

Discussion Paper: The Voice to Parliament

Preamble

The purpose of this discussion paper is to invite conversations about the Indigenous Voice to Parliament and the Referendum to be held later this year.

Some might argue that to write such a paper is to go where angels fear to tread.

This is such a *politicized* issue! Such a *polarising* issue!

Surely we shouldn't risk the ire of people who have very firm opinions on this subject!
Surely we shouldn't be entering the realm of politics, but should instead leave this subject to the professional politicians!

I believe there are some topics that are sufficiently important that our broader society *should* engage with them, even if it means stepping out of our comfort zone. The question really centres around identifying those important issues and, once identified, working out *how* to best engage with those issues.

I will be arguing that the Voice to Parliament is indeed one of those issues important enough to engage with and, furthermore, suggesting a “how” to this process of engagement that will be invitational rather than divisive. It will be an invitation to engage, whether one is currently leaning toward “no” or “yes” or “undecided” or “concerned” in relation to the Referendum question. The Referendum question and proposed constitutional amendment is described in this reference¹.



A concise summary of the intent of the Referendum is given in the **Explanatory Memorandum** to the proposed bill, **Constitution Alteration (Aboriginal and Torres Strait Islander Voice) 2023**:

The Constitution Alteration (Aboriginal and Torres Strait Islander Voice) 2023 (Bill) recognises Aboriginal and Torres Strait Islander peoples as the First Peoples of Australia in the Australian Constitution through an Aboriginal and Torres Strait Islander Voice (Voice). Enshrining the Voice in the Constitution is the form of recognition sought in the 2017 Uluru Statement from the Heart. The Voice would be an enduring institution to ensure that Aboriginal and Torres Strait Islander peoples can make representations to the Commonwealth Parliament and the Executive Government of the Commonwealth on matters that relate to them, improving the development and implementation of laws and policies.²

Starting from Common Ground

Unless we can begin from common ground, it will be difficult, if not impossible, to engage with this subject. To this end, I aim here to find that common ground, to finding starting premises we can agree upon, thereby setting the scene for our discussion.

COMMON GROUND: THE IMPORTANCE OF THIS REFERENDUM

It is quite literally impossible to remain fully engaged with the myriad political debates that swirl around us, apart from occasionally being captured by the 60-second soundbite in which the media delights. So often, when it comes to the details, we tend to tune out: *Let's just leave that to the politicians. We voted them in. They can deal with it.*

Now and then, however, we are summoned to engage.

It happens when, every few years, we are summoned to elect a new Government, be it state or federal. At such times, Australian citizens, with our voting rights and responsibilities, are summoned to “tune back in.” So too are we called to “tune in” when, once in a very long while, a Referendum is being held, a Referendum that will, if passed, alter the Australian Constitution.

The Australian Government Solicitor has this to say in his overview to the Australian Constitution:

“The Australian Constitution has properly been described as ‘the birth certificate of a nation’. It also provides the basic rules for the Government of Australia. Indeed, the Constitution is the fundamental law of Australia binding everybody including the Commonwealth Parliament and the Parliament of each State. Accordingly, even an Act passed by a Parliament is invalid if it is contrary to the Constitution.”

“The Constitution provides a mechanism by which it can be altered, called a Referendum. Before there can be any change to the Constitution, a majority of electors must vote in favour of the change. In addition, there must be a majority vote in a majority of States, that is, in four out of the six States.”³

Any Australian citizen who takes seriously his or her rights and responsibilities can only conclude that *any* Referendum, with its Constitution-altering implications, is an important thing to engage with, regardless of one’s position on the proposal.

COMMON GROUND: ACCEPTANCE OF THE UNIQUE CATEGORY OCCUPIED BY INDIGENOUS AUSTRALIANS

The Referendum on the Voice to Parliament pertains to the Indigenous peoples of Australia.

If we pause for a moment, it isn’t hard to see that Indigenous peoples occupy a unique category, indeed a number of unique categories in Australia. It should be uncontentious to state the following:

- That Aboriginal and Torres Strait Islander (ATSI) peoples were the First Peoples of Australia.
- That ATSI peoples were dispossessed of their ancestral lands through colonisation.
- That ATSI peoples have suffered historic and widespread discrimination in many and varied ways.
- That ATSI peoples continue to have very bad outcomes across multiple domains, according to the “Closing the Gap” reports.⁴ To name but a few:
 - Indigenous child mortality rate is twice the rate for non-Indigenous children (2018)

- Indigenous employment rate was around 49 per cent compared to around 75 per cent for non-Indigenous Australians (2018)
- Life expectancy at birth was 71.6 years for Indigenous males (8.6 years less than non-Indigenous males) and 75.6 years for Indigenous females (7.8 years less than non-Indigenous females) (2015–2017).
- That despite the efforts of many individuals and many programs targeted at closing the gap and improving outcomes for Indigenous people, overall, they have not been very effective.

COMMON GROUND: A SHARED RESPONSIBILITY FOR IMPROVED INDIGENOUS OUTCOMES

Within the *Closing the Gap* framework, there is a recognition, supported across the political spectrum, that there needs to be a *shared* responsibility between Indigenous Australians and governments for improving outcomes for Indigenous Australians:

“All Australian governments are working with Aboriginal and Torres Strait Islander people, their communities, organisations and businesses to implement the new National Agreement on Closing the Gap at the national, state and territory, and local levels.”

“Implementation Plans have been developed and delivered by each party to the National Agreement, in partnership with Aboriginal and Torres Strait Islander partners. They set out how policies and programs are aligned to the National Agreement and what actions will be taken to achieve the Priority Reforms and outcomes.”⁵

It could be argued that this shared responsibility for Indigenous outcomes could and should extend beyond governments to non-Indigenous Australians more broadly. One way in which a society is judged is by the living standards of its most marginalised citizens which, in the case of Australia, are its Indigenous peoples. Given the unique and tragic history of Aboriginal treatment since colonisation, it is hard to argue that the Aboriginal citizens of Australia simply need to pull themselves up by their bootstraps. Rev. Dr. Martin Luther King Jnr, speaking in a different context, but also about a people that had suffered great injustice, said this:-

“I believe we ought to do all we can, and seek to lift ourselves by our own bootstraps, but it’s a cruel jest to say to a bootless man, that he ought to lift himself by his own bootstraps.”⁶

When he said this, King was operating out of a social justice, as well as a specifically Christian perspective, being a follower of Jesus of Nazareth, who associated with, and loved, the most marginalised of his day.

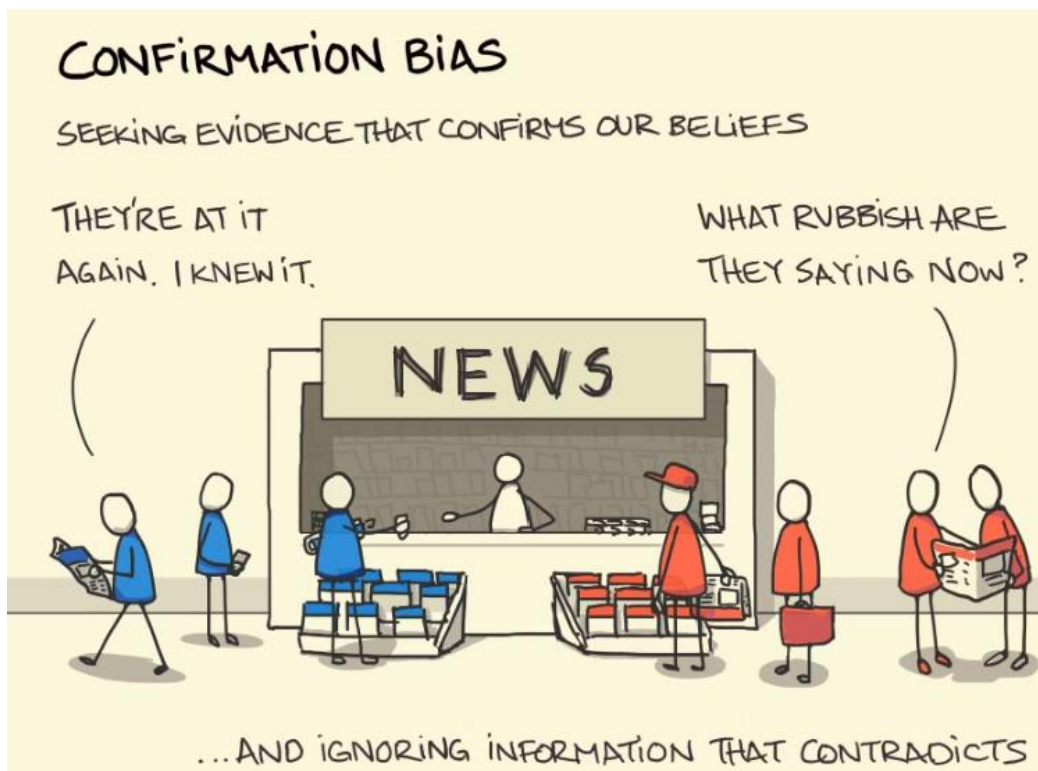
Given the unique history since colonisation of the First Peoples of Australia, their dispossession, their dislocation, their discrimination, their marginalisation, their intergenerational trauma, and how their entrenched disadvantage remains, I don’t believe it is contentious to assert, on the basis of social justice, that the goal to improve the outcomes of Indigenous peoples is a worthy goal for *all* Australians.

