

# RESPONDING GENEROUSLY TO A GENEROUS VOICE

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## *Overview*

In response to the resolution adopted at the 2022 synod of the Anglican diocese of Sydney, this paper aims to assist Sydney Anglicans in understanding and taking seriously the case for voting ‘yes’ in the planned referendum this year. The paper has three sections:

- The first section of the paper sets the referendum proposal in context through a sustained reflection on a key moment and document in the process leading to the proposed referendum: the Uluru Statement from the Heart.
- The second section then discusses some, though not all, of the key arguments against the proposed alteration, engaging especially with the arguments presented to the now-concluded Parliamentary Inquiry into the Voice.<sup>1</sup>
- The final, much briefer section of the paper sets out an argument for ‘Yes’ in the light of the preceding discussion, while acknowledging the reasons a person might not reach this conclusion.

## *Introduction*

In 2022 the synod of the Anglican diocese of Sydney resolved the following:

### **33/22 First Nations Voice**

Synod of the Diocese of Sydney, perceiving the opportunity for all Australians to contribute to a matter of national importance –

- (a) welcomes the conversation regarding the establishment of a First Nations Voice enshrined in the Constitution, recognising this conversation to be an essential step in reconciliation with Aboriginal and Torres Strait Islander peoples, perceiving this conversation to relate to the social, spiritual, and economic wellbeing of Aboriginal and Torres Strait Islander peoples, and believing this conversation will empower Aboriginal and Torres Strait Islander people to create a better future for their communities to flourish,
- (b) commits to learning more, and educating all Anglicans, about the Voice ‘*From the Heart*’, and
- (c) encourages church members to give generous consideration to the case to vote ‘Yes’ to the referendum question of whether the Constitution should establish a First Nations Voice, once the details have been made clear.’

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<sup>1</sup> The submissions to and final report of this inquiry are available here: [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Former\\_Committees/Aboriginal\\_and\\_Torres\\_Strait\\_Islander\\_Voice\\_Referendum/VoiceReferendum](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Former_Committees/Aboriginal_and_Torres_Strait_Islander_Voice_Referendum/VoiceReferendum)

Since this resolution was made, the Federal government has indicated that a referendum will be held in the later part of 2023, to decide on the proposal to add the following section to the Australian Constitution:

**Chapter IX—Recognition of Aboriginal and Torres Strait Islander Peoples**

**129 Aboriginal and Torres Strait Islander Voice**

In recognition of Aboriginal and Torres Strait Islander peoples as the First Peoples of Australia:

- (i) there shall be a body, to be called the Aboriginal and Torres Strait Islander Voice;
- (ii) the Aboriginal and Torres Strait Islander Voice may make representations to the Parliament and the Executive Government of the Commonwealth on matters relating to Aboriginal and Torres Strait Islander peoples;
- (iii) the Parliament shall, subject to this Constitution, have power to make laws with respect to matters relating to the Aboriginal and Torres Strait Islander Voice, including its composition, functions, powers and procedures.

Acknowledging that within Australia and the diocese of Sydney there exist a range of views and arguments about this proposed constitutional change, this paper aims to give further substance to the synod’s ‘welcome’ and ‘recognition’ of the conversation regarding the establishment of a First Nations Voice enshrined in the Constitution, and to assist congregation members to ‘give generous consideration to the case to vote “Yes”’, by outlining an argument for voting ‘Yes’ informed by Christian theology and considering it in the light of key arguments against the proposal. The synod resolution of 2022 committed to ‘learning more, and educating all Anglicans, about the Voice *‘From the Heart’*’. This paper therefore begins by looking carefully at the Uluru Statement, in the conviction that this is the right starting point for deliberation.

*1. A Christian appreciation of the Uluru Statement from the Heart*

Our thinking about the decision before the Australian people should begin not with the proposed amendment itself, but with the Uluru Statement from the Heart (USH), agreed by the vast majority of delegates at the National Constitutional Convention in 2017.<sup>2</sup> While the proposal to enshrine a First Nations Voice in the Constitution has a history that predates the USH,<sup>3</sup> this moment and this Statement are highly significant for understanding the kind of decision before the Australian people. For the USH calls explicitly ‘for the establishment of a First Nations Voice enshrined in the Constitution’. The proposal before the Australian people can be understood as a response to this call made with the representative authority of that Convention.<sup>4</sup> Amidst all the different voices currently making themselves heard, it is critically important that this voice not be lost. The USH of course does not represent the view

