



NSWCCL SUBMISSION

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

Inquiry into the Aboriginal and Torres Strait Islander Voice Referendum

21 April 2023

Acknowledgement of Country

In the spirit of reconciliation, the NSW Council for Civil Liberties acknowledges the Traditional Custodians of Country throughout Australia and their connections to land, sea and community. We pay our respect to their Elders past and present and extend that respect to all First Nations peoples across Australia. We recognise that sovereignty was never ceded.

About NSW Council for Civil Liberties

NSWCCL is one of Australia's leading human rights and civil liberties organisations, founded in 1963. We are a non-political, non-religious and non-sectarian organisation that champions the rights of all to express their views and beliefs without suppression. We also listen to individual complaints and, through volunteer efforts, attempt to help members of the public with civil liberties problems. We prepare submissions to government, conduct court cases defending infringements of civil liberties, engage regularly in public debates, produce publications, and conduct many other activities.

CCL is a Non-Government Organisation in Special Consultative Status with the Economic and Social Council of the United Nations, by resolution 2006/221 (21 July 2006).

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The NSW Council for Civil Liberties (**NSWCCL**) welcomes the opportunity to make a submission to the Joint Select Committee on the Aboriginal and Torres Strait Islander Voice Referendum (**Committee**) in regard to the provisions of the Constitution Alteration (Aboriginal and Torres Strait Islander Voice) 2023 Bill.

1 Introduction

- 1.1 The NSWCCL supports the Voice as an enactment of the Uluru Statement of the Heart, and the proposed amendment to the Constitution of Australia.
- 1.2 This submission will address the wording of the proposed section 129 of the Constitution as stated in the Constitution Alteration (Aboriginal and Torres Strait Islander Voice) 2023 Bill, that being:

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.
- 1.3 This submission considers the proposed wording in the context of the United Nations Declaration on the Rights of Indigenous People (**UNDRIP**), and responds to criticisms levelled against, in our view ill-conceived, constructions of the amendment's terms.
- 1.4 The NSWCCL is concerned that although this Inquiry is based on the wording of the proposed amendment, many submissions provided are more concerned with the concept of the Voice, laced with unfounded fears and scaremongering, akin to those upon the introduction of the *Native Title Act 1993*.¹ We call on the Committee to consider such submissions in that light.
- 1.5 In short, we submit that the wording is appropriate and should be put to the Australian people in its current form.

2 UNDRIP and section 129

- 2.1 UNDRIP was adopted by the General Assembly of the United Nations on 13 September 2007 and endorsed by Australia on 3 April 2009.
- 2.2 Article 18 of UNDRIP states: 'Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.'

¹ See, for eg, Mark Harris, 'Australian Update – Jeff Kennett, Mabo, and the Land Titles Validation Bill' (1993) 3(64) *Aboriginal Law Bulletin* 22 for criticism of ex-Victorian Premier Jeff Kennett who once claimed that the Mabo decision would represent a threat to suburban backyards.

- 2.3 The introduction of section 129 of the Constitution will assist in realising this right by creating a body that 'may make representations to the Parliament and the Executive Government on matters relating to Aboriginal and Torres Strait Islander peoples', thus allowing Aboriginal and Torres Strait Islander peoples to 'participate in decision-making in matters which would affect their rights'.
- 2.4 Further, it is appropriate that the provision allows Aboriginal and Torres Strait Islander peoples to make representations to both the Parliament and the Executive Government as both make decisions that affect Aboriginal and Torres Strait Islander people's lives. We submit that Parliament should consider the balance of Article 18 when it is designing the composition, functions, powers and procedures of the Voice pursuant to section 129(iii) in the future.
- 2.5 Enshrining the Voice in the Constitution will bring Australia closer to compliance with UNDRIP (which Australia endorsed over 14 years ago).

3 The meaning of 'may make representations'

- 3.1 Section 129(ii) provides that the Voice 'may make representations'. Critics of this drafting have raised two questions:
- (a) Does the Voice provide a right to be consulted?
 - (b) What is the effect of a representation?

We take each in turn.

