

**Constitutionally-enshrined First Nations Voice to Parliament**  
**NATSICC Assembly Briefing 4 October 2018**

**PART A – ONE-PAGE SUMMARY**

**A note on the author of this paper:**

Dean Parkin (e: dean@parkin-consulting.com) is the Executive Director of the Uluru Education Project, which aims to drive public awareness of the Uluru Statement From the Heart that was developed by Aboriginal and Torres Strait Islander Peoples in May 2017. Dean was involved in the 12 Referendum Council regional dialogues leading to the Uluru Convention and co-facilitated the Uluru Convention. He is from the Quandamooka Peoples of Minjerribah (North Stradbroke Island, QLD).

**Introduction to this paper:**

Father Frank Brennan gave a speech to the National Aboriginal and Torres Strait Islander Catholic Council (NATSICC) Assembly on Monday 1 October 2018 titled, [\*Strong Faith, Strong Youth, Strong Future: Walking Together in a Movement of the Australian People for a Better Future\*](#). The speech addresses the Uluru Statement From The Heart and specifically, the proposal for a First Nations Voice to Parliament, as well as describing his proposals for a way forward.

My mother Evelyn Parkin attended Father Frank's speech. Knowing a lot about my involvement with the Uluru Statement, we discussed the speech and she suggested that I write a paper to give an alternative perspective to Father Frank's views.

In accepting Father Frank's generous invitation to consider his proposal as "a way forward, if only to prompt reaction and criticism", I hope this paper is received in the spirit in which it is given: speaking truthfully to these issues of such great importance to the Australian nation, and respecting the long history of Father Frank's tireless advocacy for, and with our people.

This paper can be read in three parts: Part A – this one-page summary; Part B – Detailed description; and Part C – the Uluru Statement From The Heart.

**Summary of the main points:**

- The Referendum Council regional dialogues and the Uluru Convention that produced the Uluru Statement From The Heart was the most comprehensive process ever to engage Aboriginal and Torres Strait Islander Peoples in constitutional and structural reform.
- While we are a diverse Peoples with diverse views, the Uluru Statement is a truly historic consensus and a powerful mandate for constitutional reform
- The Uluru Statement calls for a First Nations Voice enshrined in the constitution. It does not call for a trial of the Voice in legislation first. There are a number of reasons why a move to trial the Voice in legislation first will effectively end our long push for constitutional reform.
- The Voice to Parliament is the only constitutional reform proposed in the Uluru Statement. Other options were considered by Aboriginal and Torres Strait Islander Peoples but were rejected.
- The Uluru Statement is an invitation to the people of Australia – it is not a submission or petition to the government. The Australian people need to have the opportunity to respond to that invitation in a referendum as soon as possible. The support for our cause is building.
- There are no recommendations and I do not urge you to take a particular course, other than to read this paper with an open mind and remember the effort, compromise and trust that so many Aboriginal and Torres Strait Islander Peoples put into the Statement and their hope to 'take a *rightful place* in our own country'.

## **PART B – DETAILED DESCRIPTION**

### **The Referendum Council Dialogues:**

Father Frank correctly identifies that more than 250 Aboriginal and Torres Strait Islander Peoples attended the National Constitutional Convention at Uluru on 24-26 May 2017. More than 1,200 Aboriginal and Torres Strait Islander Peoples were involved in the Referendum Council's Regional Dialogues held in 12 regions (with the addition of an ACT/Wreck Bay meeting) across the country over the course of 2016/2017. Prior to these dialogues, the Referendum Council held three planning workshops and a trial dialogue. Led by Aunty Pat Anderson, Professor Megan Davis and Noel Pearson, it was the most comprehensive process ever to engage Aboriginal and Torres Strait Islander Peoples in the hard business of constitutional and structural reform.

The dialogues were led by co-convenors in each region, most hosted by the relevant land council. The co-convenors invited people from their own region based on a formula determined by Aboriginal and Torres Strait Islander People in the planning workshops: 60% of participants were traditional owners, 20% drawn from Aboriginal and Torres Strait Islander organisations and 20% were individuals that the co-convenors determined were critical to the dialogues. It was truly an exercise in self-determination and democratic decision-making relevant to each region.

