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Joint Select Committee on Constitutional Recognition
Relating to Aboriginal and Torres Strait Islander Peoples
PO Box 6021
Parliament House
Canberra ACT 2600

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1. Liberty Victoria is committed to the defence and advancement of human rights and civil liberties. We seek to promote Australia's compliance with the rights recognised by international law and the Victorian *Charter of Human Rights and Responsibilities Act 2006* (Vic). We are a frequent contributor to federal and state committees of inquiry, and we campaign extensively for better protection of human rights in the community. More information on our organisation and activities can be found at: <https://libertyvictoria.org.au/>.
2. Liberty Victoria fully supports the model of recognition set out in the Uluru Statement from the Heart: a constitutionally enshrined, **First Nations Voice to the Parliament**, and a **Makarrata Commission**, which will supervise a process of agreement-making and truth-telling.
3. The Uluru Statement is the product of an unprecedented, national consultation with Australia's First Peoples – the very peoples who are to be recognised in our founding document. 1200 people took part in First Nations Regional Dialogues around Australia, culminating in a National Constitutional Convention in May 2017.
4. The substance of the Uluru Statement reflects the guiding principles identified by those who took part in this process, in particular that recognition must:
 - a. not diminish Aboriginal sovereignty or Torres Strait Islander sovereignty;

- b. involve substantive, structural reform;
 - c. advance self-determination and the standards established under the *United Nations Declaration on the Rights of Indigenous Peoples*;
 - d. recognise the status and rights of First Nations;
 - e. tell the truth of history;
 - f. not foreclose on future advancement;
 - g. not waste the opportunity of reform;
 - h. provide a mechanism for First Nations agreement-making;
 - i. have the support of First Nations; and
 - j. not interfere with positive legal arrangements.
5. These features are absolutely essential for any acceptable model of recognition. They set the Uluru Statement apart from the other models of recognition previously considered by the bodies identified in paragraph 1.a. of the Committee's resolution of appointment.¹
 6. In particular, the other models are not generally supported by, and were not developed together with, Australia's First Peoples.
 7. Moreover, the other models do not realise the guiding principles discussed above to the same extent as the Uluru Statement, for the following reasons (among others):
 - a. A **statement of recognition** might express or imply that sovereignty was ceded or extinguished upon European settlement. Moreover, there is a real risk that it would be watered down into a trite, motherhood statement, which would be inconsistent with truth-telling about Australia's history.
 - b. **Section 25 of the Constitution** is a dead letter. Its removal would not benefit Aboriginal and Torres Strait Islander peoples.
 - c. **Section 51(xxvi) of the Constitution** reflects the key achievement of the historic 1967 referendum. Its removal would also create doubt over the Commonwealth's legislative power to enact significant legislation in certain areas, including heritage protection and land rights.
 - d. A **constitutional prohibition on racial discrimination** was seen as overly dependent on interpretation by the High Court, and potentially not politically feasible.²
 8. In short, the Uluru Statement presents an historic opportunity for Australia to realise the promise of recognition on terms proposed by our First Peoples.
 9. Liberty Victoria also considers that the key objections to the model set out in the Uluru Statement are unfounded or misconceived.
 10. The Voice to the Parliament **would not be a 'third chamber'** of Parliament. The Voice would be an advisory body. It would have no right of veto over Parliament's power to make laws. Its principal function would be to advise Parliament on laws and public

¹ Including the Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples (2015) and the Expert Panel on Constitutional Recognition of Indigenous Australians (2012).

² Final Report of the Referendum Council, dated 30 June 2017, 11-15.

policy concerning *Aboriginal and Torres Strait Islander peoples*. The Voice would not be a roving investigative and advisory body tasked with examining all questions of public policy.

11. On the contrary, the proposal for the Voice respects and reinforces parliamentary sovereignty:
 - a. The proposal deliberately leaves the design of the body open to Parliament. This is a strength, rather than a weakness. It gives Parliament the flexibility to ensure that the Voice can fulfil its constitutional mandate, and to address any unforeseen issues in its composition or operation.
 - b. The proposal will help ensure that Parliament better understands the views, values and experiences of Aboriginal and Torres Strait Islander peoples, when making laws directed at them. This is essential in a well-functioning democracy. If Parliament is ill-informed or ignorant, it cannot be sovereign.
12. The Voice to the Parliament **would not be contrary to notions of democratic equality** and equal citizenship. This objection appeals to superficial notions of *formal equality*. In fact, the Voice will help ensure the *substantive equality* of Australia's First Peoples, having regard to the following matters:
 - a. the unique position of Aboriginal and Torres Strait Islander peoples from the perspective of our shared, national history;
 - b. their special vulnerability to discriminatory laws passed under the Commonwealth's race power (s 51(xxvi) of the Constitution);
 - c. the lamentable failure of Australian governments to work with Aboriginal and Torres Strait Islander peoples to ensure equal enjoyment of the basic conditions of a good, human life: housing, education, health care, culture, freedom from violence and morbidity, and so on; and
 - d. the systemic barriers to Aboriginal and Torres Strait Islander peoples' exercise of self-determination, in the sense of a people's pursuit of its political, economic, social and cultural development.
13. In light of these matters, it is entirely appropriate for Aboriginal and Torres Strait Islander peoples to have a special forum for informing and influencing debate over the policies directed at them.
14. Finally, the model set out in the Uluru Statement **would not be doomed to fail** at a referendum:
 - a. Public polling suggests that 61³ per cent of Australians support the proposal for a Voice to the Parliament.
 - b. If the major parties make a bipartisan commitment to the Uluru Statement, and support a strong, well-funded public education and advocacy campaign, this figure will almost certainly increase.
 - c. More to the point, the other models for recognition discussed above are not supported by Australia's First Peoples and therefore *will not succeed* at a referendum. Therefore, this objection provides no basis for refusing to put

³ See Stephanie Zillman, 'Indigenous advisory body would be supported by Australians, survey finds', *ABC News*, 30 October 2017.

the Uluru Statement model to a referendum, unless the Parliament wishes to abandon the goal of constitutional recognition altogether.

15. Liberty Victoria calls on the Federal Government to reconsider its opposition to the Uluru Statement, and embrace the historic moment it presents for our First Peoples and the nation as a whole.
16. If you have any questions regarding this submission, please do not hesitate to contact Liberty Victoria President Jessie Taylor or the Liberty office on 9670 6422 or info@libertyvictoria.org.au. This is a public submission and is not confidential.



Jessie Taylor
President, Liberty Victoria