Creating a Space for Discussion

The public discussion around the Voice to Parliament is, all too often, *polarised*, often highly so. The complexity and nuance, as well as the essence of the subject, is often not well captured by the media, with its 24-hour news cycle and its propensity for 60-second soundbites.

There is available, for the interested person, vast amounts of detail and discussion around aspects of the Voice to Parliament, including voluminous reports on how such a Voice to Parliament might work, parliamentary Joint Select Committee inquiry transcripts, submissions from erudite legal minds and so forth. There is much to look into, many knowledgeable people to listen to, much to ponder.

But, alas, we are bound by the strictures of available time: there are only twenty-four hours in a day, and we have many calls upon our time. We tend, therefore, to go to our preferred “curators of information” – those individuals, newspaper columnists and news services that we trust and, more often than not, *whose views align with our own*. In this present debate around the Voice to Parliament, we tend to be drawn, quite unconsciously, into a space where we seek out and accept those opinions that reaffirm our existing opinion, and deny those opinions which challenge our own, what psychologists call *confirmation bias*.⁷ In time, it is all so easy and natural to find myself surrounded by people, all in furious agreement with me; I find myself in an *echo chamber*.⁸

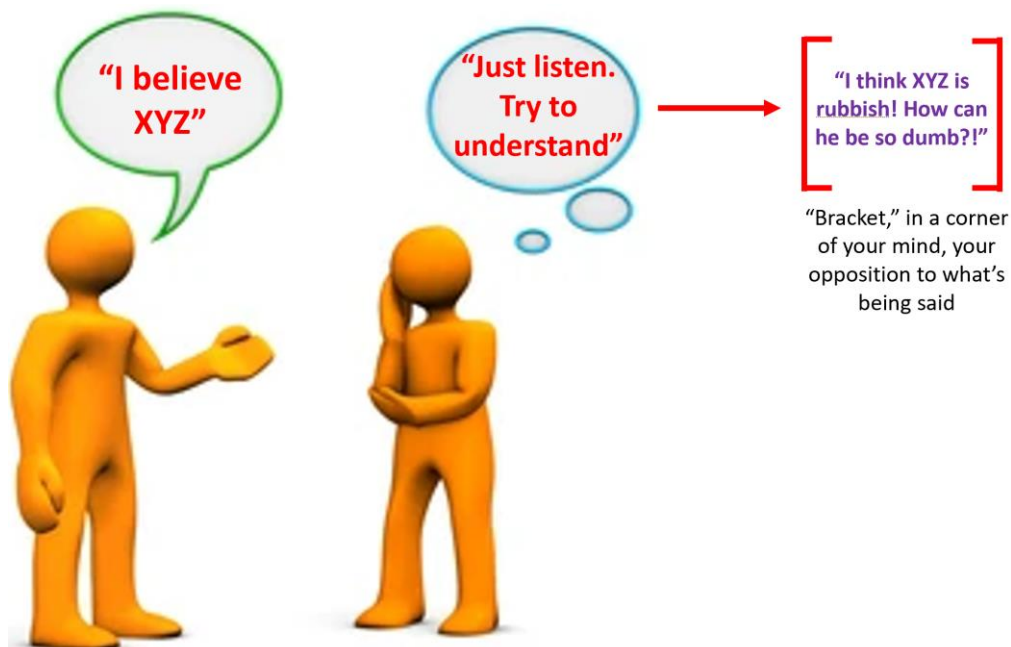


When it comes to the Voice to Parliament, I want to invite us into a different space, away from the echo chambers of “No!” and “Yes!”



Here are a few possible suggestion about how to engage in discussions around the Voice:

- When someone shares an opinion with which you disagree, *don't try to talk them out of it*. Mentally note your opposition to what's being shared, and mentally “bracket” this opposition to one side of your mind for the time-being.
- Rather than mentally arguing with the person, instead seek to listen intently, and seek to understand the viewpoint being shared, asking clarifying questions if necessary.
- It is possible, just possible, that you may hear something of which you weren't aware; something that may be worthy of further consideration or exploration.
- It is also possible, having given the person space to be heard, they may be more willing to hear *you*.



Moving beyond Media Soundbites

"This is Albanese's Canberra Voice"	"This is the indigenous Voice to Canberra"	"We don't have any details about how it will work"
"This is being pushed by elites within the Aboriginal Industry"	"This represents the voice of grassroots indigenous people"	"It is parliament who will work out the details"
"This constitutional change will be litigated to death"	"This constitutional change is legally sound"	"This will divide Australia"
"This is enshrining into the constitution racism in favour of Aboriginals"	"This is part of addressing the long history of racism against Aboriginals"	"This has the potential to unify Australia"

That all seems as clear as mud, doesn't it?!

When one listens to some of the proponents and opponents of the Indigenous Voice to Parliament, one could be forgiven for thinking that they are talking about entirely different subjects, so opposed are the viewpoints being put! The polarization of the argument can become extreme, which makes sensibly talking about the merits or demerits of the proposed constitutional amendment very difficult. We need to move beyond soundbites and engage with some of the details.

In what follows, I have attempted, wherever possible, to outline factual, verifiable information, rather than mere opinion, quoting sources where possible. On those occasions where I offer an observation or opinion, I'll try to make that clear.

The reasonably bipartisan journey leading to the Voice proposal

Some of the media soundbites we hear seem to imply that the proposed Referendum for Indigenous recognition and a Voice to Parliament is something that the Federal Australian Labor Party has unilaterally pursued to this point. The "Albanese's Canberra Voice" soundbite does seem to suggest as much, does it not?

It is sad that the relatively strong level of bipartisanship on the journey to this point seems to have been overlooked and now come to an end. It is worth briefly recapping some details of the deep involvement of *both* Coalition *and* Labor Federal governments in bringing us to the Referendum.

Okay, not so briefly, but as briefly as I can! To put you at ease, the next two and a half pages of detail is there primarily to illustrate that the journey to the Voice has been a long time in the making. Skim-read the 2.5 pages if you like, knowing that the details and the references are there, if you need them. The remainder of the document is actually quite an easy read!

Best to make yourself a coffee before reading the next two and a half pages...

