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Submission for Co-design process

Who I am

I am an Australian lawyer and postgraduate student, originally from Sydney, writing from the University of Oxford. I studied law and science at the Australian National University before working for judges at the Constitutional Court of South Africa and Federal Court of Australia. I completed my legal training placements with Aboriginal Legal Service in the ACT and WA. I am now studying human rights and constitutional law in depth at Oxford.

Acknowledgement

I acknowledge the deep teaching, experience and welcoming inclusion I have received throughout my education from Aboriginal and Torres Strait Islander Australians. I also acknowledge the countless generations of Aboriginal and Torres Strait Islander people who have cared for and continue to care for all the corners of the beautiful country I call home. Australia's rich cultural history is a privilege which has always guided our nation and its many peoples and will continue to do so.

Why do you think the Uluru Statement from the Heart is important?

Other submissions to the Co-Design Process have clearly articulated the importance of listening to and acting on the Uluru Statement. They have made powerful arguments describing sovereignty and the fundamental importance of the three steps that must be taken in voice, treaty and truth. I am writing to add one small perspective to the wave of support for the three key goals of the Uluru Statement: voice, treaty and truth. The Uluru Statement is a generous gift and I am grateful for it, and this submission is one small part of my thanks.

Sovereignty has never been ceded. Adequate action in response to that fact has never been taken. For decades, Australian politicians have stalled. But in 2017, the Uluru Statement from the Heart gave the Government a near-consensus roadmap on what comes next. Sovereignty cannot be ignored. The Uluru Statement is a gift to all Australians, and a map on the path to change. So much time, energy, compromise and good faith went into the Uluru Statement. The Government must hear what it has to say, and take up the call to walk together in a movement of all Australians towards a better future.

How could a Voice to Parliament improve the lives of your community?

A Voice to Parliament will help inform politicians in making better, more compassionate decisions on issues that affect Indigenous people. It will guide legislation on many issues from health, education and integrated service delivery to local leadership and native title. It could also improve political discourse and awareness for non-Indigenous Australians. We have so much to learn from what Aboriginal and Torres Strait Islander people have to say. This is the case now more than ever as global challenges come to face us. I support a Voice to

Parliament not only as a symbolic step, but also as a practical one. It will make Australia better, improving the quality of our democracy and the outcomes that come from it. Voice will help stop politicians repeating the same mistakes in Indigenous policy over and over. Of course, it will not fix everything, and must work together with treaty and truth, but Voice is necessary. Importantly, it will also remind our politicians to always listen.

Why is it important for Indigenous people to have a say in the matters that affect them?
Having a say is key to self-determination, an Indigenous right recognised internationally. Indigenous sovereignty is a fact, not an academic invention. Australia was claimed for the British crown illegally, and that fact, although acknowledged, has not been fully reckoned with structurally. Indigenous people should have a say in the matters that affect them for many reasons, including because this say is what was wrongly taken away through colonisation and oppression. Reconciliation demands that we listen now.

A comment on democracy

I wish to add one comment about democracy, in response to the negative rhetoric on this point by the Government. When the Government rejected the Uluru Statement in 2017, it argued that Voice would be undemocratic, undermining Australian values of one-person-one-vote and the two-chamber system of Parliament. This argument misunderstands both democracy and Australia. In democratic theory, deliberative political processes like Voice can enhance democracy. And in Australia, there is unfinished constitutional business meaning that doing nothing is not an adequate response, since it takes an illusion of stable democratic legitimacy for granted. The legitimacy of liberal democracies may not be secure while majoritarian decision-making excludes under-represented minority groups, especially where Indigenous minorities have had a political system imposed upon them. Indigenous people can be practically excluded from meaningful democratic participation through constitutional imposition, majoritarianism, inequality, racism or ongoing injustice. Specialised political decision-making mechanisms which include and consult Indigenous Voice are a democratic method for improved participation and representation.

Why do you think it's important to enshrine the Voice to Parliament in the Constitution, rather than include it only in legislation?

There are several reasons for constitutional entrenchment, including:

- (1) This is what Aboriginal and Torres Strait Islander people actually asked for through the Uluru Statement, and that importantly deserves respect.
- (2) Entrenchment has an expressive power for our country. The symbolic process of constitutional change is meaningful and people will remember it.
- (3) Entrenchment means only the people, and not partisan governments of the day, can try and take it away in the future. The past has taught us this lesson.
- (4) Entrenchment provides stability, but need not contain every detail, allowing for flexibility in the specific implementation of Voice over time.
- (5) Entrenchment provides the Voice with legitimacy and authority, through both the referendum process and the status a constitutional role provides.

It is a privilege to support the Uluru Statement and the path towards voice, treaty and truth.

Yours sincerely,
Marcus Dahl