

A CONSTITUTIONAL VOICE FOR INDIGENOUS AUSTRALIANS

It has been nearly two and a half years since the Uluru Statement from the Heart was crafted. Inspiring in the simple breadth of its vision and the clarity of its communal voice, it aims to provide a united Indigenous voice in advocating for constitutional recognition. Despite this vision, little has been done by the current government to bring about the goals envisioned by the statement, despite the appointment of the Referendum Council by the then Prime Minister Malcolm Turnbull and Opposition Leader Bill Shorten.

The statement is unique in that it is not just a call on politicians to institute change. The statement is addressed to the whole of the Australian community and asks that we all take an active role in advocating for constitutional reform that will bring about genuinely improved outcomes for Aboriginal and Torres Strait Islander Australians.

The statement concludes with an invitation to “walk with us in a movement of the Australian people for a better future.” This edition of Just Now explores the continuing importance of this movement, suggestions about what constitutional change could look like and the role of advocates in advancing the rights of Indigenous Australians.



WHAT IS THE STATEMENT REALLY ASKING?

Fundamentally, the Statement sets the framework for a change in the Constitution. It asserts that the powerlessness of Indigenous populations in our country is undeniably structural. Unlike previous discussions considering constitutional recognition, the Referendum Council tasked with bringing the statement together unequivocally rejected suggestions of symbolic recognition of Indigenous sovereignty. Instead, three key aspects of reform are seen as essential in effecting fundamental change: voice, treaty and truth.

“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.”



1

Voice

An advisory body constituted of First Nations people will advise the Parliament on issues that affect their communities. Constitutional reform in this regard would allow the Commonwealth government to legislate to create such an advisory body.

2



Treaty

An agreement formed to oversee decision making between the Australian government and Indigenous Australians would constitute the 'Makarrata Commission.' 'Makarrata' is a Yolngu word meaning healing divisions of the past through coming together after a struggle.

3



Truth

With the successful implementation of constitutional recognition and treaty, truth telling can finally occur. This would usher in a new era of respect for Indigenous self-determination and sovereignty.

Self-Determination is a Fundamental Right

The right to self-determination is a fundamental principle in international human rights law. It is cited in the UN Charter, the Declaration of Friendly Relations, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights. The principle is broadly defined as a collective right bestowing on all people the right to freely determine their political status and pursue their economic, social and cultural development.

The system of government established in the Australian Constitution does provide for the self-determination of all Australian people through amendment of the Constitution, the division of powers and the rule of law. However, self-determination holds a particular application for Australia's first peoples.

This position has been embraced in Australian law since the Mabo land rights judgement by the High Court in 1992. The Australian Human Rights Commission holds that self-determination is necessary for Indigenous communities to be able to meet their unique social, cultural and economic needs. The lack of this right to live in accordance with common sets of values and beliefs remains at the centre of the continuing disadvantage faced by Indigenous Australians. Without self-determination, the remaining impacts of colonisation and dispossession cannot be overcome.

The Commission further states that constitutional recognition of Australia's first peoples as provided by the Statement of the Heart is a crucial step in overcoming disadvantage and achieving self-determination.

"OUR ASPIRATION [IS] FOR A FAIR AND TRUTHFUL RELATIONSHIP WITH THE PEOPLE OF AUSTRALIA AND A BETTER FUTURE FOR OUR CHILDREN BASED ON JUSTICE AND SELF-DETERMINATION."

Hypocrisy in Australian Self-Determination Policy

Officially, Australian law has embraced the concept of self-determination and its particular relevance to First Nation's people. The Commonwealth department of the Attorney General's Office states that:

"The Australian Government believes that individuals and groups, particularly Aboriginal and Torres Strait Islander peoples, should be consulted about decisions likely to impact on them. This includes ensuring that they have the opportunity to participate in the making of such decisions through the processes of democratic government and are able to exercise meaningful control over their affairs.

Aboriginal and Torres Strait Islander peoples also have the right to preserve their group identity and culture. The importance of consultation is manifested in the establishment of the National Congress of Australia's First Peoples."

Despite this position, the call for self-determination in the Uluru Statement has been ignored. The current Minister for Indigenous Affairs, Ken Wyatt, stated in the annual Lingiari lecture in August this year that while the Morrison government would offer a referendum, it would not enshrine a voice to parliament.

Rather, the referendum would only focus on recognising Indigenous Australians in the birth certificate of the nation. It was this merely symbolic recognition that the National Constitutional Convention strongly rejected in drafting the Statement from the Heart.

At present, there is no indication that the Morrison Government intends to enshrine any aspect of the Statement from the Heart in the Constitution, as they attempt to counteract the key goals of voice, treaty and truth with symbolic recognition.

The Statement from the Heart cites the alienation of Indigenous children from their families, the high incarceration rate and the lasting impacts of dispossession. Resolution of these challenges will not be achieved by symbolic recognition.

In response to Minister Ken Wyatt's statement, Labor Senator for the Northern Territory Malarndirri McCarthy stated "[The] torment continues especially when hundreds, if not thousands of First Nations people gathered and gave a document [that said] this is the direction we want. [The] torment of powerlessness continues with a Minister who says that is not the direction he is going to go."



How should constitutional change really look?

Participants in the regional dialogues of the Referendum Council and the First Nations National Constitutional Convention in 2017 suggested a model for constitutional change and ways the referendum question ought to be formulated. In a Submission to the Joint Select Committee on Constitutional Recognition Relating to Aboriginal and Torres Strait Islander Peoples, the suggestion reads:

Proposed Amendment

Chapter 9: First Nations

Section 129: The First Nations Voice

(1) There shall be a First Nations Voice.

(2) The First Nations Voice shall present its views to Parliament and the Executive on matters relating to Aboriginal and Torres Strait Islander peoples.

(3) The Parliament shall, subject to this Constitution, have power to make laws with respect to the composition, functions, powers and procedures of the First Nations Voice.

Referendum question

Do you approve an alteration to the Constitution that establishes a First Nations Voice?

YES / NO

What can be done?

Continue the Dialogue

The Statement from the Heart calls on the Australian people to support the inclusion of a First Nations voice in the Constitution, a voice that can continue the dialogue. It unequivocally rejects superficial recognition and demands that the goals of the Statement be met in a referendum.

Write to, telephone or visit your local MP requesting that a First Nations voice be seriously considered by Parliament. Stay connected and informed on the topic, as you think critically about the statements made by politicians on this topic.

NATSICC

NATSICC is the peak advisory body to the Australian Catholic Bishops on issues relating to Aboriginal and Torres Strait Islander Catholics.

Their website has a number of useful guides for developing your understanding of this topic that can be found here: <http://www.natsicc.org.au/resource-hub.html>

A large variety of liturgical resources are also made available: <http://www.natsicc.org.au/liturg-resources.html>