Timeline of events leading to the voice

- In December 1972, PM Gough Whitlam establishes the **Department of Aboriginal Affairs (DAA)** and announces that Aboriginal policy would be guided by a philosophy of ‘self-determination.’⁹
- In 1973, to support Aboriginal self-determination, PM Gough Whitlam forms the **National Aboriginal Consultative Committee (NACC)** as the first elected Indigenous voice to the Federal Government, comprised of 41 elected Indigenous delegates from around Australia, to give advice to the minister on behalf of Indigenous peoples.¹⁰
- In 1977, the Coalition Government of PM Malcolm Fraser reforms NACC into the **National Aboriginal Conference (NAC)** with 35 elected members.¹¹
- In 1985, Labor PM Bob Hawke abolishes NAC.¹²
- In 1989, Labor PM Bob Hawke creates the **Aboriginal and Torres Strait Islander Commission (ATSIC)** a statutory authority to both represent and deliver services to ATSI people.
- In 2003, a Government review recommends ATSIC be restructured, but in 2004 Liberal PM John Howard, with the support of the Mark Latham-led Labor Opposition, abolishes ATSIC.¹³
- In 2010, Prime Minister Julia Gillard establishes the **Expert Panel on the Recognition of Aboriginal and Torres Strait Islander Peoples in the Constitution**, co-chaired by ALP Senator Patrick Dodson and Mark Leibler AC, which reported in 2012.¹⁴
- In September 2014, Prime Minister Tony Abbott establishes a **Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples**, co-chaired by Coalition MP Ken Wyatt and ALP Senator Nova Peris, which reported in June 2015.¹⁵
- In July 2015, a meeting between Prime Minister Tony Abbott, Opposition leader Bill Shorten and key Indigenous leaders takes place at Kirribilli House. They jointly agree to a way forward for Indigenous recognition in the Constitution.
- In December 2015, new Prime Minister, Malcolm Turnbull, and Leader of the Opposition, Bill Shorten, form the **Referendum Council**¹⁶, to advise the Prime Minister and Leader of the Opposition on options for constitutional reform.
- From December 2016 to May 2017, the 16-member Referendum Council organise twelve 3-day **Regional Dialogues**, hosted by a local Indigenous organisation in each location, held in: Hobart, Broome, Dubbo, Darwin, Perth, Sydney, Melbourne, Cairns, Ross River, Adelaide, Brisbane, Thursday Island. The dialogues engage 1,200 Aboriginal and Torres Strait Islander delegates, an average of 100 from each dialogue, out of a population of approximately 600,000 Aboriginal and Torres Strait Islander peoples nationally.
- Nominees for the **National Constitutional Convention** delegation are then invited to address the full group on why they should be selected to attend and a vote is taken. From each Regional Dialogue, ten delegates are selected to represent their region together with the convenors and working group leaders from the Dialogue (17 delegates in total). In addition to these delegates, the Council invites a number of other key individuals to attend the National Constitutional Convention, in order to ensure representation of an appropriate range of views.
- On 26 May 2017, the **Uluru Statement from the Heart** is released by delegates to the **First Nations National Constitutional Convention**, held over four days near Uluru in Northern Territory.¹⁷

- On 30 June 2017, the Referendum Council presents its final report to Prime Minister Malcolm Turnbull and Opposition Leader Bill Shorten. In the report, the Referendum Council recommends that a Referendum be held to provide in the Australian Constitution an Aboriginal and Torres Strait Islander Voice to Parliament as well as recognition of ATSI peoples as the first peoples of Australia.¹⁸
- In October 2017, PM Malcolm Turnbull rejects the statement, claiming that the Voice would represent a “third chamber of Parliament” and saying that the "radical" constitutional change would not be supported by a majority of Australians.¹⁹ (Note: In August 2022, Malcolm Turnbull, since retired from politics, states that we are ready as a nation to make this constitutional change, which he now supports.²⁰)
- On 19 March 2018, the Federal Parliament agrees to **a Coalition Government proposal**, that a **Joint Select Committee on Constitutional Recognition relating to Aboriginal and Torres Strait Islander Peoples, co-chaired by ALP Senator Pat Dodson and Coalition MP Julian Leeser**, be appointed to inquire into and report on matters relating to constitutional change, **including the proposal for the establishment of a First Nations Voice to Parliament** (emphasis added).²¹
- In September 2018, new PM Scott Morrison reiterates opposition to Voice to Parliament as a “third chamber of Parliament.”²²
- In November 2018, the Final Report is presented from the Joint Select Committee on Constitutional Recognition, **co-chaired by ALP Senator Pat Dodson and Coalition MP Julian Leeser. The report recommends that the Australian Government initiate a process of co-design with Aboriginal and Torres Strait Islander peoples for the Voice.**²³
- In November 2019, the Coalition Government forms the **Senior Advisory Group** to shape the **Indigenous Voice Co-Design Process**, announced by Ken Wyatt, Minister for Indigenous Australians.²⁴
- From January 2021, the Indigenous Voice Co-Design Process consultation occurs:-
 - 115 Community consultation sessions
 - 41 additional sessions
 - 124 stakeholder meetings (1,280 people)
 - 13 Webinars (1,486 people)
 - 2,978 submissions received
 - All up, more than 9,400 people and organisations participated in the consultation and engagement process, which ran over four months from 9 January 2021.
- In July 2021, the **Indigenous Voice Co-design Process Final Report to the Australian Government July 2021** is submitted to the Coalition Government by co-chairs Professor Marcia Langton and Professor Tom Calma.²⁵
- In August 2021, PM Scott Morrison refuses to commit to making an attempt to legislate for an Indigenous Voice to Government during the present term of the Coalition Government.²⁶
- In May 2022, PM Scott Morrison rules out Referendum on Indigenous Voice if re-elected, declaring it is not his Government’s policy.²⁷
- In May 2022, Federal Labor Government is elected.
- In September 2022, Federal Labor Government forms the **Referendum Working Group**^{28 29 30} advised by **Constitutional Expert Group**.^{31 32}
- On 28 November 2022, the National Party Coalition partner announces its opposition to the Referendum before the Referendum Working Group brings its recommendation.

- On 23 March 2023, Referendum Working Group presents report to the Australian Government.³³
- On 30 March 2023, Labor Government introduces the bill to Parliament: **The Constitution Alteration (Aboriginal and Torres Strait Islander Voice) 2023**.³⁴
- On 30 March 2023, Parliament forms 13-member **Joint Select Committee on the Aboriginal and Torres Strait Islander Voice Referendum**. The inquiry is to report by 15 May 2023.³⁵
- On 5 April 2023, the Liberal Party announce their opposition to the Referendum, indicating they will not wait for the Joint Select Committee to complete its inquiry.³⁶
- On 6 April 2023, Former Coalition MP and Minister for Indigenous Australians, Ken Wyatt, resigns from the Liberal Party in protest at the Liberal Party’s decision to oppose the Voice to Parliament.³⁷
- On 11 April 2023, Coalition Indigenous Affairs Spokesperson and former Co-Chair of Joint Select Committee on Constitutional Recognition relating to Aboriginal and Torres Strait Islander Peoples, Julian Leeser, resigns from Liberal frontbench to support Voice to Parliament.³⁸
- During April 2023, the Joint Select Committee on the Aboriginal and Torres Strait Islander Voice Referendum conducts hearings in Canberra, Orange, Cairns, Perth and Canberra once more.³⁹
- The Joint Select Committee on the Aboriginal and Torres Strait Islander Voice Referendum submits its report⁴⁰, including dissenting reports from the Liberal Party⁴¹ and National Party⁴² members.

**Good grief!
That sounds terribly complicated!
Can’t we just go back to our preferred soundbite?!**

Yes...we can...but should we?

If we consider:

...this very long journey in getting to the Voice proposal
 ...the commissioning of multiple inquiries from both sides of politics
 ...the staggering amount of work done by multiple committees of inquiry
 ...the involvement of expert panels
 ...the wide-ranging consultation with Indigenous people

...one can reasonably ask how credible these claims are:

*“This is Albanese’s Canberra Voice”
 “This is being pushed by elites within the Aboriginal Industry”^{43 44 45}*

To dismiss the extraordinary work done since 1972, and commissioned by both sides of politics, is to do a disservice both to the progress made during this time, and to the truth.

Bewailing the present level of political polarisation of this subject

In the sad polarisation of this debate, there is, very possibly, blame that could be levelled at *both* sides of politics.

Perhaps the newly elected Albanese Labor Government, with its pre-election pledge to implement the *Uluru Statement from the Heart* in full, could have tried harder to gain bipartisan support from the Coalition Opposition. *Perhaps* instead of simply forming the Referendum Working Group, advised by the Constitutional Expert Group, to work through the path to the Referendum, including the development of the question and the constitutional amendment wording, they could have tried harder to invite the Opposition into the process. *Perhaps*, as suggested in the Liberal Members' Dissenting Report of the Joint Select Committee which concluded its work in May this year, the Government should have consulted more widely than it did, including facilitating a Constitutional Convention. *Perhaps* this might have made a difference in achieving bipartisan support for the Voice.

On the other hand, *perhaps* the Peter Dutton-led Opposition could have been less reflexively oppositional to the Voice proposal, engaging in constructive criticism rather than opposing the Voice proposal with hyperbolic rhetoric from every conceivable angle. *Perhaps* the Peter Dutton led Liberal Opposition should have been prepared to wait until the Joint Select Committee, which included Liberal and National Party members, had concluded its work, instead of deciding to oppose the Voice mere days after its formation.