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<sup>2</sup> <https://ulurustatement.org/>

<sup>3</sup> Valuable summaries of the process can be found in the Appendix to Professor Anne Twomey’s Submission to the Parliamentary Inquiry into the Aboriginal and Torres Strait Islander Voice Referendum – Submission 17 – and in the submission of Noel Pearson and Dr Shireen Morris – Submission 21. See:

[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Former\\_Committees/Aboriginal\\_and\\_Torres\\_Strait\\_Islander\\_Voice\\_Referendum/VoiceReferendum/Submissions](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Former_Committees/Aboriginal_and_Torres_Strait_Islander_Voice_Referendum/VoiceReferendum/Submissions)

<sup>4</sup> In her submission to the Parliamentary Inquiry (Submission 41), Louise Clegg argues that this link to the USH is problematic, confusing and distorting the question and campaign. However, it is also possible to welcome this link and see it as clarifying the nature of the decision.

of *all* indigenous Australians; but there is also no doubting its significance. Produced as the culmination of a lengthy and broad process of consultation and dialogue with Aboriginal and Torres Strait Islander peoples across Australia, the USH is a profoundly important moment of speech that ought to remain in view through all our thinking about the proposed referendum. All Australians who are able to should read and reflect on the USH in preparation for the referendum.

The first section of this paper therefore seeks to read the USH from the perspective of Christian faith and to draw attention to numerous aspects that ought to receive our admiration. The USH is not a Christian document, making claims that introduce tensions, at least, for Christian theology. However, in many respects the USH deserves admiration from those committed to the basic features of the Christian faith.

### *1.1 Creation and spirituality*

In the first place, we should notice that, despite some differences of perspective, the USH reflects an understanding of the world with which Christians should have much sympathy. The second paragraph speaks of how Aboriginal and Torres Strait Islander tribes possessed the Australian continent and its island, ‘under our own laws and customs . . . 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’. What is particularly noteworthy about this statement is the refusal to relinquish a spiritual perspective: the world we inhabit was created, we are told, and this is something we know from a different perspective from that of science, though this, too, holds an important perspective.

The paragraph that follows articulates how this spiritual experience of belonging to the earth in this way gives rise to a distinct ‘sovereignty’ that could not be extinguished by the sovereignty of the Crown. The paragraph is italicized in the original document for emphasis:

*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.*

The quotation marks around ‘mother nature’ are important: they indicate that an effort is being made to articulate something in terms that heirs of the European enlightenment will understand. The crucial point, though, is that a claim is being made for a form of sovereignty that operates at a fundamentally different register to what Australian society is mostly used to. It is a claim for a sovereignty that is ‘a spiritual notion’.

The beautiful painted frame of the USH is not simply a border added for style but is intrinsic to its foundational claim that Aboriginal and Torres Strait Islander people’s experience of this country is a spiritual one. Christians, who also believe that this world is *Creation*, and that human experience cannot be reduced to material analysis, should find much to affirm and appreciate here. The Bible, too, teaches that human beings are ‘dust’ and will ‘return to dust’ (Gen. 3.19). It also draws a connection between the particularity of different nations’ experience of life in the earth and their spiritual experience. In Acts 17 the apostle Paul says,

From one man [God] made all the nations, that they should inhabit the whole earth; and he marked out their appointed times in history and the boundaries of their lands. God did this so that they would seek him and perhaps reach out for him and find him, though he is not far from any one of us. 'For in him we live and move and have our being'. (Acts 17:26–28)

There are, to be sure, important differences between Christian theology and some indigenous understandings of 'Creation'. Nevertheless, Christians can and should recognise and affirm the profound sense expressed by Aboriginal and Torres Strait Islander people in the USH of having received a place within the world from the Creation, and of this being a matter of great spiritual significance. In our secular and materialistic age, it is striking that the USH is centrally a call for recognition of a spiritual experience, and that the referendum we are about to hold is a response to such a call.

### *1.2 Generosity*

The second feature of the USH that ought to draw the attention and admiration of Christians is the generosity with which its complaints are expressed.

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*.

There is a striking humility in these words. People should not have to ask it to be acknowledged that they are not 'an innately criminal people', or that they do have some love for their children, or that they have a right to expect their young people to give them hope for the future. But these things are said in order to make it clear that this is a genuine plea for understanding. Where we might fairly expect only anger, we find vulnerability, and an invitation for recognition of an experience of structural powerlessness that is *torment*.

