

KIMBERLEY LAND COUNCIL

ABN 96 724 252 047 ICN 21



21 April 2023

Committee Secretary

Joint Select Committee on the Aboriginal and Torres Strait Islander Voice Referendum

Email: jscvr@aph.gov.au

Dear Secretary

Submission to the inquiry into the Aboriginal and Torres Strait Islander Voice Referendum, *Constitution Alteration (Aboriginal and Torres Strait Islander Voice) 2023*

1. The Kimberley Land Council (KLC) thanks the Committee for the opportunity to make this submission to the inquiry into the Aboriginal and Torres Strait Islander Voice Referendum, *Constitution Alteration (Aboriginal and Torres Strait Islander Voice) 2023*.
2. The KLC is a grass-roots member-based Aboriginal organisation established in 1978 for the purpose of working for and with Traditional Owners to get back country, care for country, and get control of the future. The KLC's mandate is driven by its broad membership of Kimberley Aboriginal people, and delivered by an Executive Board of culturally and regionally representative Directors.
3. The KLC acknowledges the work of the Referendum Working Group, Regional Dialogues, Referendum Council, the Joint Select Committee, including Senators Patrick Dodson and Julian Leeser, authors of the Co-design Report and all those involved in the co-design process, in bringing constitutional recognition of Australia's First Nations to this point.
4. The KLC fully supports the form and words of s129 as a culturally and historically appropriate and legally certain way to achieve the outcome of constitutional recognition called for in the Uluru Statement from the Heart. The KLC makes the following brief submission in support of the proposed amendment in its current form.

Matters of Principle

5. The KLC's history, objectives and governing processes are based in recognising, and making real, the foundational principles which define our community of Kimberley Traditional Owners. In the Kimberley, the three pillars of Aboriginal society are Land, Law and Language. Since the 1970s and early 1980s, these three pillars have been recognised and reflected in the objects, purpose and work of the KLC. For more than 40 years, the KLC has played a role in ensuring that these underlying principles continue to be a pillar in the lives of Aboriginal and Torres Strait Islander people across the Kimberley.

6. The KLC endorses the principles of Voice, Treaty, Truth set out in the Uluru Statement from the Heart. Without a doubt, based on the experience of Kimberley Aboriginal people, as well as other Aboriginal and Torres Strait Islander bodies and First Nations groups throughout Australia, putting in place governance processes which recognise and reflect important matters of identity and principle for the people being governed is essential to producing outcomes that are consistent with those principles.
7. The proposed amendment to the Constitution puts in place an entity that recognises important principles, which are currently missing in Australia's founding document. Those important principles are that Aboriginal and Torres Strait Islander peoples are the First Nations of this country, they have a prior and continuing connection to this country, that the body, to be called the Aboriginal and Torres Strait Islander Voice, is recognition of this truth, and these matters are significant and worthy of constitutional recognition.

Legal Certainty

8. The KLC respectfully acknowledges and defers to the extensive work of constitutional scholars, including the Referendum Working Group, on the proposed amendment to the Constitution.
9. The KLC notes the submission of the Attorney-General,¹ which attaches the advice of the Solicitor General on whether s129 is compatible with the system of representative and responsible government established by the Constitution and whether subsection (iii) empowers Parliament to legislate in respect of representations to Executive Government provided for by subsection (ii). The Solicitor-General's opinions on these questions are conclusive and confirm that the form and words of s129 should be put to the Australian people for consideration in their current form.
10. The KLC has also had the benefit of considering, and endorses, the written submissions of Mr Noel Pearson and Dr Shireen Morris,² Emeritus Professor Anne Twomey,³ and Professor George Williams⁴ to this inquiry. The KLC has also had the benefit of viewing the appearance of Emeritus Professor Twomey, Professor George Williams AO, the Honourable Kenneth Hayne AC KC, the Honourable Robert French AC, and Mr Bret Walker SC before the Committee on 14 April 2023.⁵ The KLC supports the position of those eminent persons on the legal risk of constitutional implications being drawn from the wording of s129, summarised succinctly in the submission of Professor Twomey,⁶ and variously described to the Committee on 14 April 2023 as "nonsense", "bizarre", or "fantastical doomsday-ing", with "no realistic possibility of a deluge of litigation".
11. In responding to the question of whether additional words should be included in s129, the submissions referred to in [9] also identify as separate and distinct the *legal* and *political* considerations in determining

¹ Dreyfus, M, Submission 64, Joint Select Committee on the Aboriginal and Torres Strait Islander Voice Referendum, Inquiry into the Aboriginal and Torres Strait Islander Voice Referendum, 21 April 2023.

² Pearson, N & Morris S, Submission 21, Joint Select Committee on the Aboriginal and Torres Strait Islander Voice Referendum, Inquiry into the Aboriginal and Torres Strait Islander Voice Referendum, 14 April 2023

³ Twomey, A, Submission 17, Joint Select Committee on the Aboriginal and Torres Strait Islander Voice Referendum, Inquiry into the Aboriginal and Torres Strait Islander Voice Referendum, 13 April 2023

⁴ Williams, G, Submission 5, Joint Select Committee on the Aboriginal and Torres Strait Islander Voice Referendum, Inquiry into the Aboriginal and Torres Strait Islander Voice Referendum, 6 April 2023

⁵ [ParlView | Video 1043631 \(aph.gov.au\)](#) https://www.aph.gov.au/News_and_Events/Watch_Read_Listen/ParlView/video/1043631

⁶ Footnote 2, pp5-9.

whether any additional or different words are required, and confirm that there is no legal reason why a change to s129 is required. That is, there is no realistic, non-fantastical *legal* reason why the words of s129 should be altered. Any justification for amendments or alterations to the words of s129 would therefore be solely *political*.

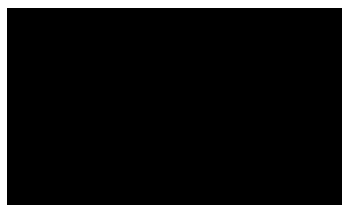
Politics

12. On the question of whether any changes should be made to s129 for political reasons, the KLC submits that no changes are required, and unnecessary amendments or alterations undermine the social, cultural and historical momentum behind this important moment in the history of the Australian nation.
13. Section 129 as presently drafted is simple, direct, and digestable for voters who will, in coming months, stand in a booth at a polling place and be required decide whether to vote “yes” or “no”. In the lead up to that decision, materials will be produced to help people make an informed decision on that question. Additional or unnecessary words not only introduce the possibility of legal uncertainty where none exists at present, it would also make explaining the task in front of voters more challenging. The KLC submits that unnecessary or superfluous words inserted solely for reasons other than legal certainty will dilute the principles of the Uluru Statement from the Heart and create new risks where none exist at present.

Conclusion

14. For a system of governance to be effective it must reflect the people that it is governing. With no mention of Australia’s Aboriginal and Torres Strait islander people in the constitution, it is evident that this is currently not the case for the Australian nation. The KLC and its members know first-hand how important and transformational it can be to have matters of defining principle given expression in systems of governance. The wording of s129 appropriately reflects the entire Australian community and embeds the fundamental principles of identity and truth that will suitably, and finally, recognise Aboriginal and Torres Strait Islander people in the Constitution of our nation.

Yours sincerely



Tyronne Garstone
Chief Executive Officer