

To the Voice Secretariat

Submission in response to the Interim Report to the Australian Government on the Indigenous Voice Co-Design Process

In 2017, following regional dialogues, the Australian public was gifted the Uluru Statement of the Heart (**Uluru Statement**). The Uluru Statement expressly calls for the “establishment of a First Nations Voice enshrined in the Constitution.” The First Nations Voice is an advisory body (**Voice**).

Constitutional recognition was excluded from the terms of reference of the Interim Report. This submission, made by a non-Indigenous Australian, supports the constitutional enshrinement of a Voice for the reasons set out below.

A constitutionally enshrined Voice would directly respond to the mandate of the Uluru Statement, and has been endorsed by two former Chief Justices of the High Court of Australia.¹ As noted by the Hon. Murray Gleeson AC QC in 2019, the Voice can be “constitutionally entrenched, but legislatively controlled.”² By comparison, a Voice created by legislation alone risks being abolished, and ignores the request for substantive constitutional reform. The constitutional reform regarding the Voice would include the “minimum requirements necessary to guarantee its continued existence and its essential characteristics”.³ The details and functions of the Voice can be addressed in legislation, evolving as necessary. Gleeson addressed the current framework, and substantive nature of the reform:

“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... It has the merit that it is substantive, and not merely ornamental.”⁴

A constitutionally enshrined Voice would provide a lasting and durable way for First Nations to have a say in the law and policy affecting them.⁵ This is necessary to achieve social and health outcomes,⁶ and to address the long standing impacts of dispossession.

Where to from here? Once a model for the Voice has been settled, the commitment to hold a referendum should be honoured.

Yours sincerely

Lucy McFarlane

¹ Murray Gleeson, ‘Recognition in keeping with the Constitution: A worthwhile project’ (Speech, Uphold & Recognise, 18 July 2019) <https://cdn.brandfolder.io/3RTTK3BV/as/putr90-7ew1ns-5sgfef/Indigenous_Recognition_-_Murray_Gleeson.pdf>; 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>>.

² Gleeson (n 1) 14.

³ Ibid 12.

⁴ Ibid 14.

⁵ *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN Doc A/RES/61/295 (2 October 2007, adopted 13 September 2007) art 19.

⁶ Lowitja Institute, ‘*Leadership and Legacy Through Crises: Keeping our Mob safe*’ (Report, 2021) 6.