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

The proposed Constitutional amendment currently reads:

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:

- (i) there shall be a body, to be called the Aboriginal and Torres Strait Islander Voice;
- (ii) 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;
- (iii) 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.

Overview of Submission

The currently proposed Constitutional amendment, the Albanese amendment, is wrong in principle and is unquestionably racist and anti democratic in practice. Chapter IX should never have been promulgated in its current form. The best formula for recognition of occupation prior to 1788 should have been introduced in the Preamble as was proposed in 2007. However this is now seemingly impossible. Chapter IX section 129 is badly flawed and must be corrected. Clause (ii), when read in conjunction with Clause (iii), arguably gives primacy to The Voice over the Parliament under the Constitution. This is unlikely to be acceptable to the majority of Australians, if they knew. At a minimum, Clause (ii) should be deleted. Anthony Albanese has made it very clear that any Parliament ignoring proposals from the Voice would be very “brave”. This coercive function of The Voice is not a satisfactory basis for addressing indigenous issues or Australia’s future

The Principle – Establishment of a Constitutional Racial Divide

Anthony Albanese himself used to oppose race based division. On 17 September 2013 in making his case to become leader of the Labor Party he said :
"It's recognising the diversity of our society and recognising that we're all enriched by it. It's recognising that we need to look after people and remove any form of discrimination, whether it be on the basis of gender, race, ethnicity, religion, or indeed, who people happen to love." Now apparently he and his government are embracing racial discrimination. This is

quite a turnaround and is unacceptable to many (most) Australians including many who identify as Aboriginal.

Anti-democratic – The Voice imparts power to its representatives not accessible to Australians who are not considered Aboriginal

Australia is founded on democratic principles – one vote one value – and on equality of opportunity; but like all democracies and indeed all societies, including societies claiming to be run on socialist or communist ideals, Australia does not try to force equality of outcomes which is simply impossible. We are all different and subject to the randomness of life and the differences in capacity that each of us is born with. Trying to even up society by dividing us by race is futile, and morally wrong. Aboriginals and non Aboriginals share success in Australia, as they share disadvantage.

Notion of who was here first

The notion of who was here first is self evident. If it is to be included in the Constitution as a proforma addition for completeness, it is completely uncontroversial and is likely to be supported by almost all Australians, whether they are descendents of the first arrivals or of those who arrived after 1788, or indeed those who are still arriving every day.

However The Voice is a different matter entirely. The Voice is very clearly intended to give those whose descendents arrived before 1788 a powerful additional say in government by trashing the one vote one value principle. And, as mentioned above, the Prime Minister has made it quite clear that it would be a “brave” government who would reject proposals by The Voice (this is “Yes Minister” speak for it would be impossible to reject the views of The Voice which represents just 3% of the population, however unreasonable such views may be).

So who is it that will get The Voice?

Apparently there will be 24 members of the Voice, mostly from the cities, and they will be appointed by various indigenous bodies which themselves are appointed or self appointed.

So The Voice would not be a representative body based on one vote one value principles. It is difficult to consider such a body as being representative of those who really need help eg particularly those living in abject circumstances in dusty town camps in the outback. One of the complaints often heard about the difficulty of “Closing the Gap” is that the wrong people are representing those who most suffer from the gap. These same people are most likely to be the new Voice representatives ie an elite group of people who identify as Aboriginals, who are Academics, elite Sports people, Doctors and health workers, Teachers. Arts and Entertainment stars, Television identities, Lawyers, Activists, Senior Public Servants, and even existing Politicians, almost all of whom are already fully integrated into “mainstream” middle class society and do not and never have suffered the privations of outback life. It is apparent that The Voice is not going to close the gap. Rather it is going to grant a particular race-based power to an elite which already has very considerable access

and power, but which has been singularly unable to close the gap except of course for themselves and their own city living families.

Who qualifies to have The Voice?

