

1. Your submission says the existing mechanisms to protect human rights in the federal context are inadequate. This includes the PJCHR which essentially advises the government on the human rights implications of legislation introduced, which it does not have to listen to and we know Parliament has a habit of ignoring. Are you concerned about the similar position the role of Voice to Parliament will have, an advisory function with no actual power to demand action, and how does this accord with principles outlined in UNDRIP which calls for real self-determination and free prior and informed consent?

It is the case that the advice of the Parliamentary Joint Committee on Human Rights (PJCHR) is not binding, and as such can be disregarded by Parliament and lead to the passing of legislation that is in contradiction or blatantly ignores Australia's international human rights obligations. In fact, a 2022 Human Rights Law Centre report exposed that 60 percent of legislation regarding human rights between 2019 and 2021 was passed by Parliament with no review by the Parliamentary Joint Committee on Human Rights.¹ And as we have seen in Queensland in recent months, even where Human Rights Acts are enshrined in State law, they can be suspended or blatantly overridden.² This is grossly inadequate. Australia's credibility on human rights is at serious risk.

We empathise and agree with the concern you have raised. There is no doubt that a Voice to Parliament will face a similar dilemma - and similar institutional obstacles - to the PJCHR.

However, it needs to be noted that the proposed constitutional amendment establishes a principle and a minimum standard for the Voice. The parliament would have the ability to grant the Voice greater 'functions' and 'powers' if it decided to do so.

With its major function being to make representations to the Parliament on issues and policies that affect Aboriginal and Torres Strait Islander peoples, the Voice is consistent with UNDRIP's Article 18 and 19 which call for the right to participate in decision-making through representative bodies chosen by First Nations peoples, as well as for the need to obtain free prior and informed consent before States adopt and implement legislative or administrative measures that may affect First Nations peoples.³ As we have seen, the Australian government has not taken steps to implement UNDRIP into law, policy or practice.

We should also note the limitations on real self-determination that are inherent in UNDRIP. For example, Article 46 states that Indigenous peoples' self-determination

¹ Dr Adam Fletcher, "[Human Rights Scrutiny in the Australian Parliament](#)", Human Rights Law Centre and RMIT University, 2022.

² Declan Brennan, "[Deliberately harmful: Queensland government overrides state's Human Rights Act](#)" National Indigenous Times, August 24 2023.

³ *ibid*

should do nothing to 'dismember or impair totally or in part, the territorial integrity or political unity of sovereign and independent States'.⁴

It is our position that a Voice to Parliament enshrined in the Constitution is the very minimum that can be expected of the nation's 'rulebook' and of the policymaking processes it underpins. The Voice is not the culmination of Aboriginal and Torres Strait Islander peoples right to self-determination, nor will it be a panacea for the many devastating and ongoing harms that have been and continue to be perpetrated by Australia's settler/invasor colonial system. We also acknowledge and respect the position of First Nations peoples who refuse the colonial politics of recognition and wish to engage with and find representation through other avenues, beyond the colonial grip. We firmly believe this position can co-exist with the Voice.

The Voice - much like any representative body - is imperfect, and it may come with constraints and exclusions. It will be operating within the very system that has created the dispossession and disempowerment it seeks to remedy. In our view, these are not reasons to vote against it; rather, they are important considerations to be openly acknowledged and repeated, and which will require continual advocacy. It will require continual pressure toward and demands for accountability from the Parliament and Executive Government who may be tempted to dismiss or set aside the advice of the Voice. Much like the PJCHR.

No system is without these risks and challenges. No single document, representative body or committee is without its limitations. If the Voice is to have any influence at all, it will be due to the relentless work of holding all levels of Government to account for the promises and commitments they've made to listen deeply to Aboriginal and Torres Strait Islander peoples through the Voice. It will also be necessary to hold the Voice accountable, as a representative body, for the job it has been created to do - that is, to represent the diversity and breadth of First Nations perspectives on the often ill-conceived policies and laws that create at times devastating consequences for Aboriginal and Torres Strait Islander communities.

