes and law reform and policy reform, about his tiredness and exhaustion, that I could relate to. But also it made me feel hopeful about Uluru and the reforms from Uluru, because Uluru did bring together decades and decades of advocacy for reform. None of the options for reform from Uluru were remotely original in terms of constitutional reform. They'd all been prosecuted by our people, by our ancestors, for decades and decades and decades. It's just that no one seems to hear.

I think the importance of Uluru Statement from the Heart and issuing it to the Australian people is that it's had a very different impact from things we've done before. And I think and we hope that, in a similar way to 1967, we will be able to work together. And we will be able to persuade the Australian politicians that this is the roadmap forward.

Writing in *The Empire* Henry Parkes once said: “It is the most reckless of all wrongs to neglect the power which we possess to make a difference to Aboriginal peoples lives. Why do we not aid them and give them a place among our brethren?”

It sounds very much like the Uluru Statement from the Heart.

We seek constitutional reforms to empower our people and take a rightful place in our country. When we have power over our destiny our children will flourish and they will walk in two worlds and their culture will be a gift to their country.

We call for the establishment of a First Nations Voice enshrined in the Constitution.

Makarrata is the culmination of this agenda: the coming together after a struggle. It captures our aspirations for a fair and truthful relationship with the Australian people and a better future for our children based on justice and self-determination.

In 1967 we were counted; in 2017 we seek to be heard. We leave base camp and start our trek across this vast country and we invite you to walk with us in a movement of the Australian people for a better future.

We're hearing two things in relation to the republic referendum: a plebiscite and then a referendum.

For such a large piece of law reform like that which culminated in Uluru after eight years – eight years of taxpayer-funded formal law reform processes – to be ignored, and for an Australian republic to be prosecuted ahead of constitutional recognition, will make things very difficult.

But more than that – and I say this as an Australian republican – will it be another process in which Australians aren't properly consulted about what a republic means to them? What if my republic vision is much bigger than just a head of state? What if our republic vision can be bigger and smarter and more inclusive?

All Australians must be given an opportunity to say how they view our democracy in 2019, not 1999, and an Australian republic can be so much more than just an Australian head of state.

Full speech at <https://parkesfoundation.org.au/2018-oration/>

Professor Mark Kenny, ANU (2020)

Why looking back is the only way forward

... Progressive as he was, Henry Parkes was inevitably a man of his time.

Yet just as we can use the current rate of change to project population growth or the rate of global heating, we might also credibly assert that were Parkes around today, he'd be a social progressive in today's terms: That is, he would have moved on from what Pickering called his "popular constitutionalism" to be an enthusiastic republican; He'd favour multiculturalism, marriage equality, gender equality, environmental protection, and reconciliation.

His approval of change and modernisation supports this contention deriving from his view that the Glorious Revolution of 1688 had marked a splitting of the monarchical chrysalis – a flipping of the power relationship between people and Crown and making the people substantially sovereign.

He called Parliamentary and Constitutional reform "a marvellous example of the progress of national sentiment".

The "progress" of national sentiment. Mark those words – progress and national sentiment. "All parties are growing wiser, both 'theoretically' and 'practically' every year," he enthused.

In these comments we can see Parkes' understanding of **society as a moving thing, as always a work in progress** – a fundamentally different proposition from that of conservatives.

...

The truth at the heart of our story

We love our country but not enough to be honest about its brutal origins. Not enough to want to square up to the damage that was done in colonising this vast sprawling continent, not enough to tap all the potential that is here.

If you step out of this wonderful building, situated on this historic alignment, out onto the most famous steps in Australia, you can see straight across the Lake to the bottom of Anzac Parade and up to its other end, the beloved, the revered, the sacred Australian War Memorial.

Step out the back of this building and on precisely the same axis, you gaze up at the new Parliament House – the geometry of all this, so precise, so utterly deliberate and constructed that I'm told if you could walk that line, you'd pass through the Great Hall and under the giant flag and into the Cabinet Room itself, the nation's inner-most sanctum of executive power.