And then there is the question of who is indigenous and eligible to be The Voice? This is not addressed by the proposed amendment, but should be before Australians are asked to vote. More than 80% of people who claim Aboriginality marry non-Aboriginals which means that most Aboriginals are mixed race, mostly Aboriginal and European. To ignore their non Aboriginal heritage is peculiar and a form of racism in itself. Nevertheless this is a personal choice. But what happens as the high levels of intermarriage continue over the generations and almost all of us are mixed race, with some Aboriginal component? Who then gets The Voice? How is one's claim to Aboriginality determined and verified? This points to a fundamental weakness of The Voice proposal – that it will never sunset and will continue forever.

What will The Voice actually do?

So what will The Voice actually do? The Albanese text does not say other than in clause (ii) where it says The Voice may make representations to the Parliament and the Executive Government of the Commonwealth on matters relating to Aboriginal and Torres Strait Islander peoples. Many legal commentators assume this will mean that all matters determined by the Commonwealth will be subject to The Voice because, as Australians, all Aboriginals have a stake in all the work of Government. Those who say that the Parliament will decide what The Voice can do have misread the text which is at best ambiguous. They say that Section 129 Clause (iii) governs Clause (ii), i.e. the Parliament governs The Voice. But this is clearly incorrect. Clause (iii) says that the Parliament's powers are subject to the Constitution, and Clause (ii) of the amended Constitution clearly states that The Voice may make representations to the Parliament and the Executive . No limits are defined. The Parliament is effectively subservient to The Voice. Even if you support The Voice, the idea that the Parliament may be subservient to The Voice should be unacceptable. Clause (ii) should be deleted to remove all doubt.

The Voice should have a defined life and an automatic sunset

If the purpose of The Voice is to close the Gap for those living in abject circumstances, what happens when the Gap is closed? Why should the race power of The Voice continue? Clearly it should terminate automatically. Some commentators have said you could have another referendum. This is a naïve suggestion. Those with The Voice will not give up their power without a nasty race based fight. And the Parliament and mainstream society would find it very difficult and unpalatable to engage in such a fight. But The Voice must end when it has reached the end of its useful life (if indeed it ever had a useful life). It cannot just go on and on indefinitely. The existing wording in no way anticipates an end and nor does the Uluru Statement.

In fact the Uluru Statement and the statements of many Activists and representatives involved in drafting the Uluru Statement anticipate that The Voice will demand a Treaty

(Makarrata) and “Truth Telling”. Those who had input to the drafting of the statement have identified reparations as an objective of The Voice, presumably as part of the Treaty. PM Anthony Albanese and Minister Linda Burney are on record as supporting all of the demands in the Uluru Statement although, confusingly, Mr Albanese is also on record as saying that reparations would not be offered. Some who contributed to the drafting of the Statement said that they were seeking separate self government and Statehood. The demands for Treaty and Reparations, self government and Statehood will divide Australia in an extremely damaging way, based on race. And ironically the actual definition of the Aboriginal race will apparently not be clearly defined leaving much room for class/race contention.

What should Australia really support?

To ensure a defined life and an automatic sunset, and to avoid race based division, the most sensible way to proceed was always to enshrine the fact of Aboriginals having lived in Australia prior to 1788 in the Constitutional Preamble and for the Parliament to pass legislation establishing a body with the express purpose of closing the gap especially for those living abject lives in dusty townships in the outback. However it is apparent that after years of consultation, it is too late to walk The Voice back.

Instead the referendum Voter must be offered a realistic form of words that establishes a Voice but does not allow The Voice to have primacy over Parliament. And the Parliament must have the power to end the voice when it is beyond its useful life.

Some acknowledgement should be made in the Bill to establish the purpose of The Voice eg to make representations to the Parliament on matters relating to the welfare of Aboriginal and Torres Straights Islander people, with the express purpose of maintaining and preserving culture and closing the gap in education, health, life expectancy, employment opportunities, personal security and other key societal benchmarks (eg incarceration rates). Self government, Statehood and reparations should not be included as a function of The Voice. And the matter of who is indigenous and can be appointed to The Voice needs to be defined, along with under what circumstances the right will terminate - mixed race people must have defined boundaries on who is eligible especially as we become substantially racially integrated over generations of intermarriage.

With these fundamental objectives, at the very least, Section 129 Clause (ii) should be struck out and Clause (iii) renumbered to Clause (ii).

If the Government and its indigenous advisors will not accept such a change, then the Vote must be NO.