Attention: Senator Patrick Dodson and Mr Julian Leeser MP, Chairs

Joint Select Committee on Constitutional Recognition
Relating to Aboriginal and Torres Strait Islander Peoples
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Submission to the Joint Select Committee on Constitutional Recognition relating to Aboriginal and Torres Strait Islander Peoples

Dear Sirs

I would like to express my support for the Uluru Statement from the Heart. I have followed the progress of constitutional recognition in close detail since the 2008 National Apology, through my undergraduate studies, professional employment, community engagement and now my postgraduate studies in law.

Out of all of the different opinions canvassed and reports produced I believe that the Uluru Statement from the Heart is the clearest statement of intent and meaning of the importance of constitutional reform for Indigenous and non-Indigenous Australians. There is one important point that I would like to make however about the importance of the Uluru Statement from the Heart and the position that it was written from and represents.

The Importance of the Uluru Statement from the Heart and Constitutional Reform

The Australian nation and people, especially its political leaders, are only limited in what they can achieve via the constitutional recognition of Aboriginal and Torres Strait Islander people by ignorance and the subsequent limit to their will and desire to overcome that ignorance and establish better and long lasting relations with Aboriginal and Torres Strait Islander people.

Australian institutions, public and private alike, are structurally limited by this ignorance and a long unwillingness to step outside of the boundaries of their own comfort and understanding and address the issues at hand on equal terms with Aboriginal and Torres Strait Islander people. Rather, successive attempts at reconciling and ameliorating the position of Aboriginal and Torres Strait Islander people have been produced and informed by those same structurally limited institutions that are stunted in their ability to understand their own institutions and Aboriginal and Torres Strait Islander people outside of their own perspectives, worldviews and histories. The history of these institutions is that they have been predicated themselves on the exclusion and derision of Indigenous cultures, histories and traditions that they now wish to include without amending their foundational structures.

This is particularly true of 'law', 'sovereignty' and the Australian Constitution. Much has been made about the legal and technical 'realities' of constitutional recognition and the demands or claims of Indigenous peoples to sovereignty. Too much has been made about the dangers or threats of these 'realities' via the well-treaded path of liberal mysticism and the misplaced faith of those in positions of power and authority in the traditions and histories of their own institutions. Proclamations of incontrovertible truths and legal doctrines, themselves convenient legal fictions made and re-legitimated to support an otherwise unsupportable structure and institution, demand in their essence subordination and exclusion in both the construction of their constitution and the very fabric of their being. Even where plural jurisdictions interact or overlap, or where Indigenous peoples are 'recognised' or 'incorporated', this is done so via the translation of multiple laws into the one hierarchical institution. This is not a law or institution that can provide for the foundations of different and better relations between Indigenous and non-Indigenous peoples from within its own traditions

and histories. Rather it is one that flattens complex realities to make them intelligible to one particular law at the expense of others.

There is a law that runs in Australia however that does provide the basis for better relations and the recognition of the legitimate place of Aboriginal and Torres Strait Islander people. This law is informed by the sovereign reality of Aboriginal and Torres Strait Islander people, something that has been woven within the very land we live over thousands of generations. Through its emphasis on the relational nature of being and the subsequent obligations and responsibilities those relations demand of us in relation to one another, this law enables a way forward. The Uluru Statement from the Heart was written from within this same tradition of law that continues today despite the 'law's' incontrovertible declarations otherwise. It is also a law that does not demand assimilation at the risk of exclusion, but rather demands responsibility to one another in our multiple and relational realities.

The requirement for this fundamental change to the structures of Australian institutions and the relationship between Indigenous and non-Indigenous peoples has remained de-centered in the constitutional recognition debate until the Uluru Statement from the Heart. Many have spoken to this central requirement over the past 250 years, but the Uluru Statement from the Heart has elevated this key requirement to where it should be, addressed in the foundational document of the Australian nation. The Australian Constitution must be amended to enable the structural change required in Australia through the facilitation of the voice of Aboriginal and Torres Strait Islander peoples being heard, understood and acted upon. The reality of the sovereign right of Indigenous peoples to self-determination demands it, as does the history of relations in Australia between Indigenous and non-Indigenous peoples.

The Uluru Statement from the Heart and the subsequent report of the Referendum Council were not wrong in demurring on the content and makeup of the 'voice'. Ultimately, that is a matter for self-determining Indigenous peoples to negotiate once the ability for its realisation is enacted in the Australian Constitution. This does not mean that important legislatively enacted bodies such as a Truth, Justice and Reconciliation Committee, a Treaty Committee or an Interim Indigenous Voice Office to enable this process should not be pursued – they will be essential to the realisation of constitutional change. Anything less, however, fails to realise the promise and potential of constitutional change and the reality of the Indigenous right to self-determination.

This is the fundamental difference between Australia and other similar nations and their relations with Indigenous peoples: a lack of an ultimate mechanism from which to negotiate the terms of our relations. Rather we are told that 'it won't work' or 'that is doesn't work that way'. While I have derided some concerns heralded from within the 'legal and technical' arguments, the larger claim to having a dependable legal process and structure in place is not misplaced. Rather, the continued consideration of the issue from within limiting doctrines and practices, which fails to comprehend the issue from another perspective than their own, remains key.

The Australian Constitution can be whatever the Australian people decide it to be; we should no longer be limited by incontrovertible legal doctrines and convenient fictions. The reality of Indigenous sovereignty, history and the right to self-determination makes a mockery of claims otherwise and demands the relationship be reset. The Australian Constitution remains the best place to begin that structural change, and the Uluru Statement from the Heart is our clearest statement of intent and importance.

Kind Regards

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