

THE ULURU STATEMENT FROM THE HEART

LOWITJA O'DONOGHUE ORATION 2018

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**Don Dunstan Foundation
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I thank the Kurna people for your kindness. I bring greetings from Cape York Peninsula to you and all our First Nations here tonight. I thank the Don Dunstan Foundation for giving me this privilege. I met Don when I was 23 when he visited my village in Cape York Peninsula. He was undertaking an inquiry of some sort and met with the local council of which I was a member. I knew well his legacy as the most progressive politician this country has produced, particularly his appointment of one of my boyhood heroes, Pastor Sir Doug Nicholls, the great Yorta Yorta leader, as Governor of this state. My school principal at Hope Vale State School showed me biographies of Sir Doug and Charlie Perkins' *A Bastard Like Me*, and reading them, from an early age these great leaders loomed large in my life.

Women and men of Adelaide, and the young among us tonight:

Lowitja should have been our 23rd Governor-General. She had the ballast for that post at that time in our history. Absent the presidency, it would have been fitting and right for her to have taken up the vice-regal role, with strong prescience of our eventual turn to a republic.

Our country is susceptible to showering tokens upon indigenes to serve some goal of patronage and inclusivity – while keeping us out of the main game – but loathe to accord to one such as Lowitja, the patron saint of twice as good, recognition of her true merit. Who today would not concede she was twice worthy as the ill-starred Hollingworth in 2001? This lost opportunity cost the country woe.

To be sure Lowitja needs no expression of regret about her contribution to public life. Her prodigious accomplishments and place in the firmament of Aboriginal and Australian leadership are undisputed. I just think our nation still needed her in her last phase of public life.

She is our greatest leader of the modern era, the finale of which was her chairmanship of the Aboriginal and Torres Strait Islander Commission from its inception to the end of the Keating government in 1996. These were ATSIC's best years. They were years of great

coherence in indigenous affairs, before the national commission's egregious poor leadership played into the hands of the Howard government's antipathy.

There were two ATSICs, one under Lowitja and the other after. It failed at the national level after Lowitja's term as chair expired, but it was always a force for good at the regional level.

Without Lowitja's ATSIC we would never have defended Eddie Mabo's great legacy and negotiated the Native Title Act and Indigenous Land Fund.

Let me acknowledge the Kurna people of this fine city and thank you for hosting us on your traditional homelands this evening. I especially thank you for providing a home for this lady, our leader, safeguarding her and giving her a place of rest and succour in the bosom of your ancestors.

For she gave her all in the service of our people the continent over. In the twilight of a life spent in long, self-less service, I know I speak for all of us whose gratitude flows brimming from our hearts, in telling her we love and honour her so.

It was my great privilege to witness her leadership of the Native Title Act negotiations with the Keating government in 1993. Paul Keating's 2011 oration correctly identified Lowitja as our leader in that drama. She was the rock who steadied us in the storm. Resolute, scolding, warm and generous – courageous, steely, gracious and fair. She held the hardest leadership brief in the nation and performed it bravely and with distinction.

Tonight I speak to the *Uluru Statement from the Heart*, the culmination of the First Nations Dialogues on Indigenous Constitutional Recognition of 2016 and 17 that led to the Uluru National Convention, issued at Mutijulu on May 26 2017.

The *Statement from the Heart* was an act of indigenous self-determination, the like of which this country has not seen in terms of its scope, rigour, and inclusion. How can such diverse indigenous peoples from all compass points of the country participate in a process and achieve that which everyone said would never be possible: to achieve a broad and real consensus? No consensus is real without dissent, but the dissent never detracted from the truth of Uluru's accord. I doubt that any polity in any community in this country has achieved the breadth of unanimity as our people achieved with Uluru.