Along with this generous humility comes perhaps the most surprising feature of the USH: it's hopefulness. The Statement continues:

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.

There is a confidence in these words that is, too, profoundly generous. Where we could find despair and disillusionment there is a willingness to hope that things can be different – not just for Aboriginal and Torres Strait Islander peoples, but for all of us, as this whole *country* is enriched by the gift of First Nations children flourishing in two worlds.

The proposed path to this hopeful future is through 'the establishment of a First Nations Voice enshrined in the Constitution'. This leads to a third feature of the USH that invites our admiration.

### *1.3 Confidence in Speech*

It is easily overlooked that at the heart of the USH, and indeed of the proposed Constitutional amendment, is an unexpected confidence in the power speech. The USH asks for *power* – ‘constitutional reforms to *empower* our people’ so that ‘we have power over our destiny’. Yet the chief specific change asked for turns out to be the opportunity to *speak*. ‘In 2017’, the Statement concludes, ‘we seek to be *heard*’.

The protracted and pronounced devaluation of speech in our time makes this confidence that speech is a true and real source of power very striking. For decades the integrity of speech in the public realm has been corroded by ‘non-core promises’, ‘backflips’ and straight out lies. The explosion of ‘published’ speech through social media has trivialised speech, obscured authority, and made all debate suspect. Sincere, thoughtful speech has been drowned under a flood of irony and suspicion.

It would be easy, then, to be cynical about a proposal to empower a people simply through giving them a voice. Surely, in fact, a more concrete grip on power is being played for here. Such suspicion, as we will see, is alive and well in responses to the proposed Constitutional change. But in the USH there is no indication of guile, but only a faith that speech has its own power. It is both reasonable and charitable to take this at face value.

Christians especially ought to respond to this confidence with deep admiration. For confidence in the power of speech lies at the heart of the Christian faith. Certainly, Christians know about lies and hypocrisy; the Bible speaks relentlessly about the dangers of false and disingenuous speech. But this is only because of a fundamental care about speech and recognition of its power. For ‘by the *word* of the Lord the heavens were made’ (Psa. 33:6); by the Word of God that was in the beginning salvation has come in Jesus Christ (John 1:1–18); and by the words of the good news people are born anew (1 Peter 1:23–25). Christians know that speech is at the end of the day the foundation of true power.

And so Christians should admire the attempt in the USH to lean on and put hope in the power that is native to speech. In a context in which truth and speech are relentlessly devalued, it is bold, hopeful, and – itself – powerful. All the more so because it is spoken ‘from the heart’.

### *1.4 From the heart*

The title and opening of the Statement are deeply disarming. This is a Statement, we are told, ‘from the heart’. To speak from the heart is to speak sincerely, exposing the core of one’s being and feeling. It is to become vulnerable by being open before another. It is the kind of act has a central place within the Bible’s picture of the life of faith. ‘Lord, who may dwell in your sacred tent?’ asks Psalm 15, and answers, ‘The one . . . who speaks the truth from their heart’ (Psa. 15:1–2). ‘It is out of the overflow of the heart that the mouth speaks’, taught Jesus (Luke 6:45). And Christian believers are taught that ‘love must be sincere’ (Rom. 12:9), and are called to, ‘speak the truth in love’, and to ‘love one another deeply, from the heart’ (1 Peter 1:22). They are also called, in Jesus’ teaching, to take their grievances to one another in the hope of healing. ‘If your brother or sister sins, go and point out their fault’, taught Jesus. ‘If they listen to you, you have won them over’ (Matt. 18:15).

The USH represents a moment of courageous and vulnerable speech from Aboriginal and Torres Strait Islander peoples to the rest of Australia. Spoken from the heart, it is clearly offered sincerely, with a goal of recognition and response. Though it speaks of grievance, it does so with great humility and generosity, in the hope of a good future together – for reconciliation rather than petrifying resentment. It is an act that deserves the greatest admiration and respect, especially from Christian believers, who should see many things precious to them reflected in it.

