

Judith-Grace Vella
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Dear Co-Design Body,

Submission to Co-design process

My name is Judith-Grace Vella. I am currently in my third year of studying a double degree in law and psychology at Macquarie University. I acknowledge the Bidjigal people of the Darug nation, the traditional custodians of the land in north-west Sydney where I have lived since I was born.

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

Over the last two centuries, the Constitution has denied Indigenous peoples a rightful place at the national table. The Uluru Statement from the Heart offers the opportunity to unite Indigenous and non-Indigenous Australians by integrating the Voice of First Nations peoples into an Anglo-Australian legal system.

The common law of Australia recognises that First Nations have inhabited this land since 'time immemorial'. However, our legal system currently denies the sovereignty of Aboriginal and Torres Strait Islander peoples. The First Nations Voice, the single constitutional reform proposed by the Uluru Statement from the Heart, allows for the co-existence of Parliamentary sovereignty and that of Indigenous nations. This is incredibly important, as, unlike some have been led to believe, the Uluru Statement from the Heart does not seek to displace our existing legal structures with Indigenous sovereignty. Rather, an Indigenous voice would recognise and enshrine the co-existence of Indigenous and Commonwealth sovereignty. In this way, the reforms of the Uluru Statement from the Heart seek to ensure that the Constitution, Australia's founding legal document, finally reflects the reality and richness of legal pluralism in Australia.

The Uluru Statement from the Heart acknowledges and adopts a common aspiration among the diversity of Indigenous peoples: for a treaty to be made between the Crown and First Nations. Any treaty (or treaties) that are made would only be most effective if complemented by the accompanying reforms of 'Voice' and 'truth' that are proposed by the Uluru Statement from the Heart. Agreement-making with Indigenous nations is no simple task; there are many First Nations to engage with, each with differing needs and levels of influence. Some have suggested that multiple agreements should be made out of respect of each nation's unique identity and sovereignty. However, the existence of many First Nations does not negate the need for there to be an organised, national approach to treaty, which can be supported with the assistance of the Voice and the Makarrata Commission.

Additionally, the success of the treaty process is underpinned by the process of truth-telling. How can non-Indigenous Australia make peace with those that they do not know or understand? A national, representative body of Aboriginal and Torres Strait Islander Peoples is thus required to ensure non-Indigenous Australia personally understands the reality of the past, before together cultivating a prosperous future in the spirit of reconciliation. Thus, the interdependence of the three reforms is a significant and distinguishing feature of the Uluru Statement from the Heart.

Why do I think it is important to enshrine the Voice to Parliament in the Constitution, rather than include it only in legislation?

The Uluru Statement from the Heart calls for the constitutional enshrinement of the Voice. I believe the most significant arguments in favour for amending the constitution over simple legislation are two-fold.

Firstly, enactment by legislation puts the Voice at risk of being repealed far too simply. Constitutional enshrinement would protect the First Nations Voice by virtue of section 128 of the Constitution, which requires a referendum to be held to remove it.

Secondly, constitutional amendment will, at the very least, provide an institutionalised and permanent place for the views of Indigenous nations to be received by Parliament.

Much has been said about the risk and expense of a referendum. I believe any cost of a referendum is outweighed by the damage to the future of Indigenous peoples that would result by failing to act now, with substantive constitutional recognition. Furthermore, constitutional enshrinement does not negate the possibility of accompanying legislation governing the functioning of the Voice so that it can be modified to meet changing conditions.

Aboriginal and Torres Strait Islander peoples, among others, have long lamented the limits to mere symbolic constitutional recognition. A constitutional First Nations Voice, as proposed by the Uluru Statement from the Heart, enacts substantive reform. Yet constitutional enshrinement of the Voice is also significant, and preferable over legislation, for an important symbolic reason: our Constitution must recognise and support the traditional owners of the land whose legal and political structures it governs.

Why is it important for Indigenous people to have a say in the matters that affect them?

I am the granddaughter of Maltese immigrants, who searched for a better life overseas. They, and their descendants, have prospered in Australia in the short span of almost 70 years. Therefore, the reality that Aboriginal and Torres Strait Islander peoples, the traditional custodians who nurtured this land over millennia, experience disproportionately worse health and educational outcomes than my non-Indigenous family, distresses me.

As a law student, I am also concerned that the legal system I am preparing to practice in perpetuates injustice for Indigenous Peoples. From my brief volunteer experience at a community legal centre in Western Sydney, I have personally witnessed the significant barriers to accessing justice that Indigenous peoples face, and the overrepresentation of Indigenous women and children in domestic violence matters.

The Uluru Statement from the Heart rightly identifies that this crisis has a structural source. This structural source has been identified by Indigenous peoples for decades, if not over a century, yet unfortunately we as a nation have failed to listen and failed to act.

More specifically, our failure as non-Indigenous Australians has been that of neglecting to include First Nations in the conversation about decisions that impact on them. We have ignored the simple solution time and time again: to listen. To allow First Nations to practice self-determination and autonomy over their lives. To allow Indigenous peoples to have influence, and to make, decisions about themselves. It is only once we listen to their voices that we can walk with them in solidarity toward a better future.

The Uluru Statement intends to address these structural issues by amending the legal and political structures of Australia. A constitutional Voice will empower First Nations, not politicians, to take ownership for the policies that affect them. By welcoming Aboriginal and Torres Strait Islander Peoples to 'the table', there will likely be more success in 'closing the gap' - a challenge this country has struggled with for far too long.

Closing remarks

Australian legal academics have widely recognised the unprecedented level of consensus that was witnessed at the 2017 National Constitutional Convention by Aboriginal and Torres Strait Islander peoples. My hope is that the gravity of this occurrence is not lost on the Co-Design Body. The achievement of a shared prosperity can only occur by listening to First Nations peoples. As I noted earlier, the failure to listen is the source of the structural challenge Indigenous peoples face. The co-design process must continue in this spirit of listening in order to achieve a thoughtful and careful institutional design of the Voice. Otherwise, Australia will lose the opportunity to heal and empower Indigenous peoples; and to unite all Australians in the commitment to a better future.

Thank you for your consideration of this submission.

Yours sincerely,

Judith-Grace Vella