



Australian Government

Australian Government response to the
Joint Select Committee on the Aboriginal and Torres
Strait Islander Voice Referendum report:

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

MAY 2023

Acknowledgements

The Australian Government acknowledges the traditional owners and custodians of country throughout Australia and acknowledges their continuing connection to land, waters and community. We pay our respects to the people, the cultures and their elders past and present.

The Australian Government thanks the individuals and organisations who contributed to this inquiry, including all those who made submissions and appeared as witnesses, and the members of the Joint Select Committee on the Aboriginal and Torres Strait Islander Voice Referendum (Committee) and the Committee's secretariat. We particularly acknowledge the Aboriginal and Torres Strait Islander people who shared their experiences, views and aspirations with this inquiry.

Introduction

The Australian Government welcomes the Committee's report on the Constitution Alteration (Aboriginal and Torres Strait Islander Voice) 2023 (Bill).

The 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.

The referendum that would follow the passage of this Bill through the Parliament is part of the Government's commitment to implement the Uluru Statement from the Heart in full.

The Australian Government's response to the report is set out below. The response addresses the recommendations contained in the report, the dissenting reports and additional comments from members of the Committee.

Recommendations

Recommendation 1: The Committee recommends that the Constitution Alteration (Aboriginal and Torres Strait Islander Voice) 2023 be passed unamended.

The Government **supports** this recommendation.

The Bill is the product of more than a decade of efforts to recognise Aboriginal and Torres Strait Islander peoples in the Constitution. It offers both practical and substantive recognition. As the Committee's report makes clear, the Bill is fit for purpose, meets the first request expressed in the Uluru Statement from the Heart and is constitutionally sound.

Moreover, as outlined in the Statement of Compatibility with Human Rights accompanying the Explanatory Memorandum, the Bill:

would promote the rights and freedoms of Aboriginal and Torres Strait Islander peoples by acknowledging their continuing disadvantage, and historical exclusion from participation in the making of decisions, policies and laws that affect them. The Bill does this in a way that would not abrogate or otherwise negatively affect the ability of members of the broader community to enjoy or exercise their political, economic, social, cultural or other rights and freedoms.

The Voice, as a representative institution, would enable Aboriginal and Torres Strait Islander peoples to express their views to the Parliament and the Executive Government of the Commonwealth on issues that relate to them, including their communities. This will ensure that the laws, policies and programs of the Commonwealth are better attuned to empowering Aboriginal and Torres Strait Islander peoples, addressing disadvantage, and improving outcomes.

Liberal Members' Dissenting Report

Recommendation 1: The proposal for an Aboriginal and Torres Strait Islander Voice should not be adopted in its current form.

The Government **does not support** this recommendation. As noted above, the Government supports the Committee's recommendation that the Bill be passed unamended.

Recommendation 2: Noting the Coalition will not stand in the way of Australians having their say on the proposal, the Government should amend the drafting of the Constitution Alteration (Aboriginal and Torres Strait Islander Voice) 2023 to address the significant risks identified through the Committee process.

The Government **does not support** this recommendation.

Amendments to the Bill are not necessary. The Bill is constitutionally sound, and the Voice would enhance our system of representative and responsible government. This is consistent with the submissions and evidence provided by most of the eminent legal experts to the Committee.

In particular, the Solicitor-General's opinion attached to the Attorney-General's submission to the Committee (Solicitor-General's Opinion) stated that proposed section 129 is not just compatible with the system of representative and responsible government prescribed by the Constitution, but an enhancement of that system. The Solicitor-General's Opinion indicated that proposed section 129 would not require the Executive Government to consult with the Voice prior to developing any policy or making any decision. Moreover, the Parliament would be empowered to legislate to specify the extent to which decision-makers within the Executive Government are required to consider representations of the Voice in certain contexts.

Recommendation 3: The People should never again be asked to vote on constitutional amendments that do not have the benefit of detailed public debate, in the form of constitutional conventions or similar.

The Government does not agree with the assertions contained in this recommendation.

Previous referendums have been preceded by a wide range of different processes, reflecting the context of each referendum.

In this case, there has been a comprehensive and lengthy process stretching over more than a decade to determine the right form of constitutional recognition for Aboriginal and Torres Strait Islander peoples. That process has involved consultation with First Nations peoples, as well as parliamentary inquiries and expert reports. This has included the 2012 *Final Report of the Expert Panel on Constitutional Recognition of Indigenous Australians*, and the 2015 Final Report of the Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples.

In 2017, a Voice was endorsed as the preferred form of constitutional recognition in the Uluru Statement from the Heart issued at the National Constitutional Convention, following the Uluru Dialogues.

The Referendum Council-led Uluru Dialogues consisted of 12 First Nations Regional Dialogues and one Regional Meeting. The Dialogues engaged 1,200 Aboriginal and Torres Strait Islander delegates from traditional owner groups, community organisations, and key individuals on their views on meaningful recognition.

In 2018, the Joint Select Committee on Constitutional Recognition relating to Aboriginal and Torres Strait Islander Peoples inquired into options for constitutional change, including the proposal to establish a Voice. It recommended, among other things, the Government initiate a process of co-design with Aboriginal and Torres Strait Islander peoples to achieve a design for the Voice that best suited their needs and aspirations.

On 30 July 2022, the Prime Minister, the Hon Anthony Albanese MP, released draft text of the constitutional amendment at the Garma Festival for discussion. This draft text drew on the considerable discussion of amendments already in the public domain and provided a further opportunity for the public to engage with the proposed amendment in the lead up to parliamentary consideration.

The draft text was subject to robust scrutiny and testing from the Referendum Working Group, the Constitutional Expert Group and other legal experts. As a result of that process, the Government made changes to the draft text, including to put beyond doubt the broad scope of the Parliament's power to make laws relating to the Voice. The proposal has been subject to further public debate and consideration in the course of this Committee's inquiry, which has affirmed the findings of those earlier consultation processes.

National Members' Dissenting Report

The National Members' Dissenting Report contains no specific recommendations. However, the Report states that The Nationals do not support the Report of the Joint Select Committee on the Aboriginal and Torres Strait Islander Voice Referendum or its recommendations.

The Government **does not support** the views expressed in this dissenting report.

Additional Comments from Senator Andrew Bragg

Recommendation 1: The 'seven words' model be adopted into the constitutional amendment.

The Government **does not support** this recommendation.

The 'seven words' model would involve inserting the words 'and the legal effect of its representations' to the end of s 129(iii).

As set out in the Government's response to recommendations 1 and 2 of the Liberal Members' Dissenting Report, amendments to the Bill are not necessary.

Paragraph [35] of the Solicitor-General's Opinion states that this proposed amendment 'was overtaken by the current wording of proposed s 129(iii), which necessarily includes (although it extends beyond) the power to legislate with respect to the legal effect of the Voice's representations.'

Additional Comments from Australian Greens Members

The Additional Comments from Australian Greens Members contain no specific recommendations.

The Government **notes** these additional comments.