Over the course of six months, Aboriginal and Torres Strait Islander Peoples across the country gave up their weekends to participate in the dialogues that spanned two-and-a-half days of history, constitutional education and detailed, robust debate. Who else in the country would undertake such a task? Our people were not naïve going into the dialogues; there was much cynicism expressed that the system would reject our best efforts. A combination of the leadership of Aunty Pat, Megan and Noel, as well as the determination of our people to finally articulate our aspirations and settle our rightful place in our own country overcame that cynicism and resulted in sophisticated and nuanced debate.

In every dialogue, our people weighed the various options for constitutional reform and engaged their passionate hearts and sharp minds. For the first time ever, we discussed what was meaningful to us. It is no accident that agreement making, or treaty, was on the table for the first time. The previous exercises in examining constitutional reform - the 2012 Expert Panel and 2015 Joint Select Committee - did not examine treaty because it was too contentious. The Referendum Council knew that it could not explore options for constitutional reform without also discussing treaty/treaties.

The results of these 12 dialogues fed into the Uluru Convention and subsequently the Uluru Statement From The Heart. It did not emerge just from the 250 delegates at Uluru but from the hearts and minds of more than 1,200 people, and many decades of fierce advocacy and activism before that. Our people poured their cultural, intellectual and emotional energy into this process and the outcome was an historic and unprecedented consensus. On hearing the first reading of the Uluru Statement on the morning of the 26 May 2017, more than 250 Aboriginal and Torres Strait Islander Peoples got to their feet as one in spontaneous applause. We owe it to our old people and those involved in this process to never forget how this statement came into life. The detractors and opponents of the Uluru Statement who say that its proposals are 'new' or 'last-minute' don't know their history (I do not suggest Father Frank is one of these). Aboriginal and Torres Strait Islander nations have never ceded their sovereignty and have been fighting for self-determination and political representation for many, many decades.

## **Aboriginal and Torres Strait Islander leadership**

Father Frank points out that, “there is no point in proceeding with a referendum on a question which fails to win the approval of Indigenous Australia”. This is somewhat problematic as there is not one, unified ‘Indigenous Australia’. We come from east and west, north and south. We come from urban, regional and remote. We are left and right. We are spiritual and we are of faith. We are law men and women, and we are law professors with international standing. We are conservationists and coal miners. We are dancers and diplomats. A quick glance at the Australian political class right now shows us how divided it is. It is an unfortunate habit by some to assume that Aboriginal and Torres Strait Islander Peoples should be ‘united’ in their views. It is an ask that is never expected of the rest of the community. Regardless of the fact that we are a diverse Peoples, the Uluru Statement represents an historic consensus and is a compelling mandate for reform.

## **Assumptions about the likelihood of success**

There is a critical passage in Father Frank’s speech that needs to be fully stated and understood:

“I make no apology for bluntly stating that there is little to be gained by those who advocate for the immediate insertion of a Voice into the constitution sight unseen, unheard and untested. That suggestion has been rejected by the last three Liberal Prime Ministers – Abbott, Turnbull and now Morrison”.

It must also be bluntly stated that Father Frank rejected this suggestion many months before Prime Minister Turnbull and more than a year before Morrison even got the chance. Father Frank mentions that he had the privilege of giving the 2017 Lowitja Oration. It is indeed, a privilege he should be rightfully proud of. In this oration, a mere four days after the Uluru Statement was brought to life, he stated that “Australians will not vote for a constitutional First Nations Voice until they have first heard it and seen it in action”.

Before the ink had dried on the Statement, before the Referendum Council had even finalised its report and five months before the Turnbull cabinet rejected both, Father Frank declared that the call for a First Nations Voice to Parliament enshrined in the constitution, a reform so modest that it only brings Australia up to a ‘pass’ mark compared to other nations, had no chance with the Australian people. No evidence was given for this assertion, just a simple statement of opinion, repeated more than 12 months later, still without any evidence. Two polls conducted soon after the Uluru Statement suggest otherwise:

- In June 2017, an Essential poll found 44% of respondents in support of enshrining an Indigenous voice to parliament in the constitution
- In August 2017, an Omnipoll found 60.7% supported a proposal to “change the constitution to set up a representative Indigenous body to advise the parliament on laws and policies affecting Indigenous people”

Of course, polls come and go and should be treated carefully and a successful referendum will need significant, sustained support. At the very least, they provide some indication that even in the absence of any political leadership (from either side of politics), it is worth having a conversation with the Australian people about the Voice to Parliament. At the very least, the historic commitment, work and consensus of the Uluru Statement deserves more than four days of existence before being written off on the basis that the Australian people won’t accept it.