From either end of this magnificent axis – atop Mount Ainslie, behind the War Memorial or up on Red Hill behind the parliament – can be seen the whole institutional story of Australia.

But let's go back out on those steps. Cast your eyes down and closer. What you see is also, in its own way, perfect. For amid all this precision planning, the manicured landscaping and permanent sharp-edged monumentalism, right there, smack-bang on this nation-defining axis, sits the Aboriginal Tent Embassy – its improvised disorder acting as its own monument to marginalisation, denial, grudging tolerance, and legal ambiguity.

Here, in deliberate contradistinction, is an anti-monument – asymmetric, informal, and ephemeral. Where the other institutions sit stoic and motionless in a fast-moving world so as to remind us of our enduring values, this evokes movement. It reminds us it is our stone hearts that have stopped, that it is we that are closed and motionless.

The Tent Embassy – one of the world's enduring continuous protest sites – will have been there for 50 years in little more than a year from now.

It is a credit to the simple perseverance of a people who in so many other ways, from their racist treatment in the Constitution, to their discrimination, incarceration, and denunciation since white settlement, have just clung on.

As my friend Stan Grant observed in his poetic and painful book, *Australia Day*, when he was born, he was counted among the flora and fauna of this country, not its citizens – and remember, he’s younger than me. Grant’s generous writings on Australia Day and identity eschew the usual traps of simplicity and the accumulation of useless anger describing this frame of history as the “narrative of loss and inheritance robbed” – “history told from the losing end”.

“This is an age of grievance, and grievance is a demoralising basis for identity,” he writes, telling us that, in the contest for wounds, “there can be no winner”.

Yet even after mounting a persuasive case for keeping January 26, Grant can’t avoid the pain of continued denial, the deep emotional scars and the visceral yearning for a bilateral healing.

He concludes that our constitution, “our founding document, must respect what came before: it must acknowledge the place of First Peoples” because it “still carries the illegitimacy and stain of race”.

“The First Peoples do not have special rights,” he insists, “but inherent rights. It diminishes no one to acknowledge and protect that unique status in keeping with the spirit and limits of our constitutional democracy.”

Two decades into the 21st century, I feel confident that progressives from the dawn of our federation would be appalled at the lack of any big restorative gesture – the absence of a treaty, the refusal to brook Constitutional recognition including a voice to Parliament, the glacial pace of practical, meaningful reconciliation, the non-representation on the national flag, the failure to make financial restitution for past wrongs including wages robbed, children ripped from families, the disrespect of Indigenous soldiers good enough to fight and die for their country but not to be recognised as citizens, much less heroes; and of course the shocking cycle of poverty, violence, social dysfunction, conviction, incarceration and deaths in custody.

The chance to “make a place of peace in the space between us”

The ANU’s Australian Studies Institute was privileged to host Pat Turner AM recently delivering the 2020 ‘Australia and the World’ Lecture. She titled her lecture ‘The Long Cry of Indigenous Peoples to be Heard – A defining moment in Australia’.

“Australia,” she said, “knows that there is unfinished business in relation to our First Nations peoples”, referring to the Uluru call for a Voice to Parliament.

“It was a mechanism to facilitate engagement, dialogue, and discussion between those so far excluded and those who are elected to make laws for the people of Australia. The response from government was, once again, not to hear our cry. This treatment merely serves to reinforce and confirm the torment of our powerlessness, to borrow a phrase from the Uluru Statement. We were not and have not been heard. But we persist. We always do.”

Grant finished his book with these words.

“If you are not Indigenous, it is impossible to really know what it is to carry this history in our bones – to live with the memory of wounds ... this was never empty, *terra nullius* was the lie that haunts us still ... If we are smart enough and generous enough and forgiving enough, we can write our laws and our stories and we can make a place of peace there in the space between us”.

In the year of Black Lives Matter and the explosion of racial violence in America, let me conclude with this observation. You don’t take advantage of the comparatively lower temperature of Australian race relations by denial, by doing nothing. Rather you seize on that goodwill, that social capital, that national unity, to build a better, stronger, truer Australia.

Full speech at <https://parkesfoundation.org.au/2020-oration/>