Perhaps.

Alas, we are where we are, heading into a Referendum *without* bipartisan support, and knowing that no previous Referendum has succeeded without bipartisan support.⁴⁶ If the Referendum succeeds, it will be a historic event in more ways than one.

The thorny topic of “race”

One argument raised against the Voice proposal is that it enshrines in the Constitution a distinction based on race, whereby Aboriginal and Torres Strait Islander peoples are assigned privileges not conferred upon other Australians. We have been told by the Liberal Opposition Leader, Peter Dutton, that:

“The Voice will re-racialise our nation. At a time when we need to unite the country, this Prime Minister's proposal will permanently divide us by race.”⁴⁷

Former PM Tony Abbott, in a submission to the Joint Select Committee hearings in April 2023, put it this way:-

“The whole point of this proposed change is to give the Indigenous Voice an ability to influence all-of-Government in a way that individual citizens cannot, and that Indigenous people supposedly never could. In other words, it's to give Indigenous people a collective right to influence Government over and above that of everyone else who'd be operating through existing democratic mechanisms. If it were not so, what is the point of the proposed constitutional change?”

“Because it would introduce a ‘privilege of origin’ and a ‘hierarchy of descent’ any separate, institutionalised Indigenous Voice, to the whole of Government or the Parliament only; in legislation or in the Constitution; local or national; is wrong in principle, as well as most likely deeply problematic in practice.”⁴⁸

How do we assess these critiques, and those like them, of the proposed Voice?

A NATION *NOT* ALREADY DIVIDED BY RACE?

We first set aside the irony that a people historically subjected to race-based *mistreatment* and *discrimination* should be accused of receiving race-based *preferential* treatment through the proposed Voice to Parliament.

There is an implication in the previous critiques, and those like them, that there is currently no racial divide in Australia. *If only* this was the case.

If only the First Peoples of Australia had not been subjected to dispossession and race-based discrimination from the time of colonisation. *If only* laws and practices over time had not entrenched the race-based disadvantage of ATSI peoples in comparison with other peoples in Australia. *If only* the final elimination of overtly racist laws had eliminated the ATSI experience of disadvantage and discrimination. *If only* ATSI peoples were not still, in 2023, the most marginalised peoples, *by race*, in this nation.⁴⁹

I am sure that most of us yearn for the day when race-based inequality, including *inequality of outcome*, is a thing of the past. To assert, however, that this day is already here, is simply to deny reality.

Rather than the Voice being a proposal that creates division where none already exists, the *existing and very real* “division” in lived experience between ATSI peoples and other Australians is what the Voice seeks to address.

DENYING THE MYTH OF EQUAL INFLUENCE OVER GOVERNMENT: LOBBYING

The ideal of every Australian having equal access to our elected parliamentary representatives, and equal influence over our political process, is just that: a lovely ideal, an ideal which has no basis in reality. The *reality* is that certain individuals and groups have a disproportionate access to our parliamentary representatives, and a disproportionate influence over our political process, by virtue of their wealth and power, a power they wield not only through political donations, but also through *lobbying*.

The amount of money spent by the wealthy and powerful on lobbying in Australia is *staggering*.

“Over the past 30 years, commercial **lobbying in Australia** has ‘grown from a small industry of a few hundred employees’ to become a **lucrative multibillion dollar a year industry**.”

“As of August 2020, the Federal Lobbyist Register indicates that 579 individual lobbyists are employed by 266 firms. Of the 579 lobbyists, 39% (225) are former

Government representatives, that is, former politicians, senior public servants or ministerial advisers. This shows that **there is a revolving door between Government and lobbyists due to the extensive and beneficial networks developed by public officials.**⁵⁰

As highlighted by organisations such as *Transparency International Australia*, lobbying and political donations give those with the wealth and power unrivalled access to the corridors of power, with many former politicians taking up lucrative lobbying roles after their retirement from politics, taking advantage of their political networks and insider knowledge.⁵¹

I'm not suggesting that the wealthy and powerful having a disproportionate access to our parliamentarians and influence over our political process is illegal *per se*. Nor am I particularly concerned here with whether it is unethical or against the general public interest. Instead, I am simply highlighting that, when it comes to access to parliamentarians and influence over the political process, the idea of a "level playing field" where all Australians have equal influence, is simply farcical.

Do we *really* think that granting Aboriginal and Torres Strait Islander peoples, the most marginalised people in Australia, a *transparent* Voice to Parliament and Executive Government, is a bigger insult to our egalitarian ideals than the *opaque*, backroom dealing of lobbyists funded by the wealthy and powerful?

LET'S SET ASIDE EMOTIONAL ARGUMENTS AND FOCUS ON...MONEY, MONEY, MONEY!

As we respond to the race-based critique of the Voice proposal, we will resist the temptation to argue, on moral grounds, that as a result of the race-based historic maltreatment of Aboriginal and Torres Strait Islander peoples, and the resultant ongoing disadvantage they experience, that "preferencing" ATSI peoples through the Voice to Parliament amounts to a very small "penance" on the part of non-Indigenous Australians.

Instead, we will focus, quite unemotionally, on numbers. We will focus on cold, hard cash.

We will focus upon the potential *cost-savings* inherent in the Voice to Parliament proposal.

There seems to be an unstated implication in the "race-based" critique of the Voice that Aboriginal and Torres Strait Islander peoples are presently treated "the same" as non-Indigenous Australians, and that we should keep things that way. Such is not the case, as even a cursory review makes clear. ATSI peoples have *always* been in a "unique category." They were the original inhabitants of Australia, the fiction of *terra nullius* notwithstanding⁵². They were dispossessed from their lands and maltreated in appalling ways. Decisions were made for them, without their consultation, and against their will. Over a long period of time, as a result of widespread maltreatment and discrimination, many factors, including intergenerational trauma, conspired to make ATSI peoples the most marginalised people in Australia in terms of life outcomes, as outlined in the *Closing the Gap* measures.⁵³

Successive Australian governments have invested heavily in ongoing financial support for ATSI people. How heavily? The **Indigenous Expenditure Report** provides estimates of Australian, State and Territory Government expenditure for Aboriginal and Torres Strait

Islander Australians across 150 different expenditure categories. The latest report, in 2017, includes the following⁵⁴:-

- In 2015-16, total direct Government expenditure on Aboriginal and Torres Strait Islander Australians was estimated to be **\$33.4 billion**, comprising:
 - \$6.0 billion on *Indigenous specific expenditure* (i.e. expenditure on services and programs that are provided to the Aboriginal and Torres Strait Islander community specifically. An example is a program for Aboriginal and Torres Strait Islander students in a school).
 - \$27.4 billion on *mainstream expenditure* (i.e. expenditure provided for all people, Aboriginal and Torres Strait Islander Australians and non-Indigenous Australians alike).

That is, some **\$6 billion** annually is spent by Commonwealth, state and territory governments, on specific, targeted services and programs for Aboriginal and Torres Strait Islander peoples.

The argument for the Voice, amongst other things, is that it will offer advice to Government on ***more effectively using the funds (\$6 billion annually) already being spent to support ATSI peoples:***

“The (Referendum) Working Group agreed that a Voice to Parliament will be a permanent body to make representations to the Australian Parliament and the Executive Government on legislation and policy of significance to Aboriginal and Torres Strait Islander peoples. It will further the self-determination of Aboriginal and Torres Strait Islander peoples **by giving them a greater say on matters that affect them.**”

“Members of the Voice would be selected by Aboriginal and Torres Strait Islander communities, not appointed by the Executive Government. To ensure cultural legitimacy, the way that members of the Voice are chosen would suit the wishes of local communities and would be determined through the post-Referendum process.”⁵⁵

The argument for the Voice to Parliament, purely on the grounds of cold, hard cash - all \$6 billion per annum - is that, ***if the Voice can provide advice to Government, based on local knowledge of needs, as to how best to spend these \$6 billion annually, then significant cost savings may ensue.***

A mere 1% improvement in cost-effectiveness, through Voice-based enhancement of funds allocation, would save \$60 million annually, a potential cost-saving that needs to be borne in mind when considering the ongoing cost of funding the Voice to Parliament.