More telling is the groundswell of support from non-Indigenous people and organisations in the year since the Turnbull cabinet rejected the Voice to Parliament proposal. Organisations such as the Australian Medical Association (AMA), the Bar Association (the national representative body for

barristers) and the Business Council of Australia (BCA) (whose members include the CEOs of Australia's biggest companies) have thrown their support behind the Uluru Statement and the call for a constitutionally-enshrined Voice to Parliament. The BCA's CEO Jennifer Westacott said in August 2018 that, "a decision should be put to the Australian people via a referendum within 12 months of the next federal election. With the support of the Australian people, this would deliver a constitutional change before July 2020". The BCA has significant influence and its members employ about 10% of the Australian workforce. We should not lightly accept that there is no support from the Australian people or key organisations. There is growing support for our cause.

### **Putting the Voice in legislation first**

Father Frank could not be clearer in his insistence that the Voice must be put in legislation first before holding a referendum:

"Those who advocate an immediate insertion of the Voice into the Constitution, untried and untested, need to admit that their proposed way forward has won support neither from the Coalition nor from the Labor Party. That's why it's not only sensible but also imperative first to legislate and road test any Voice".

Before going through the problems with this approach, it must be said that everything Aboriginal and Torres Strait Islander Peoples have gained in our post-invasion history has been achieved through struggle. The Freedom Rides, 1967, land rights, the Apology. Nothing is ever freely given to us. Our ducks are never lined up in a neat row. We are used to kicking the doors down, because they are never opened for us. This is not a whinge but a political reality we are all taught from an early age. So, while Father Frank is sadly right that neither the Coalition or Labor are leading the charge for constitutional change first, it not a new challenge or one that we find insurmountable.

It must also be said that the other reform considering a referendum, the move to a republic, is unlikely to face the same barriers. Can anyone imagine calls for a proposed Australian republic to go through a 'trial run' before holding a referendum? Why is it ok for this reform to go straight to a referendum but the mob have to jump through more hoops and put their far more modest proposal for reform through a trial to see if it is worthy enough to then put to the Australian people? Having come from a history of being treated as second-class citizens, it is hard not to feel this requirement to audition our reform is discriminatory. Perhaps that is not the intent, but in the spirit of honesty, it nonetheless provokes those feelings. Besides, the Voice to Parliament is not an untested proposal – there are many examples, both here and overseas of representative structures. The only thing untested in this process is the willingness of political leaders to spend some of their political capital on pursuing meaningful constitutional reform for Aboriginal and Torres Strait Islander Peoples.

The Uluru Statement calls for a First Nations Voice enshrined in the constitution. It does not call for a trial Voice in legislation. The reason why the Uluru Statement called for the constitutional protection is because our previous efforts at self-determination and political representation were abolished with the stroke of the ministerial pen. Former Senator Amanda Vanstone admitted in August this year that abolishing ATSIC in 2005 was a mistake. While it is refreshing to hear such an admission from the minister responsible, that mistake set back Indigenous self-determination and efforts to Close the Gap by decades. In the ten years of the Closing the Gap Strategy, we have seen six Prime Ministers and 27 Premiers and Chief Ministers come and go. In that same time, the number of children in out of home care has risen from 9,000 to nearly 18,000. That's right; since the historic Apology to the Stolen Generations, the number of our young people taken from their families has doubled. Our people know that dealing with these generational issues is made nearly impossible with this chopping and changing of governments, ministers, policies and legislation. We need the continuity and certainty of a constitutionally-enshrined Voice to Parliament and we need it now.

