

Putting a Voice into the Constitution

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In the light of the Uluru Statement, I offered a threefold suggestion when privileged to deliver the 2017 Lowitja Oration for the 50th anniversary of the 1967 referendum. In light of the ongoing discussions, I have continued to refine the suggestion.

First, we need to repeal the outdated, unused section 25 which allows the states to discriminate on the basis of race when prescribing the conditions for elections to state parliaments. The deletion of that provision is just low hanging fruit.

Second, consistent with the language used by the Expert Panel chaired by Patrick Dodson and Mark Leibler in 2012, we need to place an acknowledgment at the beginning of the Constitution:

We, the people of Australia, include Aboriginal and Torres Strait Islander peoples and peoples from all continents and their descendants who have made Australia home, having migrated to be part of a free and open society.

We recognise that the continent and the islands of Australia were first occupied by Aboriginal and Torres Strait Islander peoples.

We acknowledge the continuing relationship of Aboriginal and Torres Strait Islander peoples with their traditional lands and waters.

We acknowledge and respect the continuing cultures, languages and heritage of Aboriginal and Torres Strait Islander peoples.

We acknowledge the need to secure the voice of Aboriginal and Torres Strait Islander peoples in the Commonwealth.

Third, we could then amend section 51(26) of the Constitution 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:*
(i) *may request the Parliament to enact a law providing protection or support for one or more of the cultures, languages and heritage of the Aboriginal and Torres Strait Islander peoples and their continuing relationship with their traditional lands and waters; and (ii) may advise the Parliament of the effect which a law has or is likely to have or which a proposed law if enacted would be likely to have on the cultures, languages and heritage of the Aboriginal and Torres Strait Islander peoples and their continuing relationship with their traditional lands and waters.*