## *2. Considering the specific proposal*

What, then, of the specific proposal before the Australian people? For it is of course possible that however well-disposed we might be towards the USH the concrete realities of implementing its calls might prove too complex or problematic to be a wise course of action for Australia. In this section we will consider the specific proposal by discussing some of the more important arguments that were raised against it in submissions to the recently concluded Parliamentary Inquiry.<sup>5</sup> Although this committee has now issued its report, the submissions provide a useful way of accessing key arguments. This cannot be a comprehensive discussion, but it aims to be sufficient to allow for reasonably realistic judgments to be formed. It should be noted at the outset, though, that proceeding in this way, by considering the concerns that have been raised, could obscure the weight of opinion presented to the inquiry. In fact, a clear preponderance of submissions to the inquiry were in favour of the proposed amendment. This includes submissions from indigenous organisations and individuals, legal scholars, and other organisations and individuals.

We may summarise some of the more important objections to the Voice proposal as it currently stands under the following headings: concerns about its location in the Constitution, concerns about sub-clause (ii), a philosophical objection to the implication of unequal citizenship, and concerns about the operation of the Voice with and its effects upon existing structures of authority among first nations peoples.<sup>6</sup> These categories are imperfect and undoubtedly bleed into each other. However, they provide a useful starting point for discussion.

### *2.1 Concerns about the location of the proposed amendment*

A number of submissions have raised concerns about the proposed location of the amendment. Graham Connolly, for example, points out that, on the one hand, the appropriate location for recognition of Aboriginal and Torres Strait Islander peoples is surely the preamble. On the other hand, he argues that giving the voice a whole new chapter will imply that the Voice constitutes a fourth constitutional locus in addition to the Parliament, Executive and Judicature. This, he argues, will fundamentally compromise the monarch's duty to execute and maintain the Constitution (s. 61). G. A. F. Connolly suggests that it would

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<sup>5</sup>

[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Former\\_Committees/Aboriginal\\_and\\_Torres\\_Strait\\_Islander\\_Voice\\_Referendum/VoiceReferendum](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Former_Committees/Aboriginal_and_Torres_Strait_Islander_Voice_Referendum/VoiceReferendum)

<sup>6</sup> There are a number of technical concerns that are not within the scope of this paper to address. These include the question that has been raised about the bearing of s 75 on the Voice, and questions about the title of the Bill and its implications for the referendum question.

be far wiser to locate the Voice within chapter II.<sup>7</sup> Similarly, Louise Clegg points out that the wording ‘There shall be a body’ imply the creation of an institution of State, and suggests that a much less risky proposal would be a refurbished s 51(xxvi).<sup>8</sup> This question of the authority implied by the independent location of the Voice could become important if, as David Jackson asks, Parliament failed to pass the legislation providing for the Voice in view in the proposed sub-clause (iii).<sup>9</sup>

Against these concerns must be cited the weight of legal opinion at this point, which concludes that the proposed amendment is legally sound and consistent with Australia’s constitutional traditions.<sup>10</sup> For instance, the Attorney General’s submission argues that the proposed amendment will in fact enhance Australia’s system of representative and responsible government.<sup>11</sup>

There are in fact good reasons for the proposed location of the Voice. As Anne Twomey explains, separating the Voice from the first three chapters makes it ‘very clear that the Voice does not form part of, or have the powers of the institutions established by’ these chapters. That is, the location of the Voice arguably works against the concern that it will accrue power by virtue of its independence within the Constitution. Twomey notes that the placement of the Voice also ensures that it does not interfere with existing jurisprudence relating to these chapters, and avoids potential unwelcome implications of placement at other points.<sup>12</sup> Perhaps there would be questions relating to the significance of the location of the Voice for the High Court to consider in time, however it is clearly not immediately obvious that this location constitutes a fundamental problem.

## *2.2 Concerns relating to sub-clause (ii)*

As noted above, sub-clause (ii) of the proposed amendment reads:

the Aboriginal and Torres Strait Islander Voice may make representations to the Parliament and the Executive Government of the Commonwealth on matters relating to Aboriginal and Torres Strait Islander peoples;

A number of concerns have been raised about the scope and authority implied in this sub-clause. These include concerns about the powers implied by the authority to make representations, concerns about the inclusion of the Executive at this point, and concerns about the scope implied by ‘matters relating to’.<sup>13</sup>

In relation to the first area of concern, it is argued that the right to make representations would reasonably be taken to imply an obligation on the Parliament and Executive to listen to these representations. Would this obligation be only a moral obligation, or could it be found to have legal force, by virtue of the distinct

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<sup>7</sup> Submission 27.

<sup>8</sup> Submission 41.

<sup>9</sup> Submission 31.