Legislating a voice to Parliament as a first step toward constitutional enshrinement is damaging and counter-productive. It will unnecessarily and significantly, if not permanently, delay the introduction of a constitutionally-entrenched Voice without improving the likelihood of success of any subsequent referendum.

If the voice is to be a successful and effect positive changes to the lives of Aboriginal and Torres Strait Islander Peoples, its work must be critical and contestable. It will inevitably provide criticism inside and outside of government. If the Voice is only legislated, governments on the receiving end of its critical work will not support constitutional enshrinement.

In its early years of operation, the Voice may be harshly judged to work inexpertly or inefficiently. Criticisms of this nature are inevitable when a newly established body is finding its feet and beginning its work. The risk here is that those opposed to constitutional enshrinement will use such criticisms of a legislated Voice to entrench opposition to ultimate constitutional reform.

On the other hand, a successful legislated Voice will be seen as 'good enough' and a future referendum to enshrine it in the constitution will be seen as unnecessary. We can already imagine the cry of 'if it ain't broke, don't fix it'! Meanwhile, the legislated voice will face the same risk that ATSIC did and will be vulnerable to a change of government or to a change of view within government. We will have repeated the mistakes of the past and will be right back where to where we started.

In either scenario, the historic invitation from the Uluru Statement to 'walk with us in a movement of the Australian people for a better future' will be lost.

### **The alternative proposals**

In introducing the discussion about the Uluru Statement, Father Frank rightfully says that, "regardless of what's gone on previously in the discussions about constitutional recognition, we all need to accept that Uluru is the new starting point". He then implores us to engage in debate respectfully, which all of us can agree on. An important element of respectful engagement is the ability to deeply listen and hear what people are saying. Especially in the case of the Uluru process, which was a bi-partisan commitment to finally understand what meaningful constitutional recognition meant to Aboriginal and Torres Strait Islander Peoples. We did our job, despite the many doubts that we would reach a comprehensive consensus. We undertook the compromises, the difficult decisions and robust debate.

In his Lowitja Oration, four days after the Uluru Statement, Father Frank puts forward three proposals for constitutional reform completely at odds with the Uluru Statement and the months of deliberation undertaken by more than a thousand Aboriginal and Torres Strait Islander Peoples. As if none of it had ever happened. These proposals, repeated this week in the speech to the NATISCC Assembly were:

1. Deleting Section 25, which contemplates the possibility of a state government excluding some Australians from voting on the basis of their race. It is an outdated and racist provision that's never been used and never will be used.
2. Inserting a Statement of Acknowledgement at the beginning of the constitution
3. Amending Section 51(26) so that the Commonwealth Parliament shall, subject to the Constitution, have power to make laws for the peace, order and good government of the Commonwealth with respect to:
  - a) the cultures, languages and heritage of the Aboriginal and Torres Strait Islander peoples, and their continuing relationship with their traditional lands and waters;
  - b) 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 these matters.

All three of these proposals in one way or another were carefully considered by Aboriginal and Torres Strait Islander Peoples leading up to the Uluru Statement. None of these proposals emerged from the Uluru Convention or the Referendum Council's report. If Uluru is the "new starting point", why are we still talking about proposals that have already been considered and rejected by Aboriginal and Torres Strait Islander Peoples? How many times or how loudly must we voice our view before we are heard? This is why the Uluru Statement talks about '*the torment of our powerlessness*' and is the very reason why Aboriginal and Torres Strait Islander Peoples proposed a Voice to Parliament. It is beyond time that we have a constitutionally-enshrined Voice and more importantly, that it is heard.

The Referendum Council's [final report](#) details why these proposals did not gain support from Aboriginal and Torres Strait Islander Peoples. The third proposal however needs exploring. Why should a constitutionally-enshrined Council ('Voice') be limited to speaking about cultures, languages, heritage and land or Native Title? Who gets to decide that these are the only issues that directly affect Aboriginal and Torres Strait Islander Peoples? Surely after the colossal failure of the Closing the Gap Strategy and the Indigenous Advancement Strategy (IAS) over the last 10 years, we know that health, housing, education, employment and justice are all critical to not just wellbeing, but to Aboriginal and Torres Strait Islander Peoples taking their rightful place in our own country?