If the Voice proves effective in advising Parliament and Executive Government how to more wisely allocate funds and resources for specific Indigenous programs, then cost-savings won't be the only benefit. More importantly still, there is the genuine possibility of significant improvement in the outcomes for Indigenous peoples, a real closing-of-the-gap in Indigenous disadvantage.

The “lack of details” surrounding the Voice

A critique levelled at the proposed Voice is that it is lacking in detail about how it will work:

“We’re being asked to vote on the vibe.”
“We’re being asked to write a blank cheque.”

It is true that the proposed constitutional amendment *doesn’t* provide details as to how the Voice to Parliament will function. The Constitution *isn’t* the place for such details. If the Referendum is passed in the affirmative, it will be the *Federal Parliament* that debates and hammers out the details of how the Voice will work. As the constitutional amendment states in clause 3:

“The Parliament shall, subject to this Constitution, have power to make laws with respect to matters relating to the Aboriginal and Torres Strait Islander Voice, including its composition, functions, powers and procedures.”⁵⁶

It is the *Parliament* that will be responsible for the details surrounding the operation of the Voice and, by that token, being asked to vote “yes” in the Referendum amounts less to us writing a blank cheque and more to us having confidence in our elected parliamentarians to work out the details.

That being said, details are important in informing our decision-making. A great source of detail surrounding how the Voice to Parliament *might* work is provided in the **Indigenous Voice Co-Design Process Final Report to the Australian Government July 2021**, and which was commissioned by the Coalition Government.⁵⁷ This 272-page report, produced by the Senior Advisory Group, co-chaired by Professor Marcia Langton and Professor Tom Calma, describes how local and regional voices *might* feed into the national Voice. The word *might* is italicised because it will be the elected representatives of our Federal Parliament who determine the workings of the Voice to Parliament, and not the Langton-Calma led Senior Advisory Group.

It is worth noting that *other* options are conceptually possible when it comes to constitutionally enshrining a Voice to Parliament. As described in the report of the Joint Select Committee on Constitutional Recognition relating to Aboriginal and Torres Strait Islander Peoples, co-chaired by ALP Senator Pat Dodson and Coalition MP Julian Leeser:

“Some have argued that there should be a Referendum passed as the first step. Others consider that legislation should be developed to establish The Voice by an Act of Parliament and, once that is done, the Government should proceed to a Referendum to entrench the guarantee of The Voice in the Constitution.

“Others have argued for an extended process to educate the public before either legislation or Referendum. Lawyers have provided various models and have taken positions on one side or another.

“But these are just matters of political tactics.

“The key point of this report is that The Voice should become a reality, that it will be co-designed with Government by Aboriginal and Torres Strait Islander peoples for Aboriginal and Torres Strait Islander peoples right across the nation.”⁵⁸

In other words, it was conceivable that the mechanics of the Voice could have been debated, agreed upon and legislated by the Parliament – which would have addressed the desire for “details” – before subsequently enshrining the Voice in the Constitution through a Referendum. The route chosen by the Government has been the other way around: the Referendum first to enshrine the principle of the Voice, and then leaving it to our elected Parliament to work out the details. A case could be argued that, between now and the Referendum, the Government could and perhaps should publicly flesh out more details as to how the mechanics of the Voice might operate.

What is remarkable, given the current political polarisation around the Voice, are the words in bold red text above. The Joint Select Committee, appointed by the Coalition Government of the day, and co-chaired by Liberal Julian Leeser, said, in essence, *that no matter how the Voice becomes a reality “The Voice should become a reality.”*

The alleged “overreach” and “litigated to death” potential of the Voice

Many legal-based critiques of the Voice proposal have been offered.

ONE IMMEDIATE QUESTION: WHY ALTER THE CONSTITUTION?

One of the arguments against the present Voice proposal, which entails a referendum to change the Constitution, is that a body such as the Voice could be created by an Act of Federal Parliament, without any need to alter the Constitution. This is quite correct, and such an approach has, in fact, been taken on a number of occasions previously. Herein lies the problem, according to the proponents of the present Voice model.

As described earlier in this document, various Federal Parliaments have created “Indigenous Voice” bodies, only to later abolish them. Such as been the case with the creation and subsequent abolition of:

National Aboriginal Consultative Committee (NACC): formed 1973, abolished 1977

National Aboriginal Conference (NAC): formed 1977, abolished 1985

Aboriginal & Torres Strait Islander Commission (ATSIC): formed 1989, abolished 2004

One of the key reasons that proponents of the Voice insist upon it being enshrined in the Constitution, rather than simply being legislated as with the above bodies, is that it will make it much more difficult (but not impossible, as will be covered later) to abolish if political sentiments change over time. Proponents argue that the Voice should be an *enduring* body to allow ATSI peoples to offer advice to Parliament and Executive Government, rather than one that can simply be abolished by Parliament. If the present, constitutionally-enshrined Voice model is approved by the Australian public at the Referendum, it will be for *Parliament* to determine how the Voice will be set up and operated, and if, over time, The Voice requires restructuring or re-tweaking, it will be *Parliament* that dictates the restructuring and re-tweaking.

THE LEGAL ANALYSIS OF THE VOICE PROPOSAL

During the more than ten years of committees and inquiries, commissioned by both sides of politics, many expert opinions have been sought on how the Voice would function, including expert legal opinions as to the constitutional implications.

There have been fears expressed, both by legal experts and non-experts, regarding possible Voice overreach, the potential for litigation, and the potential for tying up the machinery of Government.

The Government has made clear, in an **Explanatory Memorandum** by the Attorney-General, the following:

“The Voice would be able to make representations on matters relating to Aboriginal and Torres Strait Islander peoples. While the constitutional nature of the body and its expertise in matters relating to Aboriginal and Torres Strait Islander peoples would give weight to the representations of the Voice, **those representations would be advisory in nature.**

“The constitutional amendment **confers no power on the Voice to prevent, delay or veto decisions of the Parliament or the Executive Government.**

“The constitutional amendment **would not oblige the Parliament or the Executive Government to consult the Voice prior to enacting, amending or repealing any law, making a decision, or taking any other action.**”⁵⁹

It is clear, based on the Explanatory Memorandum, what the *intent* of the constitutional amendment is: the *intent* is that the Voice will *not* have the power of veto or tying up the machinery of Government; it will be an *advisory* body only.

A detailed response by the independent Solicitor-General, addressing fears of Voice overreach, confirms that the intent, as expressed in the Explanatory Memorandum, is realised in the proposed amendment⁶⁰:

“The Voice would have no power to make laws, to develop or administer policies or to decide disputes. Nor would it form part of either the Parliament or the Executive Government, instead **operating only as an advisory body** to those two branches of Government. **The Voice clearly has no power of veto.**”

“Proposed s 129 **would not prevent the Parliament from legislating until it receives a representation from the Voice** (which might never happen with respect to many proposed laws, given that the Voice is not required to make representations on any particular matter, and that the Voice will no doubt prioritise its resources by focusing on making representations on the matters it considers are of the greatest significance to Aboriginal and Torres Strait Islander peoples). **Nor would it require the Parliament to consult with the Voice before legislating.**”

“Proposed s 129 **would not impose any obligations upon the Executive Government to follow representations of the Voice, or to consult with the Voice prior to developing any policy or making any decision.**”

THE QUESTION OF INCLUDING “EXECUTIVE GOVERNMENT” IN THE AMENDMENT

One of the regular critiques of the Voice proposal to amend the Constitution is the incorporation of the term “Executive Government”:

Clause 2: The Aboriginal and Torres Strait Islander Voice may make representations to the Parliament and the Executive Government of the Commonwealth on matters relating to Aboriginal and Torres Strait Islander peoples.

It has been argued that the inclusion of Executive Government makes the potential recipients of the Voice’s advice too broad, including departmental heads and other public servants. The reason for the amendment incorporating “the Parliament *and Executive Government*” (emphasis added) is fairly obvious when one considers how legislation is developed and passed through Parliament: *the details of legislation are normally shaped well before they ever reach the floor of Parliament*. This has been succinctly explained by former Coalition MP and Minister for Indigenous Australians, Ken Wyatt:-

“When I heard the Leader of the Opposition talk about his concerns of Executive Government, let me say that Executive Government is influenced by external people at all times and when you draft legislation not only is your agency involved but also external groups. I did an analysis of the coalition party room papers, and for each of those what I did was identify everybody who had contributed to shaping the legislation before it was taken to the party room, because the notion of influencing legislation once it's tabled in the chamber is erroneous because it is far too late to influence it unless the opposition with the crossbenchers are able to make that amendment by virtue of number and somebody crossing the floor. *That point is far too late.*”⁶¹ (emphasis added)

After this, Ken Wyatt gave several examples of external bodies providing input to *Executive Government* well in advance of *Parliament* debating proposed legislation.

