

Time to listen to Uluru's big ideas

Michael Kirby

Noel Pearson, Greg Craven and I probably had very different starting points when we first thought about recognising Aboriginal and Torres Strait Islander peoples in an appropriate way in the Australian Constitution. When we joined with Rachel Perkins, my old university friend Charlie Perkins's daughter, what we had in common was a journey from the heart. Our journey led each of us to reassess our initial stance. And we brought our minds and sense of the achievable with our hearts because, in this objective, there have already been too many disappointments and false starts.

That is why we have come together to launch *Upholding the Big Ideas*. It offers proposals for implementing the recommendations contained in the *Uluru Statement from the Heart* and the national Referendum Council's final report on the future relationships of all Australians. These options were developed by a policy unit established jointly in Australian Catholic University and Uphold & Recognise, an organisation committed to reconciling two imperatives: 'to uphold the Australian Constitution' and 'in recognise Indigenous Australians'.

Just over a year ago, 250 Aboriginal representatives from all parts of Australia met at Uluru and issued what they called the "*Statement from the Heart*". At its core was the call for the Australian Constitution to be amended to provide for a First Nations' Voice to Parliament. The Prime Minister, Malcolm Turnbull, subsequently remarked that the Uluru Statement contained "big ideas" but was short on detail as to how the ideas might be implemented. A year later, it is time for Australians to respond thoughtfully to the voice of our Aboriginal people. This is necessary to spell out exactly what is needed in the here and now.

At first, I probably had concerns similar to those that caused our Prime Minister to reject the Big Ideas of Uluru. He did so, however, before there had been any real discussion, or an opportunity for Australians at large to debate the options for implementing them. His response was intuitive. But we need to do better than that. Intuitive responses to new ideas are sometimes sound. But not always. Thoughtful people, with a sense of justice, will sometimes reconsider their intuitive reactions. They will think again. This is such an occasion.

The key contribution of *Upholding the Big Ideas* is that it presents us with models for how the Australian parliament might hear Aboriginal voices and do so more effectively. Whether you agree or disagree with the proposals now advanced, they invite us all to think afresh especially about what it would mean to implement the call for parliament to hear Indigenous voices more effectively. Most fair minded Australians would agree that, so far, we have not done such a good job of listening to the voices of our Indigenous people. Their persisting disadvantages are a stain on our country's nationhood.

Given the initial failure after 1788 to agree to a treaty with our Indigenous peoples (as occurred in New Zealand and other colonies of the British Crown), and the failure to engage in any consultation with the Indigenous people a century later, when our national Constitution was adopted, it is surely appropriate for us to think again about what our First People are proposing to us.

The failure to recognise their rights over their traditional lands was a long-lasting source of economic deprivation. It contributed significantly to the disadvantages that Indigenous people still experience in Australia in so many aspects of their lives —including in housing, healthcare and education.

So, when representatives of the Aboriginal and Torres Strait Islander people of Australia came together to make a serious proposal to their fellow citizens, it behoves us all to give their proposal careful consideration. Not to reject it out of hand.

Rejection was the attitude that led to the original denial of land rights—an injustice that took us 200 years to correct. This time we need to do things better and quicker.

In recent years, many leading citizens of Australia have begun to ask what we can do to ensure that our country and all its citizens will be reconciled fully and justly with our Indigenous peoples.

The key to real progress lies in going beyond mere symbolic acts, like acknowledging the traditional custodians of the land on public occasions or inserting poetic recitals in all our constitutions federal or State (so long as they have no legal consequences).

The key to making real progress lies in listening to the voices of our Indigenous people whenever important issues arise that affect them and their communities in a special way. Listening is always important. But it matters most of all in the federal parliament, where our country's most important laws are debated and adopted. That is what the *Uluru Statement from the Heart* requests:

- * It does not ask for special reserved Aboriginal seats or proportional Indigenous representation in federal parliament.
- * It does not ask for a veto on legislation.
- * It does not expect that what the Indigenous voices say will always be agreed to or accepted.

After 230 years of substantially ignoring their voices; after 200 years of rejecting their land rights until the High Court's Mabo decision in 1992; after 150 years of representative government, substantially without hearing such voices; and in the light of so many persisting problems and injustices, the request for a non-binding voice to the federal parliament, on matters that are important to our Indigenous people, does not seem an excessive or unreasonable demand. It is one that a self-confident and just parliamentary democracy should be willing to deliver.

If we had adopted this big idea much earlier, we might have avoided the many mistakes and injustices that have marred Australia's relationship with its Indigenous peoples until now. Parliament has not made such a good fist of things that it can fairly reject this proposal as unnecessary or premature.

The best place to locate an obligation to hear such voices in parliament would be in our national Constitution—where many other provisions concerning the parliament are found. That would ensure that the proposal could not be abolished or diluted through the vicissitudes of partisan politics. It would emphasise the unique, historical and corrective character of the reform that marks off our Indigenous people from other groups and minorities in Australia. The proposal for a direct voice to parliament is the central call of the *Uluru Statement*.

If constitutional change is considered too much to ask, however, the very least we should do immediately is to urge our parliament, acting out of its own powers, to respond, from the *Heart of our Democracy*, and to afford a unique voice to our Indigenous fellow citizens to speak directly to the parliament on matters that specially concern them. That said, we also need to hear them when they remind us that our parliament has set up such a voice for them before, and then proceeded to silence that voice because there was no constitutional obligation requiring parliament to hear their voices.

We should listen to their voices. We should open our ears to their voices. And we should open our hearts to what they say.

- * *Michael Kirby is a former High Court judge and was the recipient of the Australian Human Rights Medal 1991.*