Uluru is the achievement of all those Aboriginal and Torres Strait Islander men and women who contributed on behalf of their people. It was led by two remarkable women formed in the Lowitja mould and worthy successors to her leadership. Professor Megan Davis, Cobble Cobble of Queensland, a constitutional lawyer from the University of New South Wales, designed the process and guided an expert legal team facilitating the Dialogues that led to Uluru. Dr Pat Anderson, Alyawarre of the Northern Territory, and chair of the Lowitja Institute, captained the Dialogues as they wended their way around the continent. The work of Megan Davis and Pat Anderson was a *tour de force*: leadership

the like of which Lowitja showed in our time of need in the early 90s. I attended 7 of the Dialogues and these women attended all 12 of them. They carried the Dialogues to their destination at Uluru.

These three women from three different generations remind me of the stupendous quality and strength of our leadership women. Our respective achievements, I believe, would not have been possible without them.

If self-determination means anything for the First Nations of Australia, then the process and outcome of Uluru is its very meaning. It is and will be a benchmark of hard work and rigour. Indeed Uluru sets the model for future national conference, policy debate and decision-making, where we seek common ground on matters of high deliberation for us as indigenous peoples.

Let me turn to the words of The Uluru Statement. They bear reminder:

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.

Let me deal with the main elements of the statement. Uluru calls for a **'First Nations Voice enshrined in the Constitution'**.

The First Nations Dialogues made clear the choice of Aboriginal and Torres Strait Islanders to have substantive constitutional reform, rather than mere symbolism.

Remember John Howard's symbolic preamble failed in the 1999 referendum.

Paul Keating's view needs to be understood. He has asked why indigenous constitutional reform advocates would want to be recognised in such a desultory colonial document, an enactment of the British Parliament, which is essentially a rule book governing our system of government and law.

I agree with Keating's characterisation of our constitution, what former Chief Justice Murray Gleeson prefers to call our basic law.

I agree the Australian Constitution is not the place for symbolic words. It would be like putting some poetic flourish in the front of the Rules of Cricket.

The Keating aversion to the constitution as an appropriate instrument for symbolic recognition coincides with the objection of constitutional conservatives, who abjure symbolic words lest they give rise to unintended consequences in constitutional interpretation.

The constitution is the place for substantive rules, the establishment of institutions and the distribution of power. Which is why establishing the institution of an Indigenous Voice is rightly done in the constitution.

The representation, functions and powers of the Voice would be established under parliamentary legislation. It would not be as claimed a ‘Third Chamber of the Parliament’, and would indeed sit outside of the parliament. It could not have legal veto over the functioning of parliament and all of its functions would be conferred by legislation. The Voice would contribute to the national policy debate, and seek to influence policy and laws affecting indigenous people.

When power was allocated under the federal compact of 1901, First Nations were excluded. Yet there were more indigenous peoples than Tasmanians. Even today there are more indigenous peoples than Tasmanians. And yet because the colonies were the historic parties to the federation – and the pre-existing polity of indigenous peoples was ignored in the constitutional negotiations and excluded from the compact – 500,000 Tasmanians have 12 Senators in the federal parliament.

First Nations are a different polity to the former colonies. First Nations represent the sovereign peoples who possessed the country since the first Australians made the crossing to this continent over 65,000 years ago. How could the First Nations not have a claim to a place in the Commonwealth?

The Voice is a modest institutional proposal that would nevertheless sit within our Commonwealth’s most important law. It would therefore be highly symbolic and play an important function in our system of government. And so it should.

Voice is power. Voice is recognition. Voice is empowerment.

Indigenous voices need to be heard if the indigenous future is to be better than the past. The Voice must be enshrined in the constitution.

The joint parliamentary committee co-chaired by Liberal MP Julian Leeser, and Labor Senator Patrick Dodson, gives us another chance at constitutional reform following the Turnbull Government’s rejection last year.

I don’t think there is any alternative to *what* recognition proposal should be adopted. The Voice is the *what*.