In other words, if the first chance the Voice has to influence decision-making and legislation affecting ATSI peoples is when legislation is first tabled in parliament that, according to former Coalition MP Ken Wyatt, is *far too late*.

JOINT SELECT COMMITTEE REVIEW OF PROPOSED VOICE AMENDMENT

In April this year, the **Joint Select Committee on the Aboriginal and Torres Strait Islander Voice Referendum** conducted five public hearings around the country, as well as receiving written submissions from 270 individuals or organisations. A number of the interviews were with legal experts, many of whom, such as former High Court Judge Kenneth Hayne, former Chief Justice Robert French, constitutional expert Professor Anne Twomey and barrister Brett Walker SC are comfortable, in a legal sense, with the proposed constitutional amendment. Other legal experts, such as Professor Greg Craven, believe there is the potential for litigation by the Voice, arguing for a change to the wording; even so, Craven says that, regardless of whether or not the wording is changed, he will still be voting “yes” in the Referendum.⁶²

The Joint Select Committee recommended *that the proposed Constitution alteration bill be passed unamended.*⁶³ The Liberal Members' Dissenting Report disagreed with that

recommendation, asserting that there is a risk, based on the Voice's power to make representations to the Executive Government, **“that Government could become unworkable.”**⁶⁴ As they state it:

“If the Constitution is amended in accordance with the Bill, it is inevitable that the High Court will be asked to decide whether the Executive is under a **duty to consult** the Voice in advance of making decisions and a **duty to consider** the Voice's representations. Two former justices of the High Court gave evidence that if the High Court found these duties to exist, Government would become unworkable.”

“There are reasonable arguments for and against finding that the Executive would have a duty to consult the Voice and consider its representations. The Committee received submissions from legal experts setting out both sides of the argument.”

“The response to risk can't be judged by counting the number of lawyers for and against a particular argument. The fact is, serious experts, including former High Court and Federal Court judges, gave conflicting evidence about the risk. That is enough cause for the Parliament to take the issue seriously and take steps to eliminate it.”

The Liberal Members' Dissenting Report suggests a number of possible constitutional amendment rewordings, some of which may have been worth considering, but it appears that the Government has accepted the Joint Committee's official recommendation to pass the proposed Constitution alteration bill *unaltered*; this is the final wording, it seems, that will be taken to the Referendum later in the year.

I won't be so foolhardy as to offer commentary on the merits or demerits of expert legal opinions on the subject of legal challenges by the Voice, whether they are opinions supporting or opposing the proposed constitutional changes.

Perhaps the Voice *may*, at some point, mount a legal challenge based on not being consulted; *or* perhaps it *won't*. As we know, almost anything has the *potential* to be litigated.

What I question, however, is the rather extreme “Government would become unworkable” risk, and I question it for *two reasons*.

REASON ONE FOR NOT BEING AFRAID OF GOVERNMENT BEING MADE UNWORKABLE:

Let's *assume*, for argument's sake, that the Referendum is passed in the affirmative, the constitutional amendment is enshrined, and that Parliament subsequently enacts legislation to create the Voice, with the Voice beginning its work of advising Government on behalf of ATSI peoples. Let's *assume* that the intent of the constitutional change, as expressed in the Explanatory Memorandum released by the Attorney-General, that the Voice acts solely as an advisory body, does *not* come to pass. Rather, what happens in this worst-case scenario, a scenario described by a number of commentators, including Janet Albrechtson of *The Australian* newspaper⁶⁵, is the following. The horror scenario that unfolds, in this hypothetical, is that the Voice will tie up the machinery of Government, insisting of being notified well in advance of *all* decisions being made by *all* Government departments, whether they directly relate to ATSI peoples or not, making all decision-making dependent upon its approval by the

Voice and that, furthermore, if legislation is passed that the Voice disapproves of, or if the Voice's advice is ignored, then the Voice can challenge the process in the High Court. In this scenario, a successful Referendum will result in shackling the machinery of Government decision-making, a nightmare of litigation, and a form of co-Government. In short, an absolute nightmare, in every way.

Putting aside for the moment the credibility of this worst-case scenario, let's *assume* it actually happens. What would be the *logical* outcome of such a nightmare?

In this *hypothetical* nightmare scenario, the Australian public would be *aghast* at the unintended consequences of the Voice to Parliament, and would therefore pressure their political representatives to conduct a follow-up Referendum in order to rescind the results of the first!

The twin spectre of *endless* litigation and an *endless* nightmare of a hamstrung Government simply doesn't stack up as the logical outcome, even in this worst-case scenario. This horrific, worst-case scenario is, I believe, a *Bogey Man*, conjured to frighten us into voting no.

REASON TWO FOR NOT BEING AFRAID OF GOVERNMENT BEING MADE UNWORKABLE:

***Yes, Minister!* to the rescue...**

There's another aspect of the unworkable, worst-case scenario that also doesn't stack up. Some of the more extreme arguments about the ability of the Voice to advise "Executive Government" assert that the Voice will insist upon having access to *all* Government decision-making processes and documentation for *all* Government departments.

If you're a fan of English comedy, you may appreciate being reminded of an episode of *Yes, Minister*. In this particular episode, the minister has learned that his department head, Sir Humphrey Appleby, has been making decisions without his knowledge. He insists, henceforth, on being "fully informed" of all the decisions going down. The junior Bernard shoots a worried look at Sir Humphrey after the minister has left the room. "What do we do?!" he asks. Sir Humphrey looks at Bernard, smiles, and says, "Give him everything, Bernard. *Everything*."



From then on, the hapless minister is deluged with *every* piece of correspondence relating to *every* decision being proposed or made, no matter how trivial; an overwhelming amount of information, impossible for *any* individual, including your average minister ever to read but a tiny fraction. And, as we know, according to Sir Humphrey, Minister Hacker is "very average"!

The details aren't determined yet, but there is some indication that the Voice may comprise perhaps 24 individuals. The very idea that these 24 people could possibly demand, receive, read and assimilate, and respond effectively to *all* of the correspondence for *all* of the decisions being made by *all* the departments of Government is simply ludicrous.

There may be legal *potentialities*, but the issue about what the Voice focusses upon will come down to *practicalities*.

As constitutional law expert, Professor Anne Twomey says:

“A Voice that squanders its resources and influences by seeking to spread itself too thinly across a number of policy areas may end up being replaced, considering its members will be democratically elected. The Voice will have limited resources and will, therefore, need to focus its attention on what matters most to Aboriginal and Torres Strait Islander people.”⁶⁶

In his submission to the Joint Select Committee, former Indigenous Affairs Minister in the Coalition Government, Fred Chaney, says much the same:

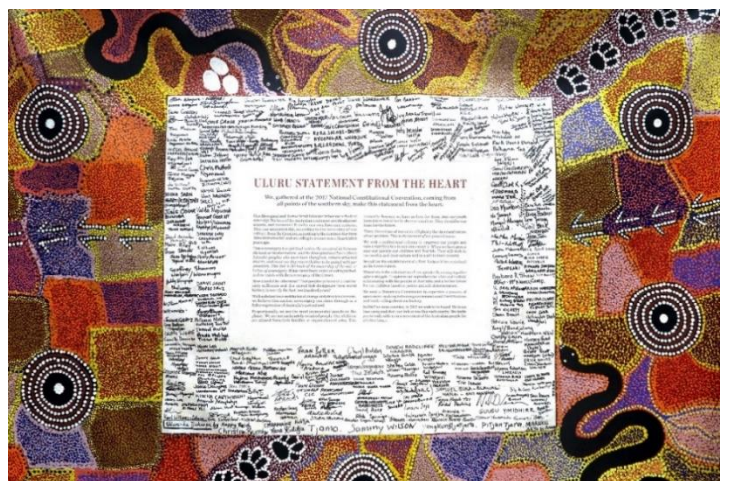
“Government is a huge beast; I don't know how anyone keeps track of it. And I suppose we've just seen, in the recent discussion about our immigration policy, just how absurdly complicated it can be in one department, let alone across the whole of Government. I think the important thing about the Voice is that what it brings before Government and before the Executive will be determined by what it thinks is important at the time. It can't possibly be dealing with everything at once. What are the issues that matter most to Aboriginal people at the moment? It might be that, at the moment, issues of domestic violence are terribly important. It might be issues of heritage protection, after Juukan Gorge caves. I think the priorities will select themselves according to the issues of the day.”⁶⁷

Quite simply, the Voice will need to “stick to the knitting” by focussing its attention on matters that truly affect Aboriginal and Torres Strait Islander peoples.

