

Mabo lawyer Bryan Keon-Cohen urges 'gutless politicians' to support Uluru decision

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Michael Gordon
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One of the key lawyers in the Mabo case, Bryan Keon-Cohen, has described the proposal to enshrine an Indigenous voice in the constitution as modest and conservative, and challenged "gutless politicians" to support it.

"It doesn't in any way challenge the basic power structures of the constitution," said Mr Keon-Cohen. "It provides advice only and Parliament can do what it likes with that advice, including ignoring it.

"What are we worrying about, apart from politicians being gutless?"

Prominent constitutional lawyer, Professor Adrienne Stone, has also supported the proposal as consistent with Australia's constitutional culture.

Deputy Prime Minister Barnaby Joyce earlier branded the proposal from the Indigenous constitutional convention at Uluru last week as an overreach that was "not going to happen".

"If you overreach in politics and ask for something that will not be supported by the Australian people, such as another chamber in politics or something that sort of sits above or beside the Senate, that idea just won't fly," Mr Joyce said on Monday.

The Uluru declaration does not recommend a creation of a "Black Parliament", but calls for a "First Peoples Voice" to be enshrined in the constitution to ensure the views of Aboriginal and Torres Strait Islander people are heard on legislation that affects them.

It also proposes a Makarrata Commission, a separate body to be set up outside the constitution to supervise agreement or treaty making and "truth-telling about our history".



Solicitor Greg McIntyre, barrister Ron Castan, Eddie Mabo and barrister Bryan Keon-Cohen at the High Court of Australia 1991.

The co-chair of the Referendum Council, Pat Anderson, urged people not to politicise the declaration and to "pause and reflect" on the fact that it followed a six-month Indigenous dialogue that was without precedent.

The council will meet next week to consider the Uluru declaration before preparing a report to Prime Minister Malcolm Turnbull and Opposition Leader Bill Shorten by June 30.



Performers from Thursday Island during the opening ceremony of the First Nations National Convention in Uluru. Photo: Alex Ellinghausen

One of the country's most respected Aboriginal politicians, Linda Burney, Labor's spokeswoman for human services, has expressed concern that the Uluru statement was silent on recognising Aboriginal people in the constitution and amending the existing race power.

But Ms Anderson urged politicians to wait until the council had submitted its report.



Mutitjulu elders watch performers from Muakgau Lak Gubau Gizu during the opening ceremony of the convention. Photo: Alex Ellinghausen

Mr Keon-Cohen was junior counsel in the Mabo case to the late Ron Castan. He will attend ceremonies on Thursday Island on Saturday to mark the 25th anniversary of the decision that recognised the rights of Mabo's people to their islands in the eastern Torres Strait and inserted the legal doctrine of native title into Australian law.

He told Fairfax Media the proposal for an Indigenous voice into the constitution was very conservative, especially when compared with reforms adopted in Canada in 1982.

"It provides First Peoples with an assured input to policy and legislation on the basis that they are unique and not just another racial group in our great melting pot of – what are we? – 200 nations," he said.

Mr Keon-Cohen said the Canadians explicitly recognised Indigenous treaty rights in their reforms and that country remained economically prosperous and socially cohesive.

Professor Stone, the director of the Centre for Comparative Constitutional Studies at the University of Melbourne, said she was not as pessimistic about the proposal as Mr Joyce.

"It's very important to make it clear that this is an advisory body with an entrenched role. It has no law-making powers and nothing it can absolutely insist upon. When it's described as a voice, it is just that," Professor Stone said.

"It is in keeping with the Australian tradition of constitutionalism, which tends to prefer procedural solutions over explicit statements of value and tends to prefer enabling people to make their own decisions rather than, for example, giving strong powers to the courts to enforce constitutional values."