If the window of opportunity is to be seized, the joint parliamentary committee will need to come up with a model of *how* a Voice might be constituted, that answers the objections raised by the government and the prime minister. Leeser has a strong view about upholding the constitution but he believes that you can do that whilst at the same time addressing the historic challenge we have for indigenous recognition.

The argument is made that the Voice might have some kind of moral veto, that its presence and the advice it provides to the parliament might oblige the parliament to follow its every advice. One would hope such advice would be taken very seriously, that is why we want to create it. But at the same time parliament is a very robust place, and

Australian politics a very robust scene. I don't think I have ever seen Australian governments follow word for word what Aboriginal leaders have ever said in our history and I don't think that's going to change in the future. First Nations will be involved in the national politics of the day. It will be a matter of how persuasive their arguments are as to whether the parliament and governments will adopt them, and that is the way it should be.

The second element Uluru calls for is a **'Makarrata Commission to supervise a process of agreement-making between governments and First Nations'**

The Yolngu word 'makarrata' means coming together after a struggle.

A Makarrata Commission could be an independent commission of inquiry or a tribunal, like the Waitangi Tribunal in New Zealand. It would be an independent umpire body, of balanced Indigenous and Non-Indigenous membership, empowered to facilitate and mediate reconciliation, agreement-making and truth-telling between First Nations and Australian governments, in an orderly and mutually respectful way.

The Commission's function would be to supervise local and regional agreement-making between governments and First Nations: a process of local and regional treaty-making under the terms of a national framework treaty.

The national framework treaty would provide the over-arching terms within which substantive regional and local treaties would be settled.

The third element Uluru calls for is **'Truth-telling about our history'**. This proposal came out of the Dialogues. It was not an option put forward in the consultation document produced by the Referendum Council. But the universal view was that we needed a process to tell the truth of our history.

So the concept of the Makarrata Commission would include the function of truth-telling in relation to our national history, but as importantly local and regional histories of First Nations.

When re-reading Paul Keating's 2011 Oration I found this apposite articulation of the crucial importance of truth. Keating said:

... above all that, I saw the approach of using the High Court's native title route as possessing an even greater attribute - and that was truth. There is, especially in public life, no more beautiful a characteristic than truth. Truth is of its essence liberating; it is possessed of no contrivance or conceit - it provides the only genuine basis for progress. By overturning the lie of 'terra nullius', the notion that at sovereignty the continent was possessed by no one, the High Court not only opened a route to indigenous land, it rang a bell which reminded us that our future could only be found in truth.

Truth provides the only genuine basis for progress. This is why First Nations representatives called for truth-telling to be part of the Makarrata process.

Finally, I want to turn to the concept of a 'Declaration of Australia and the Australian People'.

The idea of a Declaration outside of the Constitution, akin to the American Declaration of Independence, was first proposed by Julian Leeser and Damien Freeman in 2015. Such a Declaration would have moral and cultural force, rather than legal. It could be set out in the act of parliament, but it would not depend upon its legal enactment for its force. Its power would come from history, truth and a people's pledge to the future.

The Referendum Council's second recommendation proposed the extra-constitutional Declaration.

In their 2015 paper Leeser and Freeman suggested that some form of national competition be undertaken to develop the words of the Declaration.

I want to propose some 'terms of reference' for a Declaration of Australia and the Australian People, and then suggest some language that may meet these terms.

But before I do so I want to talk about the looming opportunity for our country and the urgency of leadership, posed by the 250th anniversary of Captain James Cook's 1770 voyage up the east coast of the continent.

We can't just pull out the gurneys and start hosing the pigeon manure off the sundry desultory busts and statuary of the great Captain, from Botany Bay to Cooktown, and expect the country to come to proper grips with its meaning for us in the 21st Century.

We can have a conflagration if we don't see what is before us, or we can use transcend it.

To my mind the 250th anniversary of the voyage of James Cook provides us with the opportunity to do that which was not done in 1770: for us to *treat* with one another in relation to the 250 year old question of finding a rightful place for an Old Australia within the New.

