



## Heeding the Uluru Statement from the Heart

An Opinion Piece for *The Australian* Newspaper by Fr Frank Brennan 31 May 2017

Fifty years on from the successful 1967 referendum, we have all heard the *Uluru Statement from the Heart*. Aboriginal and Torres Strait representatives have told us that 'in 1967 we were counted, in 2017 we seek to be heard'. Australians of good will acknowledge that sovereignty is a spiritual notion for Indigenous Australians and that Aboriginal and Torres Strait Islander incarceration and separation of children are indicators of 'the torment of (their) powerlessness'. We affirm the aspiration of the Indigenous leaders gathered at Uluru: 'When we have power over our destiny our children will flourish. They will walk in two worlds and their culture will be a gift to their country.'

Indigenous leaders this last week have called for the creation of two new legal entities. They want a First Nations Voice enshrined in the Constitution, and a Makarrata Commission set up by legislation. The Makarrata Commission would supervise agreement making between governments and First Nations and engage in truth telling about history. The envisaged destination is a national Makarrata (or treaty).

So the immediate constitutional issue is the creation of the First Nations Voice. There is no point in proceeding with a referendum on a question which fails to win the approval of Indigenous Australia. Neither is there any point in proceeding with a referendum which is unlikely to win the approval of the voting public.

The consultations conducted in Indigenous communities under the auspices and with the financial support of the Referendum Council have yielded a constant message that Indigenous Australians want substantive constitutional change and not just symbolic or minimalist change.

The question is: How much should we attempt to put in the Constitution now, and how much should we place outside the Constitution, or delay for constitutional inclusion until another day? There's certainly one thing worse than minimal symbolic constitutional change accompanied by substantive change outside the Constitution, and that is no mention of Aboriginal and Torres Strait Islander peoples in the Constitution, either because we judged it all too hard or too compromised, or because we tried to achieve too much, too soon.

The Referendum Council is required to report to the Prime Minister and the Leader of the Opposition by 30 June on 'options for a referendum proposal, steps for finalising a proposal, and possible timing for a referendum'. The Referendum Council needs to recommend to government a timetable for constitutional change with maximum prospects of a 'Yes' vote for proposals sought by Indigenous Australians.

Australians will not vote for a constitutional First Nations Voice until they have first heard it and seen it in action. The work needs to begin immediately on legislating for that First Nations Voice, so that it is operating as an integral part of national policy and law making, attracting national support for constitutional recognition. Presumably this new legislated entity would replace the existing National Congress of Australia's First Peoples which boasts, 'As a company the Congress is owned and controlled by its membership and is independent of Government. Together we will be leaders and advocates for recognising our status and rights as First Nations Peoples in Australia.'

The Referendum Council should recommend that the government commence immediate consultations how best to set up a new Indigenous advisory council as a First Nations Voice. It should recommend that Parliament legislate for the creation of such an advisory council. It should recommend that any referendum be delayed until the advisory council is established and working well. The Parliament might then, and only then, consider legislation for a referendum proposing relevant changes to the Constitution.

One desirable change would be to section 51 (26) of the Constitution which could be amended to provide that the Commonwealth Parliament have power to make laws with respect to the cultures, languages and heritage of the Aboriginal and Torres Strait Islander peoples, and their continuing relationship with their traditional lands and waters. These are the distinctively Indigenous matters which warrant Indigenous peoples having a secure place at the table. Section 51(26) of the Constitution could go on to provide that the Parliament have power to make laws with respect to the constitution and functions of an Aboriginal and Torres Strait Islander Council which may request the Parliament to enact a law or advise the Parliament of the effect of a law or proposed law relating to any of those matters.

Other issues will wait for another day, or be dealt with outside the Australian Constitution. One thing is certain following last week's cry from the heart at Uluru. There is no quick fix to the Australian Constitution. Successful constitutional change acceptable to the Indigenous leaders gathered at Uluru won't be happening anytime soon. Let's take the time to get this right.

*This is an extract from Fr Frank Brennan's Lowitja Oration delivered in Adelaide 30 May 2017.*