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Here are my answers to the questions posed by Senator Bragg.

**Question 1:**

Proposed section 129 (iii) reads: “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.”

Please provide your view on including the following words at the end of section 129 (iii) as follows: “and the legal effect of its representations”.

**Answer:** I don’t see that these words add anything substantive to the clause. My query would be: if these words do add something substantive to the clause (which I doubt) and which is ‘subject to this Constitution’, might there be a risk that a future High Court (inspired by some of the writings of Gummow J et al) would take umbrage at Parliament, rather than the court, purporting to determine the legal effect of a constitutional entitlement of a constitutional entity.

**Question 2:**

Proposed section 129(ii) reads: “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”.

Please provide your view on the following alternative approaches to subsection (ii).

1. Removing subsection (ii) to allow the matters around the Voice’s representations to the Parliament and the Executive Government to be addressed by legislation.
2. Replacing subsection (ii) with “The Aboriginal and Torres Strait Islander Voice may make representations to the Parliament and the Ministers of State for the Commonwealth on proposed laws and matters with respect to Aboriginal and Torres Strait Islander peoples and to the Parliament and the Executive Government of the Commonwealth on such other matters as the Parliament provides”.

**Answers**

1. Removing subsection (ii) would remove all constitutional scope of the activities of the Voice, making its scope dependent entirely on the Parliament. I think that would be contrary to the intended operation of the Voice as envisaged by the Referendum Working Group and the Government. I don’t think it is a goer.

2. I don’t see the need to add ‘proposed laws and’.

Also I see no need to add ‘and to the Parliament and the Executive Government of the Commonwealth on such other matters as the Parliament provides’ as this is already covered by clause (iii), bearing in mind that Professor Anne Twomey has told the committee (Transcript 14/4, at p.48): ‘Remember, the term in the Constitution or the term proposed to be excused is ‘the executive government’. It’s not this particular officer or that particular officer, it’s the executive

government. That's all that needs to be maintained, your ability to make representation to the executive government. Parliament can say that you make your representation to the executive government by sending all your representations to a particular email address or a particular officer or by giving them to ministers. You can have all sorts of ways of setting it up. In practice, you can have methods of consultation et cetera. That's all up to parliament and the legislation. In the end, it's parliament that will control how representations to executive government come into executive government and are dealt with.'

So why not simply provide in clause (ii) that representations can be made to Parliament or to ministers. Clause (iii) would then permit legislation to be enacted providing for representations to be made to ministers on matters relating to Aboriginal and Torres Strait Islander peoples including decisions by the Davis list of entities such as the Reserve Bank and Centrelink, and administrative decisions by public servants. The legislation could also provide the means by which representations would be made to ministers via a particular official or email address or whatever. But at least you would then avoid constitutionalising the entitlement of the Voice to make representations direct to individual public servants making administrative decisions.

Yours sincerely

Frank Brennan

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OFFICIAL

Good afternoon Father Brennan

Senator Bragg has the below questions on notice (QON) for your response.  
Could you please provide a response by **tomorrow, Friday 5 May by 4pm**. If this deadline cannot be met please let me know.

**Question 1:**

Proposed section 129 (iii) reads: “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.”

- Please provide your view on including the following words at the end of section 129 (iii) as follows: “and the legal effect of its representations”.

**Question 2:**

Proposed section 129(ii) reads: “*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*”.

Please provide your view on the following alternative approaches to subsection (ii).

1. Removing subsection (ii) to allow the matters around the Voice's representations to the Parliament and the Executive Government to be addressed by legislation.
2. Replacing subsection (ii) with *"The Aboriginal and Torres Strait Islander Voice may make representations to the Parliament and the Ministers of State for the Commonwealth on proposed laws and matters with respect to Aboriginal and Torres Strait Islander peoples and to the Parliament and the Executive Government of the Commonwealth on such other matters as the Parliament provides"*.

If you have any further questions, please feel free to get in touch to discuss.

Kind regards

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