This we did not do in 1788, 1901, 1938, 1970, 1988 or 2001, and we left history unresolved.

Let us not kick the can down the road again in 2020. Let us use Cook's 250th anniversary to commence a process of *treaty* between the First Nations of this country and the Commonwealth of Australia.

We will need a Voice to represent the First Nations in such a process of treaty-making. That is why a constitutional voice is imperative.

Let me now set out some terms of reference for a Declaration.

Firstly, it should bring together each of the three parts of the one Australia: its Indigenous Heritage, its British Institutions and its Multicultural Migration.

Secondly, it should honour each of these three parts in as fulsome a manner as possible.

Thirdly, it must deal with the events at Sydney Cove in 1788 from two perspectives, from the perspective of invasion and from the perspective of settlement.

Fourthly, it must honestly deal with the bad and the good of history in as straightforward a way as we can muster.

Fifthly, it should commit us to the stewardship of our land for future generations.

Sixthly, it should commit us to making good on the Uluru Statement from the Heart.

Seventhly, it should set out our most characteristic values as Australians.

Let me try out these words:

Whereas three stories make Australia: the *Ancient Indigenous Heritage* which is its foundation, the *British Institutions* built upon it, and the adorning *Gift of Multicultural Migration*:

And whereas Aboriginal and Torres Strait Islander tribes were the First Nations of the Australian continent and its islands, possessed under ancient laws and customs, according to the reckoning of culture, from the Creation, according to the common law, from time immemorial, and according to science for more than 65 millennia. This 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 their ancestors. We recognise and honour the First Nations who discovered Australia as their sovereign possession, the oldest continuing civilisation in the world.

And whereas those who sailed the First Fleet landing at Sydney Cove carried upon their shoulders the common law of England, when the sovereignty of the British Crown was proclaimed. The rule of law, parliamentary government and the Australian English language have their provenance in Britain. From eyes on board ship, this was a settlement, and from eyes on shore, an invasion. We recognise the eve of the 25th and the dawn of the 26th January 1788 as a profound time for all of us, when Ancient Australia became the New Australia. We recognise and honour the Britons and Irish – convict and free – who founded our institutional heritage, making our Commonwealth from 1901, a great democracy of the globe.

And whereas peoples the earth over brought their multitude of cultural gifts to Australia. That we celebrate diversity in unity makes us a beacon unto the world. We recognise and honour our New Australians. When we renounced the White Australia policy, we made a better Commonwealth. We show that people with different roots can live together, that we can learn to read the image-book of others, that we can look across the frontiers of our differences without prejudice or illusion.

Now therefore, with earnest and open hearts and strong desire to fill the lacuna, after more than two centuries, we make this *Declaration of Australia and the Australian People*, to see our reflections in each other, and recognise one and all:

Our history is replete with shame and pride, failure and achievement, fear and love, cruelty and kindness, conflict and comity, mistake and brilliance, folly and glory. We will not shy from its truth. Our storylines entwine further each generation. We will ever strive to leave our country better for our children.

We will honour the Uluru Statement from the Heart and make good upon it. Whilst English is the shared language of our Commonwealth, mother tongues name the country and sing its song-lines – and we do not want for them to pass from this land. They are part of the cultural and natural wonder of our country that is the campfire of our national soul, and the pledge of care and custody we owe our ancestral dead and unborn descendants.

After the battles of our frontier wars fell silent, diggers from the First Nations joined their Settler and New Australian comrades in the crucibles of Gallipoli, the Western Front and Kokoda, and there distilled the essence of our values:

- That our mateship is and will always be our enduring bond.
- That freedom and the fair go are our abiding ethic.
- That our virtues of equality and irreverence give us courage to have a go.
- That we know we can and always will count on each other.

Three stories make us one: Australians.

Thankyou.