The Voice Proposal: The Call to engage *both Heart and Head*

The Uluru Statement from the Heart ends with these words:-

***“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.”***



As its title makes clear, the Uluru Statement speaks, indeed, from the *heart*. And yet the *head* has *also* been critically important in

the process leading up to the statement: so many committees of inquiry, so many consultations, so many individuals and groups thinking through an immense mountain of details on the pathway to the Voice proposal.

I believe it is important for *us* to engage with the Voice proposal in a similar way: to bring to bear *both* heart *and* head, as we seek discernment about how to vote in the upcoming Referendum.

Yes, we are invited to *feel* the heart cry of the Uluru Statement, to *empathize* with the pain of Aboriginal disadvantage, and listen with *our* hearts to the invitation to walk with the Indigenous peoples of this land into a future of new possibilities.

But we also need to *think* through the Voice proposal; to use our *heads*. When reasons for voting “no” are shared, we should be open to hearing and evaluating those reasons. *If* those reasons cannot be answered adequately, then that should concern us, influencing our opinion. However, *if* there are valid and compelling answers to the objections raised against the Voice proposal, as well as compelling positive reasons to vote “yes,” then we should also be open to hearing those answers and updating our viewpoint. This is a critical aspect of being *reasonable*. When we hold positions *reasonably*, we are open to *reasoning*. We are willing to consider: factors we hadn’t previously considered; new information that challenges our perspective; and the pointing out of logical flaws in our argument. We may believe we are right, perhaps strongly so, *but*, if we are presented with valid and compelling arguments to the contrary, we are open, at least in principle, to our opinion being changed.

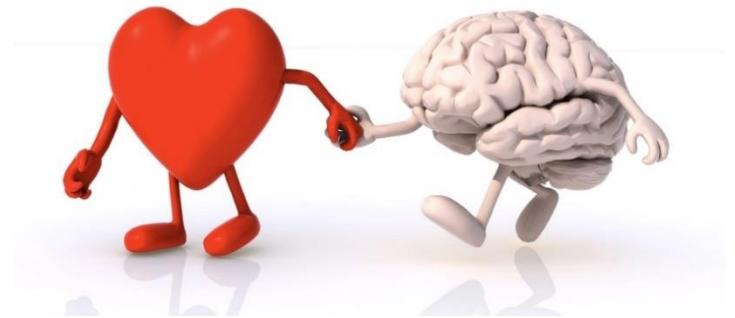
There is, however, *another* category of “reason” for one’s opposition to the Voice which *isn’t so reasonable*, and this has been evidenced, at times and by certain individuals, during this debate. It sometimes happens when the opponent to the Voice offers not *one*, but *many* different objections to the Voice proposal. As one begins to address the first objection, one might hear, “Well, ABC is only part of the issue...the bigger problem is *DEF*.” As one then starts to address the *DEF* problem, one might hear “Look, my deeper concern is *GHI*.”

A game of *Whack-a-Mole* ensues, with issues that have previously been addressed sometimes resurfacing, as newly raised issues are dealt with. No answering of the raised objections comes any closer to satisfying the opponent of the proposition, because the raised objections are less *reasons* than they are *justifications*, justifications which conceal the true, underlying objection, which may remain forever hidden from view, possibly even from the person themselves. In such cases, we have moved beyond the realm of heart and head, and into the realm of immovable ideology.



A Dialogue between Heart and Head

Some individuals are naturally more heart-focussed, and some are naturally more head-focussed, reflecting the tremendous diversity among people. In this debate, as we journey toward the Referendum, we need *both*: we need heart *and* head; we need emotional sensitivity *and* we need clarity of thinking; we need to feel *and* think our way to a collective, national discernment.



Where to from here?

I hope this discussion paper will encourage you to think reflectively and critically about the proposed constitutional amendment on the Voice, especially if you haven't yet had the opportunity to do so. I hope it encourages you to look into aspects that concern you. I hope it challenges you to consider opinions that may differ from your own. I hope it encourages you to talk to others about the Voice. I hope it encourages you to listen to others whose views may differ from your own.

Later this year, we will be called to vote in an historic Referendum. If the Referendum is passed in the affirmative, I trust we would all hope that the Voice will make the significant contribution toward the lives of Aboriginal and Torres Strait Islander peoples that its architects believe it will.

Michael Dowling
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June 2023



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Referendum question

The question to be put to the Australian people at the 2023 Referendum will be:

**“A Proposed Law: to alter the Constitution to recognise the First Peoples of Australia by establishing an Aboriginal and Torres Strait Islander Voice.
Do you approve this proposed alteration?”**

Proposed constitutional amendment:

The proposed law that Australians are being asked to approve at the Referendum would insert a new section into the Constitution:

Chapter IX Recognition of Aboriginal and Torres Strait Islander Peoples

129 Aboriginal and Torres Strait Islander Voice:

In recognition of Aboriginal and Torres Strait Islander peoples as the First Peoples of Australia:

1. There shall be a body, to be called the Aboriginal and Torres Strait Islander Voice;
2. The Aboriginal and Torres Strait Islander Voice may make representations to the Parliament and the Executive Government of the Commonwealth on matters relating to Aboriginal and Torres Strait Islander peoples;
3. The Parliament shall, subject to this Constitution, have power to make laws with respect to matters relating to the Aboriginal and Torres Strait Islander Voice, including its composition, functions, powers and procedures.

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³ Overview to the Australian Constitution by the Australian Government Solicitor:

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⁴ Closing The Gap report 2020

<https://ctgreport.niaa.gov.au/sites/default/files/pdf/closing-the-gap-report-2020.pdf>

⁵ Closing the Gap website:

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⁶ Video of Rev. Dr. Martin Luther King Junior interview:

<https://www.facebook.com/watch/?v=2505848169435198>

⁷ Confirmation bias:

<https://www.britannica.com/science/confirmation-bias>

⁸ Yep, me too. We are all subject to the perils of confirmation bias, myself included. In order to guard against my own echo-chamber tendencies, I have taken out a year's subscription to the electronic edition of *The Australian* newspaper and committed to reading every article on the Voice, especially those columnists I disagree with. I have found it an interesting exercise. Yes, I've been very annoyed on more than one occasion! But I've also learned things worth knowing from those I disagree with, things that I have investigated and considered further.

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https://parlinfo.aph.gov.au/parlInfo/download/library/prspub/8498103/upload_binary/8498103.pdf

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https://parlinfo.aph.gov.au/parlInfo/download/library/prspub/8498103/upload_binary/8498103.pdf

¹⁴ Recognising Aboriginal and Torres Strait Islander Peoples in the Constitution: Report of the Expert Panel 2012:
<https://www.indigenousjustice.gov.au/wp-content/uploads/mp/files/resources/files/12-01-16-Indigenous-recognition-expert-panel-report.pdf>

¹⁵ Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples: Final Report June 2015
https://www.aph.gov.au/-/media/Committees/Senate/committee/jscatsi_ctte/final_report/report.pdf?la=en&hash=8B1D4F41593B2122D2C27D0596041D3FD8D50A21

¹⁶ Referendum Council:
<https://www.referendumcouncil.org.au/council.html>

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¹⁸ Referendum Council Final Report:

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¹⁹ PM Malcolm Turnbull in October 2017 rejecting the Voice

<https://www.theguardian.com/australia-news/2017/oct/26/Indigenous-voice-proposal-not-desirable-says-turnbull>

²⁰ Malcolm Turnbull interview August 2022 supporting the Voice

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https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Former_Committees/Constitutional_Recognition_2018/ConstRecognition/Final_Report/section?id=committees%2Freportjnt%2F024213%2F26664