<sup>10</sup> See, for instance, submissions 5, 17, 64, 82, and 175.

<sup>11</sup> Submission 64, pp. 12–13. See also submission 82, from the Sydney University Law School, which, though brief, argues that ‘the provisions of the Bill are legally sound, consistent with our constitutional traditions and international human rights law and are a necessary response to the Uluru Statement from the Heart’.

<sup>12</sup> Submission 17.

<sup>13</sup> See, for instance, among a number of submissions, submissions 27, 31, 41, and 56.

enshrinement of the Voice and its power to make representations, over against the power of the Parliament to determine the constitution of the Voice under sub-clause (iii)?

The key question can be highlighted by comparing the opinions expressed in two submissions: by Professor Anne Twomey and Louise Clegg. In her submission, Twomey argues that, ‘there are no words in proposed s 129(ii) which impose any kind of obligation on Parliament or the Executive Government’, and concludes,

The intention that the proposed amendment not entail any of the abovementioned obligations on the Parliament and the Executive Government is abundantly clear. It would be extraordinary for the High Court to ignore and overturn such a clear intention, especially in the absence of any contrary words in the text.<sup>14</sup>

Louise Clegg disagrees with this argument, stating that in this case, ‘the entrenchment [of the power to make representations] would amount to next to nothing, and the words would have barely any practical content at all if they did not require some kind of conduct, consideration or action from the relevant repositories of power’.<sup>15</sup>

It is worth noting that this disagreement directly relates to the point above about the intrinsic power of speech. Ms Clegg’s dismissal of a Voice without any implied legal obligation arguably does not appreciate the basic confidence in speech that lies at the heart of the USH and of the proposed amendment.

The opinion of the Solicitor General presented to the Inquiry strongly supports Twomey’s position. The Solicitor General concludes that sub-clause (iii) would empower the Parliament to specify whether and how Executive Government decision-makers are legally required to respond to the Voice. Parliament could not validly pass a law that deprived the Voice of the freedom to make representations. However, nothing in the proposed s 129(ii) either explicitly or by implication places a legal obligation upon the Executive Government.<sup>16</sup>

In relation to concerns expressed about the impact of including the Executive Government in sub-clause (ii), a number of important submissions have insisted that this was always the intention and position of the government, and that any other position is untenable.<sup>17</sup> The Attorney General, for instance, writes that, ‘It is self-evident that, in order to improve the laws and policies that affect Aboriginal and Torres Strait Islander peoples and improve outcomes, the Voice must be able to make representations to the Parliament *and* the Executive Government’.<sup>18</sup> In their joint submission, Noel Pearson and Dr Shireen Morris give a number of examples that illustrate the vital importance of representations being able to be made to the Executive as well as Parliament.<sup>19</sup>

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<sup>14</sup> Submission 17, pp. 5 and 7.

<sup>15</sup> Submission 41, p. 7.

<sup>16</sup> See submission 64, pp. 17–24.

<sup>17</sup> See the comments in the submissions of Prof. Twomey (submission 17) and the Attorney General (submission 64).

<sup>18</sup> Submission 64.

<sup>19</sup> Submission 21, pp. 4–6.



Finally, in relation to concerns about the potentially broad scope of the phrase, ‘matters relating to’,<sup>20</sup> it is true that this would include ‘laws of general application which affect Aboriginal and Torres Strait Islander peoples differently’,<sup>21</sup> and that this would include a very wide range of matters. It is also undoubtedly true that this would generate government work that would at times be not insignificant. However, these concerns should not be overstated. The words of Pearson and Morris should be heard clearly:

We hope the Committee respects indigenous Australians enough to trust that they will not be giving silly and irrelevant advice, either to Parliament or the Executive. Flexibility and common sense are needed here. Discretion in the scope of the Voice’s advice is important, because the most practical benefit will come where the Voice is able to advise on policy that indirectly and unintendedly impacts Indigenous communities in a unique way.<sup>22</sup>

It would be naïve to deny that there was any risk at this point. No human institution has ever been immune from the risks of selfishness, foolishness and arbitrariness in the use of power. However, it would be unreasonable to exaggerate these concerns, and – as Pearson and Morris imply – restricting the scope of the Voice’s activities on the basis of them could amount to prejudice.

