

THE FRED HOLLOWES FOUNDATION'S SUBMISSION TO THE INDIGENOUS VOICE CO- DESIGN PROCESS INTERIM REPORT TO THE AUSTRALIAN GOVERNMENT

The Fred Hollows Foundation (The Foundation) is a leading international eye health non-government organisation that has been actively programming in Australia since 1999.

We continue the legacy of leading ophthalmologist and human rights campaigner, the late Professor Fred Hollows, who believed everyone should have the same access to good eye health. Our work in Australia continues the work of Professor Hollows that began in the 1970s with the National Trachoma and Eye Health Program.

We are determined to deliver Fred Hollows' vision of preventing avoidable blindness and restoring sight. We work tirelessly to ensure that Aboriginal and Torres Strait Islander Peoples can always exercise their rights to sight, good health, and self-determination. We work in collaboration with our partners to close the gap in eye health outcomes between Aboriginal and Torres Strait Islander Peoples and other Australians and ensure world class eye health and vision care for Aboriginal and Torres Strait Islander Peoples. We are committed to ensuring social justice reform is accelerated and pursued according to the needs and aspirations of Aboriginal and Torres Strait Islander Peoples, as determined by them.

The Foundation is pleased to provide a submission to the Indigenous Voice Co-Design Process Interim Report to the Australian Government.

RECOMMENDATIONS

The Fred Hollows Foundation makes the following recommendations:

1. The government renew its commitment to constitutional reform and commit to a referendum on a constitutionally enshrined First Nations Voice to Parliament (the Voice) once the model for the Voice has been settled, as outlined in the Uluru Statement from the Heart.
2. The enabling legislation for the Voice must be passed after a referendum has been held in the next term of Parliament.
3. The government commit to a true co-design process on a Voice to Parliament that is transparent and led by Aboriginal and Torres Strait Islander Peoples.

DESIGN OF THE VOICE AND LIMITATIONS OF THE CURRENT PROCESS

The Foundation congratulates the Senior Advisory Council on the work they have done to date on the design of the Voice. We acknowledge the significant amount of work undertaken by the two co-chairs and three committees. The Foundation notes the importance of an ongoing co-design process with Aboriginal and Torres Strait Islander Peoples to determine the final design of the Voice.

As a non-Indigenous organisation, The Foundation does not make a submission to comment on the detailed design aspects of the proposed Voice. This must be determined by Aboriginal and Torres Strait Islander Peoples. However, as an ally, The Foundation expresses its disappointment in a Voice proposal and process that is forced to disregard the key tenets and aspirations of the Uluru Statement from the Heart, that is, that any First Nations Voice to Parliament must be constitutionally enshrined.

The Fred Hollows Foundation believes it is disingenuous of the Australian Government and Minister Wyatt to preclude the Senior Working Group from incorporating key elements of the Uluru Statement of the Heart in their consultation and co-design process. The out-of-scope measures in the Terms of Reference actively prohibit Aboriginal and Torres Strait Islander Peoples from exercising their right to self-determination, and free, prior and informed consent in the process to design and establish the Voice. The Terms of Reference effectively 'silenced the voices of 1200 dialogue participants by writing the core of their demands out of their scope' (Nakata, S. 2021).

The Foundation also expresses its concerns about the legitimacy of the current process, as Aboriginal and Torres Strait Islander Peoples did not choose who would represent them on the Senior Advisory Group, and there is no agreed and transparent decision-making mechanism as part of this co-design process. This is at odds with Article 18 of the UN Declaration on the Rights of Indigenous Peoples which states that 'Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own Indigenous decision-making institutions.' And, in turn, is in direct conflict to the principles of self-determination and free, prior and informed consent, that underpins all rights of Indigenous peoples.

The Foundation notes that the current process only partially responds to the recommendations of the [Final Report of the Joint Select Committee on Constitutional Recognition Relating to Aboriginal and Torres Strait Islander Peoples](#). The Joint Select Committee made two recommendations relevant to this process:

- Recommendation 1: In order to achieve a design for the Voice that best suits the needs and aspirations of Aboriginal and Torres Strait Islander peoples, the Committee recommends that the Australian Government initiate a process of co-design with Aboriginal and Torres Strait Islander Peoples.
- Recommendation 2: The Committee recommends that, following a process of co-design, the Australian Government consider, in a deliberate and timely manner, legislative, executive and constitutional options to establish the Voice.