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<https://www.theguardian.com/australia-news/2018/sep/26/scott-morrison-claims-Indigenous-voice-to-Parliament-would-be-a-third-chamber>

²³ Joint Select Committee on Constitutional Recognition relating to Aboriginal and Torres Strait Islander Peoples: Final Report November 2018

https://parlinfo.aph.gov.au/parlInfo/download/committees/reportjnt/024213/toc_pdf/Finalreport.pdf

²⁴ Media release re Voice Co-Design Senior Advisory Group

https://parlinfo.aph.gov.au/parlInfo/download/media/pressrel/7019626/upload_binary/7019626.pdf

²⁵ Indigenous Voice Co-Design Process Final Report to the Australian Government July 2021

<https://apo.org.au/sites/default/files/resource-files/2021-07/apo-nid316024.pdf>

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<https://www.theaustralian.com.au/nation/scott-morrison-puts-Indigenous-voice-to-government-on-hold-for-now/news-story/c88d313f932ce05a49650b21e740191e>

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³⁰ Referendum Working Group communique:

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³⁶ Liberal Party announces opposition to the Voice:

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<https://www.abc.net.au/news/2023-04-06/ken-wyatt-quits-liberals-over-voice-to-Parliament-stance/102197862>

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⁴³ National Party Senator Jacinta Nampijinpa Price has employed such language, directed at the Indigenous architects of the Voice proposal, claiming that Aboriginal people don't want the Voice.

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<https://www.reconciliation.org.au/wp-content/uploads/2022/11/2022-Australian-Reconciliation-Barometer-FULL-Report.pdf> (p.104)

<https://www.theguardian.com/australia-news/2023/jan/27/uluru-statement-architect-confident-of-Indigenous-voice-success-despite-invasion-day-calls-to-vote-no>

⁴⁵ In April 2023, the elected leaders of the Central Land Council, which represents 24,000 Aboriginal people in the Northern Territory, have issued a joint statement saying Senator Jacinta Nampijinpa Price does not speak for them.

<https://www.theguardian.com/australia-news/2023/apr/20/central-land-council-leaders-say-jacinta-nampijinpa-price-needs-to-stop-pretending-we-are-her-people>

⁴⁶ Historical referendums and constitutional change

<https://enlighten.griffith.edu.au/historical-referendums-and-constitutional-change/>

⁴⁷ Liberal Opposition Leader Peter Dutton comments about re-racialising Australia and permanently dividing us by race. Parliamentary speech on 22 May 2023 as recorded on pages 57-59 of the Hansard transcript.

https://parlinfo.aph.gov.au/parlInfo/download/chamber/hansardr/26695/toc_pdf/House%20of%20Representatives_2023_05_22.pdf;fileType=application%2Fpdf

⁴⁸ Tony Abbott submission to the Joint Select Committee on the Aboriginal and Torres Strait Islander Voice Referendum

<https://www.aph.gov.au/DocumentStore.ashx?id=121c19ad-19fe-4e42-b891-b74b1e61f354&subId=740384>

⁴⁹ Commonwealth Closing the Gap Annual Report 2022

<https://www.niaa.gov.au/sites/default/files/publications/niaa-closing-the-gap-annual-report-2022.pdf>

⁵⁰ Regulating the Influencers: The Evolution of Lobbying Regulation in Australia

<https://law.adelaide.edu.au/system/files/media/documents/2021-09/Regulating%20the%20Influencers%20The%20Evolution%20of%20Lobbying%20Regulation%20in%20Australia.pdf>

⁵¹ Lobbying And Revolving Doors

https://transparency.org.au/wp-content/uploads/2021/10/TIA-Position-Paper_Lobbying-and-Revolving-Doors_Final.pdf

⁵² Terra nullius: Latin term meaning “land belonging to no-one” employed as a legal concept by the British government to justify the settlement of Australia.

<https://www.nla.gov.au/digital-classroom/senior-secondary/cook-and-pacific/cook-legend-and-legacy/challenging-terra>

⁵³ Commonwealth Closing the Gap Annual Report 2022

<https://www.niaa.gov.au/sites/default/files/publications/niaa-closing-the-gap-annual-report-2022.pdf>

⁵⁴ Indigenous Expenditure Report 2017

<https://www.pc.gov.au/ongoing/Indigenous-expenditure-report/2017/ier-2017-Indigenous-expenditure-report.pdf>

⁵⁵ The Voice principles:

<https://voice.gov.au/about-voice/voice-principles>

⁵⁶ Referendum question and proposed constitutional amendment:

See: https://parlinfo.aph.gov.au/parlInfo/download/legislation/bills/r7019_first-reps/toc_pdf/23048b01.pdf

⁵⁷ Indigenous Voice Co-Design Process Final Report to the Australian Government July 2021

<https://apo.org.au/sites/default/files/resource-files/2021-07/apo-nid316024.pdf>

⁵⁸ Joint Select Committee on constitutional recognition of ATSI peoples

https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Former_Committees/Constitutional_Recognition_2018/ConstRecognition/Final_Report/section?id=committees%2Freportjnt%2F024213%2F26664

⁵⁹ EXPLANATORY MEMORANDUM to CONSTITUTION ALTERATION (ATSI VOICE) 2023

https://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r7019_ems_30a282a6-7b5a-4659-b9cb-13da5698bca1/upload_pdf/JC009279.pdf

⁶⁰ Solicitor-General opinion IN THE MATTER OF PROPOSED SECTION 129 OF THE CONSTITUTION

<https://www.aph.gov.au/DocumentStore.ashx?id=ea88212c-eccc-45d2-822c-8578fa96895c&subId=740367>

⁶¹ Hearings conducted by Joint Select Committee on the Aboriginal and Torres Strait Islander Voice Referendum. See Perth hearing transcript, dated 28 April 2023, page 17 of the transcript.

https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Former_Committees/Aboriginal_and_Torres_Strait_Islander_Voice_Referendum/VoiceReferendum/Public_Hearings

⁶² Transcripts from the five public hearings of the Joint Select Committee on the Aboriginal and Torres Strait Islander Voice Referendum

https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Former_Committees/Aboriginal_and_Torres_Strait_Islander_Voice_Referendum/VoiceReferendum/Public_Hearings

Submissions (270) to the Joint Select Committee on the Aboriginal and Torres Strait Islander Voice Referendum

https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Former_Committees/Aboriginal_and_Torres_Strait_Islander_Voice_Referendum/VoiceReferendum/Submissions

⁶³ Advisory Report on the Constitution Alteration (Aboriginal and Torres Strait Islander Voice) 2023

[https://parlinfo.aph.gov.au/parlInfo/download/committees/reportjnt/RB000125/toc_pdf/AdvisoryReportontheConstitutionAlteration\(AboriginalandTorresStraitIslanderVoice\)2023.pdf](https://parlinfo.aph.gov.au/parlInfo/download/committees/reportjnt/RB000125/toc_pdf/AdvisoryReportontheConstitutionAlteration(AboriginalandTorresStraitIslanderVoice)2023.pdf)

⁶⁴ Liberal Members' Dissenting Report on the Joint Select Committee on the Aboriginal and Torres Strait Islander Voice Referendum

https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Former_Committees/Aboriginal_and_Torres_Strait_Islander_Voice_Referendum/VoiceReferendum/Report/Liberal_Members_Dissenting_Report

⁶⁵ Weekend Australian, 8-9 April 2023, Janet Albrechtson, Indigenous Voice to Parliament will create co-government and cause policy chaos

<https://www.theaustralian.com.au/inquirer/Indigenous-voice-to-Parliament-will-create-co-government-and-cause-policy-chaos/news-story/c9bba90e726a77514fd463a561fc69ea>

⁶⁶ Professor Anne Twomey interview; Transcript of public hearing, Canberra, 14 April 2023, Joint Select Committee on the Aboriginal and Torres Strait Islander Voice Referendum

<https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22committees%2Fcommjnt%2F26825%2F0000%22>

⁶⁷ Hon. Fred Chaney; Transcript of public hearing, Canberra, 1 May 2023, Joint Select Committee on the Aboriginal and Torres Strait Islander Voice Referendum

<https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22committees%2Fcommjnt%2F26826%2F0000%22>