In any case, culture is not something that we can partition from the rest of our lives; every part of our lives is affected by the holding, practice and expression of our culture. So, in having a say over our culture, we would still be talking about everything that affects our lives.

This proposal is driven by a spurious fear, first articulated by Barnaby Joyce, and then to his eternal shame, repeated by Prime Minister Malcolm Turnbull, that the Voice to Parliament would represent a 'third chamber' of parliament. This is a grievous misrepresentation of the Uluru Statement which calls for a First Nations Voice TO Parliament. The dialogue and Uluru delegates discussed and understood the concept of parliamentary sovereignty and that a Voice could not veto the decisions of the parliament. Putting aside the troubling fact that Aboriginal and Torres Strait Islander Peoples appear to understand this better than those elected to actually run the show, it is not as if the current two chambers of the parliament are kicking goals. In 2018, the 10<sup>th</sup> year of the Closing the Gap report, only three out of seven targets are on track to be met. After six years of Coalition governments that tout their business and economic credentials, the unemployment gap between Indigenous and non-Indigenous Australians is actually getting wider.

Far from taking power away from the parliament, the Voice to Parliament will *empower* it with the knowledge and experience of Aboriginal and Torres Strait Islander nations who live with and understand the day-to-day impacts of policy and legislation. The parliament will be more effective and more productive in Indigenous affairs. Every single commission, inquiry and report into the social and economic position of Aboriginal and Torres Strait Islander Peoples has recommended that we are empowered to have a greater input into our own affairs. It makes no sense to establish a Council that is unable to advise the parliament on these matters. Why should Tony Abbott as Special Envoy have a say over Indigenous education but Aboriginal and Torres Strait Islander Peoples should not?

### **Conclusion:**

The Uluru Statement From The Heart is an invitation to the people of Australia. We must honour that invitation and have that conversation with them - if not now, then when? We must not be driven by a fear of failure in this movement. We must turn our hearts to hope and belief. The path we are walking is not new; it has been laid out for us by our ancestors and it is our responsibility to walk

proudly and assuredly down that path, side-by-side with the Australian people in a movement for a better future.

## **PART C – ULURU STATEMENT FROM THE HEART**

We, gathered at the 2017 National Constitutional Convention, coming from all points of the southern sky, make this statement from the heart:

Our Aboriginal and Torres Strait Islander tribes were the first sovereign Nations of the Australian continent and its adjacent islands, and possessed it under our own laws and customs. This our ancestors did, according to the reckoning of our culture, from the Creation, according to the common law from ‘time immemorial’, and according to science more than 60,000 years ago.

This sovereignty is *a spiritual notion: the ancestral tie between the land, or ‘mother nature’, and the Aboriginal and Torres Strait Islander peoples who were born therefrom, remain attached thereto, and must one day return thither to be united with our ancestors. This link is the basis of the ownership of the soil, or better, of sovereignty.* It has never been ceded or extinguished, and co-exists with the sovereignty of the Crown.

How could it be otherwise? That peoples possessed a land for sixty millennia and this sacred link disappears from world history in merely the last two hundred years?

With substantive constitutional change and structural reform, we believe this ancient sovereignty can shine through as a fuller expression of Australia’s nationhood.

Proportionally, we are the most incarcerated people on the planet. We are not an innately criminal people. Our children are alienated from their families at unprecedented rates. This cannot be because we have no love for them. And our youth languish in detention in obscene numbers. They should be our hope for the future.

These dimensions of our crisis tell plainly the structural nature of our problem. This is *the torment of our powerlessness.*

We seek constitutional reforms to empower our people and take *a rightful place* in our own country. 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.

We call for the establishment of a First Nations Voice enshrined in the Constitution.

Makarrata is the culmination of our agenda: *the coming together after a struggle.* It captures our aspirations for a fair and truthful relationship with the people of Australia and a better future for our children based on justice and self-determination.

We seek a Makarrata Commission to supervise a process of agreement-making between governments and First Nations and truth-telling about our history.

In 1967 we were counted, in 2017 we seek to be heard. We leave base camp and start our trek across this vast country. We invite you to walk with us in a movement of the Australian people for a better future.