The Foundation notes that the current process satisfies Recommendation 1 of the Joint Select Committee. The Australian Government must commit to also satisfying recommendation 2 and provides constitutional options to establish the Voice.

IMPORTANCE OF A CONSTITUTIONALLY ENSHRINED VOICE TO PARLIAMENT

The Foundation recognises and strongly supports a First Nations Voice enshrined in the Constitution. Constitutional enshrinement of the Voice is critical to ensure that there are sufficient protections in place. Constitutional protection guarantees that the Voice cannot be abolished if it provides advice that is unpalatable to the government of the day. This is essential to its integrity, and as the [Referendum Council's Final Report](#) noted, a constitutionally enshrined Voice 'provides reassurances and recognition that this new norm of participation and consultation would be different to the practices of the past' (p14).

The Foundation notes that a constitutionally enshrined Voice is the only form of constitutional change and voice design that has wide and broad support from Aboriginal and Torres Strait Islander Peoples. A constitutionally enshrined Voice is also critical for the implementation of the other two aspects of the Uluru Statement from the Heart: a Makarrata Commission to oversee a process of truth-telling and treaty and agreement making.

The Uluru Statement from the Heart is an invitation to Australians to walk alongside Aboriginal and Torres Strait Islander Peoples in a movement for a better future. The Uluru Statement calls for

‘constitutional reforms to empower [Aboriginal and Torres Strait Islander Peoples to] take a rightful place in [their] own country.’ The Foundation supports these calls wholeheartedly.

The proposed design of the Voice does not distinguish between a Voice to Parliament and a Voice to government. We note that the Uluru Statement of the Heart calls specifically for a Voice to Parliament: that is, the Voice of elected Aboriginal and Torres Strait Islander representatives directly to the elected representatives of Parliament.

SUPPORT FOR A CONSTITUTIONALLY ENSHRINED VOICE TO PARLIAMENT

The Foundation would like to highlight the process undertaken by the Referendum Council that led to the Uluru Statement from the Heart, from which the calls for the Voice originate. As this is where the call originates, it is essential that the proposal for the Voice both draw upon this document and are in line with its core asks, that is, constitutional enshrinement of the Voice.

The Foundation notes the extraordinary and unprecedented process undertaken by the Referendum Council. The National Constitutional Convention was the first time a constitutional convention was convened by, with and for First Nations peoples. The Uluru Statement from the Heart was based on extensive consultations that included First Nations Regional Dialogues between December 2016-May 2017 and the National Constitutional Convention in May 2017. A constitutionally enshrined First Nations Voice to Parliament was the single most endorsed option for constitutional recognition throughout these consultations.

The majority of Australians also support a constitutionally enshrined Voice to Parliament, and this support is growing. The [Australian Reconciliation Barometer 2020](#) found that 86 per cent of the general community think it is important to ‘establish a representative Indigenous Body, to share the views of Indigenous Australians regarding Indigenous Affairs and policies’ and that 81 per cent of the general community think that this body should be protected within the Constitution, ‘so it can’t be removed by any government’ (p14).

CONCLUSION

The call for a constitutionally enshrined First Nations Voice to Parliament remains as important now as it was in 2017 when the Uluru Statement from the Heart was delivered. The Fred Hollows Foundation stands alongside Aboriginal and Torres Strait Islander Peoples in calling for the Australian Government to honour its commitment to a referendum on a constitutionally enshrined Voice. The Foundation urges the Senior Advisory Group to note the support and need for a constitutionally enshrined First Nations Voice to Parliament in its final report.

CONTACT DETAILS

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REFERENCES

- [The Final Report of Referendum Council \(2017\)](#)
- [The Final Report of the Joint Select Committee on Constitutional Recognition for Aboriginal and Torres Strait Islander Peoples](#)

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- Nakata, S. 2021, *On Voice, and finding a place to start*, retrieved from: <https://auspublaw.org/2021/03/on-voice-and-finding-a-place-to-start/>
- Coalition Government (2019), *Our Plan to Support Indigenous Australians*, ParlInfo. Retrieved from: <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;adv=yes;orderBy=dateeFirst;page=0;query=%22support%20indigenous%20australians%22%20Content%3ALiberal%20Date%3A01%2F05%2F2019%20%3E%3E%2031%2F07%2F2019;rec=1;resCount=Default>
- From the Heart Campaign, website: <https://fromtheheart.com.au/>