### *2.3 Concerns about racism and unequal citizenship*

Concerns of a more philosophical nature have also been raised about the proposed amendment. Nyunggai Warren Mundine has argued forcefully that the proposed change ‘cements the view of Indigenous Australians as one race of people and will enshrine us as a race of people in the Constitution’; it is ‘reinstating race-based treatment of Aboriginal and Torres Strait Islander people’.<sup>23</sup> Recognition of Australia’s first peoples, he argues, must be done in terms of first *nations* rather than first peoples as a whole.

Differently, though relatedly, it has also been argued that the amendment is problematic because it ‘explicitly and unambiguously inserts inequality of citizenship into the Constitution’.<sup>24</sup> Similarly, Nicholas Hasluck argues that, ‘the Voice should be rejected on the grounds that our democracy is built on the foundation of all Australian citizens having equal civic rights’.<sup>25</sup>

In response, a number of points should be noted. First, as the submission from Western Sydney University Law School notes, ‘race is already imbricated in the Constitution’ in s 51.<sup>26</sup> Second, the proposed amendment need not and should not be taken to be treating Aboriginal and Torres Strait Islander peoples as a single race. It does not use the language of race but deliberately repeats the plural language of ‘peoples’. The unity envisaged by the amendment is not a unity of race but of shared antiquity, heritage

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<sup>20</sup> See, for example the comments of Nicholas Hasluck, submission 56, and Graham Connolly, submission 27.

<sup>21</sup> Twomey, submission 17, p. 3.

<sup>22</sup> Submission 21, p. 8.

<sup>23</sup> Submission 20, pp. 1, 3.

<sup>24</sup> Louise Clegg, submission 41, p. 8.

<sup>25</sup> Submission 56, p. 3.

<sup>26</sup> Submission 175.

as ‘first peoples’, and experience of dispossession in Australia.<sup>27</sup> The UN Declaration on the Rights of Indigenous Peoples (2007)<sup>28</sup> recognises the unique position of original custodians of lands that have been dispossessed. To make special provisions for indigenous peoples is not an instance of racial discrimination. Aboriginal and Torres Strait Islander peoples have been uniquely disempowered in Australia because those who wrote our constitution specifically excluded them. It is entirely reasonable to argue that this should be addressed at this fundamental point of dispossession, the Constitution.

Arguably, the enshrinement of a Voice representing the diverse constellation of Aboriginal and Torres Strait Islander peoples would in fact make it easier for erroneous racial views of Indigenous Australians to be resisted at various points. However, the concern expressed by Mundine that the sense of unity implied by the proposed Voice will work against recognition of the diversity of Aboriginal and Torres Strait Islander nations ought to be taken seriously.

Third, in response to the concern that inequality of citizenship is being inserted, it is best simply to acknowledge that this is indeed the case. In one very specific way, formal inequality of citizenship *is* being proposed here. But this inequality has specific and firm limits: what is being given to Aboriginal and Torres Strait Islander peoples and not to all other Australians is the authority to speak to Parliament and the Executive about matters relating to Aboriginal and Torres Strait Islander peoples. Only this form of inequality, but really this form of inequality, is being proposed. And it is being proposed ‘in recognition of Aboriginal and Torres Strait Islander peoples as the First Peoples of Australia’.

The proposed amendment will leave intact the formal equality of all Australian citizens in almost all respects. But it will add a right for Aboriginal and Torres Strait Islander peoples that others will not have in recognition of their status as First Peoples. There are indeed risks in this. Louise Clegg, for example, expresses a concern that this move ‘will over time undermine the precious moral authority now increasingly held by Aboriginal and Torres Strait Islander people in our society’.<sup>29</sup> But there are also reasons to think that such a move is the appropriate thing to do. For it is one thing to have formal equality of citizenship; it is another thing to be able to realise and take advantage of that equality of citizenship. The USH asks, among other things, to recognise that many Aboriginal and Torres Strait Islander people in fact experience deep powerlessness, and that the relationship between Aboriginal and Torres Strait Islander peoples and the rest of Australia is *not* currently ‘fair’ or ‘truthful’. The proposed amendment aims to assist in redressing these problems by giving Aboriginal and Torres Strait Islander peoples a distinctive access to government deliberation in recognition that they are, unrepeatably and uniquely, Australia’s First Peoples.

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<sup>27</sup> In his submission, Mundine writes that, ‘My common ground with Wiradjuri and Dharug people is race. Not descent. Not language. And not country’. Is there not also common ground in the shared antiquity of his nation with those other nations in this land?

