
Hi

My answers are as follows:

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”.

I do not see the addition is necessary given the width of the power conferred by 129(iii). That said, I do not have a problem with the addition as I think reflects the intended scope of that clause in any event.

Questions:

1. My question is, how did we get from 18 versions to one?

I do not know as I was not privy to those conversations.

2. Did you draft the Garma 2022 amendment the Prime Minister released?

No

3. Did you provide legal advice to anyone in relation to the development of the wording? Or after the wording had been formulated?

Yes as a member of the Government’s Constitutional Expert Group.

4. Were you asked to evaluate or endorse the Garma amendment?

No.

5. Were you involved in an informal legal working group of some description? Who else participated?

No.

6. Is this how you would draft the provision if you were given a blank slate? How else might the provision be drafted? If you’ve written a paper on this, please table it as evidence.

I am not sure as it is not something I have ever been asked to do. I have also not seen the need to do so because the proposed drafting is an appropriate way of realising the change.

7. Or were you asked to comment on or evaluate someone else’s drafting? Can you table your response?

No.

8. Have you provided any legal advice to the Prime Minister or anyone else in the Government about this amendment? Can you table that advice?

Yes as a member of the Government’s Constitutional Expert Group.

Kind regards

George

[REDACTED]

Subject: [SEC=OFFICIAL] Inquiry into the Aboriginal and Torres Strait Islander Voice Referendum QoNs

OFFICIAL

Good afternoon

Thank you for appearing at a public hearing for the Inquiry into the Aboriginal and Torres Strait

Islander Voice Referendum.

Senator Bragg would like to add the below questions on notice. **Please provide a response by Monday 24 April.**

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”.

It has never been revealed who drafted the amendment, or how this final amendment was settled prior to the PM announcing it. It is not clear what legal views or opinions (if any) were provided to the government before or after it was announced, though the PM has stated publicly that he did receive legal advice prior to releasing the Garma amendment, and since.

In an article in the Australian by Chris Kenny, he seems to refer to French and Gleeson as the key advocates of the amendment:

“This is an entirely appropriate area of concern for any change to our Constitution, and it is incumbent on anyone proposing changes to demonstrate that new clauses, as far as possible, will not have unintended consequences. But considered opinions from former High Court chief justices Murray Gleeson and Robert French, not to mention a raft of other constitutional law professors, have provided significant reassurance.”

The 2018 Leaser / Dodson JSC took evidence of 18 different ways to entrench the Voice, and in 2022 the Prime Minister came out with a single set of words.

The Prime Minister said on 730 with David Speers 9/1/2023:

“This isn't my proposal”.

We are being asked to examine the Bill, and the advice that was provided to the Prime Minister should be available to the Parliament so we can do our job.

Questions:

1. My question is, how did we get from 18 versions to one?
2. Did you draft the Garma 2022 amendment the Prime Minister released?
3. Did you provide legal advice to anyone in relation to the development of the wording? Or after the wording had been formulated?
4. Were you asked to evaluate or endorse the Garma amendment?
5. Were you involved in an informal legal working group of some description? Who else participated?
6. Is this how you would draft the provision if you were given a blank slate? How else might the provision be drafted? If you've written a paper on this, please table it as evidence.
7. Or were you asked to comment on or evaluate someone else's drafting? Can you table your response?
8. Have you provided any legal advice to the Prime Minister or anyone else in the Government about this amendment? Can you table that advice?

If you require further information please contact the secretariat on (02) 6277 2205 or by return email.

Thank you for assisting the Subcommittee with its inquiry.

Kind regards

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