The Voice is necessary but not sufficient. It is the very least that Australia's settler/invasor colonial governance system - and the rulebook designed to give shape and form to that system - can be expected to do. It is a basic reform that can form a foundation for better policy-making within a fundamentally broken colonial system. Establishment of the Voice alone does not satisfy UNDRIP's principles for self-determination. Whether it achieves principles of free prior and informed consent is a question for the Aboriginal and Torres Strait Islander representatives who are elected within and from their communities. This is a challenge for representative politics more broadly.

On this point, we can look to the State-based representative bodies already in existence, such as the First Peoples' Assembly of Victoria, as one possible blueprint

⁴ [United Nations Declaration on the Rights of Indigenous Peoples](#), United Nations.

for how independent and democratically elected representative bodies can function and what their inherent benefits and challenges might be.

Your question states that the Voice will have 'no actual power'. On this, we both agree and disagree. It is true that Parliament will retain its supremacy and can dismiss the representations made by the Voice. We too lament this fact and wish it were different, though it is not surprising. As Yellowknives Dene scholar Glen Coulthard argues, a colonial system will not grant any form of 'recognition' or 'power' to First Nations peoples in ways that fundamentally undermine its own interests.⁵ It is extremely unlikely to fully relinquish its own control. In this sense, the Voice has limited power, as defined by a settler/invasor state.

But there is another possibility, and this requires us to take a broader and deeper view of what power is and can be when understood beyond the realms of the settler state: the Voice, as an articulation of Aboriginal and Torres Strait Islander notions of sovereignty and self-determination which are not 'granted' by settler states but are generated from deep within Aboriginal and Torres Strait Islander nations and communities, has great power. It says 'you cannot extinguish us'. It says 'we are building solutions both within *and* beyond this colonial system'. It takes great power to operate in a system designed to silence you; it is an embodiment and display of great power to refuse to disappear.

2. Your submission talks about section 27(2) of the ACT Human Rights Act which reflects the aspirations of Article 31 of UNDRIP (right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions). Are there any improvements to this section that you would want to see replicated in a Federal Act?

As noted by the ACT Human Rights Commission, the cultural rights articulated in section 27(2) of the ACT Human Rights Act are not intended to change current arrangements dealing with intellectual property or land rights, but may include, for example, traditional activities such as hunting and fishing, carrying out cultural practices on lands that are protected, as well as use of resources.⁶

In our view, this section could be improved by explicitly recognising the cultural rights of Aboriginal and Torres Strait Islander children and young people to learn and be connected to their culture and to maintain kinship ties to the community, as well as to engage in distinct cultural practices that are vital to establishing and maintaining these connections. We would like to see the inclusion of these explicit rights in a Federal Act.

⁵ Glen Coulthard, *Red Skin, White Masks: Rejecting the Colonial Politics of Recognition*. Minnesota: University of Minnesota Press, 2014.

⁶ "[Aboriginal & Torres Strait Islander cultural rights](#)", ACT Human Rights Commission, nd.

Further, a Federal Human Rights Act would be strengthened by the explicit mention of the cultural rights of Aboriginal and Torres Strait Islander peoples to maintain their relationships with the lands and waters and other resources with which they have a connection *free from commercial or business activities and extractive industry practices*. Given the abysmal track record of resource extraction and other development projects impinging on the rights of First Nations peoples here in Australia and abroad as well as proceeding without their free prior and informed consent, we believe this addition is an important one.

In addition to these material and economic relationships with the land, waters and other resources being *recognised* and *valued*, we believe the cultural right to these relationships must be *protected*, something that is not reflected in the current wording of section 27(2) of the ACT Human Rights Act and that should be included in a Federal Act.

As noted in our submission, the inclusion of cultural rights in a Federal Human Rights Act should carry strong and distinct cultural heritage protection across all Australian jurisdictions. As stated in Article 31 of the UNDRIP, this cultural heritage protection should also explicitly include the right to maintain, control, protect and develop the manifestations of their sciences, technologies and cultures, including human and genetic resources and seeds. This latter point is of particular importance with respect to Aboriginal and Torres Strait Islander peoples' fundamental right to food and water sovereignty, an issue that will only become more pressing as climate change continues to wreak havoc on the communities who have contributed the least to its exacerbation. A Federal Human Rights Act should explicitly acknowledge and protect these rights, as well as recognise the distinctly cultural significance of Aboriginal and Torres Strait Islander people's right to food, and to the land and waters upon and in which food is grown and harvested.

We thank you for your further questions.