<sup>28</sup> <https://social.desa.un.org/issues/indigenous-peoples/united-nations-declaration-on-the-rights-of-indigenous-peoples>

<sup>29</sup> Submission 41, p. 8.

## *2.4 Concerns about the Voice and existing Aboriginal and Torres Strait Islander structures*

A final set of objections to the proposal relates to the impact the Voice will have on existing structures of Aboriginal and Torres Strait Islander authority. Nyunggai Warren Mundine argues that there is a fundamental clash between the proposed Voice and the reality of the diversity of Aboriginal and Torres Strait Islander nations.<sup>30</sup> He maintains that the proposed Voice could not be representative, because it will not be able to represent the multitude of nations. Because ‘only countrymen and women can speak for country’, he anticipates that the Voice, especially if it is formed along the model proposed in the Co-Design Report, will not be able to speak for Aboriginal and Torres Strait Islander Australians. ‘Traditional owners should be their own voice for their own nation and country. They don’t need some new national Voice to speak for them’.<sup>31</sup> In addition, he worries that because the Voice will be enshrined in the Constitution, it will ‘have structural primacy over organisations representing traditional owners’ and inevitably undermine them.<sup>32</sup>

These are weighty concerns; and it is probably not possible to tell in advance how significant they would prove to be. In response, however, we should first note that the weight of opinion expressed by Aboriginal and Torres Strait Islander individuals and bodies appears to be in favour of the proposal. Second, we might ask whether it is possible for these concerns to be taken not as objections to the proposal, but as important cautions for Parliament to bear in mind should it move to make laws under the proposed s 129(iii). Third, we should note that a key argument *for* the proposed Voice is the felt inadequacy of existing structures to advocate for the interests of Aboriginal and Torres Strait Islander peoples. Pearson and Morris have given significant examples of recent areas where local indigenous lobbying has been tragically ineffective.<sup>33</sup> Finally, it should be noted that the Uluru Statement itself was the result of an effort to engage and listen at the local and regional level, an effort that has been described as, ‘unprecedented in our nation's history. . . engaging a greater proportion of the relevant population than the constitutional convention debates of the late 1800s’.<sup>34</sup>

### *3. An argument for voting ‘Yes’*

Australians are instinctively reluctant to change their Constitution, which has served us well. An instinctive conservatism can be wise, and it can also be a danger. It can amount to a refusal to listen to perspectives different to one’s own. ‘If in doubt vote no’ and ‘If it ain’t broke don’t fix it’ are sentiments that appeal to people who occupy positions of relative privilege in Australia. It is inaccurate to think that there is nothing ‘broke’ in Australia today. The USH asks the Australian people to recognise that there is much that *is* broken for many Indigenous Australians. And this includes the Constitution, which is ‘broken’ because it does not recognise Australia’s First Peoples.

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<sup>30</sup> Submission 20.

<sup>31</sup> Submission 20 p. 5.

<sup>32</sup> Submission 20, p. 5.

<sup>33</sup> Submission 21, pp. 4–6.

<sup>34</sup> Megan Davis, ‘On Recognition and Renewal’, *Quarterly Essay*, June 2023, p. 53.

There are risks in changing the Constitution in the way that is proposed. The most significant of these may be the unknown long-term effects of introducing an element of formal inequality into Australian citizenship. The extent of this should not be exaggerated: the Voice has only the power to speak to government. But this *is* a real power, which those who have proposed it hope will, in time, make a real difference. We cannot see what changes this will lead to in time, and it is not unreasonable to be cautious about it.

Yet there are risks, too, in failing to change the Constitution at this moment. The risk is that the opportunity presented to Australia by the USH will be missed. It is an opportunity opened by an act of profound generosity and humility, confidence in speech where there might easily have been cynicism, and hopefulness where there might easily have been resentment. There will be doubts, because there are uncertainties and risks. There are also, perhaps, ways in which we might wish things had been done differently. It will always be possible to think of alternative paths that might have been taken or might be taken some day. But these ideas must be weighed against the fact that this opportunity *does* lie before us now as a real course of action we may take, while those alternatives remain unreal. We have been invited to respond to a generous and weighty plea to be heard, spoken from the heart. We cannot assume an invitation of such grace and hopefulness will be extended again. To vote 'yes' is to say that, though the proposed change may not be perfect, it is good enough; and this is the opportunity we have been given to make a change to the Constitution of Australia in response to the Uluru Statement from the Heart.