Right to be consulted

- 3.2 The Hon. Barnaby Joyce MP, as recently as last week, claimed that this wording would require ASIO to '...come and consult [the Voice] about what [ASIO is] up to'.²
- 3.3 With respect, Mr Joyce and proponents of similar arguments fail to recognise that the proposal does not include a proactive obligation on the Executive Government to consult the Voice.³ Similarly, they fail to appreciate that the Executive cannot be compelled to consult prior to legislating.⁴
- 3.4 Similarly, Douglas Drummond KC queried in 2021 whether judges may interpret the Constitution to require 'the Parliament to have regard to advice by whoever is able to claim to speak for indigenous people'.⁵ Drummond wrote this prior to the proposed wording of the Constitutional amendment being released, however, to our knowledge, he has not since retracted this criticism. The NSWCCCL has not heard Mr Drummond's evidence before this committee, but considers that the criticism is unsound as there is no requirement in the proposed wording for the Parliament to consider or act upon the representation made by the Voice. This is not to say, however, that at some point in the future the Parliament may separately exercise its power to, for example, make a law which requires a Minister to consider the recommendation made by the Voice. But for the avoidance of doubt the Constitutional amendment does not create such an obligation.

² "We're going to have real problems': Barnaby Joyce slams Voice to executive government', *Sky News Australia* (online, 14 April 2023) <<https://www.skynews.com.au/australia-news/voice-to-parliament/were-going-to-have-real-problems-barnaby-joyce-slams-voice-to-executive-government/video/d103b43e2416778c248f4b08544bcfeb>>.

³ Professor Anne Twomey, Submission no 17 to Joint Select Committee on the Aboriginal and Torres Strait Islander Voice Referendum, *Inquiry into the Aboriginal and Torres Strait Islander Voice Referendum* (13 April 2023).

⁴ *Legislation Act 2003* (Cth) ss 17, 19.

⁵ Douglas Drummond, 'The Voice: Maori Activists set an Example' (2021) 65(9) *Quadrant* 42, 44.

- 3.5 The proposed wording merely gives the Voice the power to make a representation. Consistent with the design principles, the Parliament and the Executive Government may request a representation from the Voice, or the Voice may make a representation proactively.⁶ There is no requirement for consultation being proposed.
- 3.6 We note that this proposed process is distinct from other Parliamentary processes, such as that applying to the Parliamentary Joint Committee on Human Rights. Under the *Human Rights (Parliamentary Scrutiny) Act 2011*, all bills or legislative instruments must be accompanied by a statement of compatibility prepared by the Committee on Human Rights.⁷ Any argument that the proposed wording for the Voice extends to this level of interaction with decision making is incorrect.
- 3.7 The Voice proposal is further distinct from other legislative regimes that mandate consultation before an action is taken. For example, the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) specifies that whilst preparing an environment plan, a titleholder must consult a range of persons specified in the Act.⁸ Again, the proposed wording does not require this level of engagement with the Voice.
- 3.8 Proposed section 129 is devoid of any obligation on the Parliament or Executive Government to consult the Voice prior to taking action, or to act on the representations made by the Voice. The criticisms regarding a right to be consulted are unfounded as the Voice can merely make representations.

Effect of a representation

- 3.9 Submissions before this Committee paint this amendment as corrupting the very notion of democracy. One submission argues that the amendment means '*...a small group of peoples, who represent about 3% of the population, can influence laws that affect all Australians.*⁹
- 3.10 As previously stated, this amendment does no more than to empower the Voice to make representations – formal statements expressing a particular point of view.¹⁰ Parliament retains its legislative function, and can legislate or repeal any enactment it desires.¹¹ The amendment does not give the Voice any special authority over laws, but it does grant First Nations Peoples a greater influence over laws that affect them – an opportunity which has historically been denied.¹² Such influence is consistent with Article 18 of UNDRIP.
- 3.11 Reading this concern charitably, it focusses on the perceived risk of judicial review.¹³ In fact, the proposed wording places no obligation on Executive Government or Parliament to respond to, or

⁶ 'Design Principles', *Education* (Web Page) <<https://ulurustatement.org/education/design-principles/>>.

⁷ *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth) s 8(1).

⁸ *Environment Protection and Biodiversity Conservation Act 1999* (Cth) reg 11A(1).

⁹ David Malouf, Submission No 13 to Joint Select Committee on the Aboriginal and Torres Strait Islander Voice Referendum, *Inquiry into the Aboriginal and Torres Strait Islander Voice Referendum* (8 April 2023).

¹⁰ Professor Anne Twomey, Submission No 17 to Joint Select Committee on the Aboriginal and Torres Strait Islander Voice Referendum, *Inquiry into the Aboriginal and Torres Strait Islander Voice Referendum* (13 April 2023).

¹¹ A V Dicey, *An Introduction to the Study of the Law of the Constitution* (10th ed, Macmillan, 1959) 39–40; See also *Berwick Ltd v Gray* (1976) 133 CLR 603, 611 (Jacobs J) quoted in *Newcrest Mining (WA) Ltd v BHP Minerals Ltd & Commonwealth* (1997) 190 CLR 513, 605 (Gummow J).

¹² *Kartinyeri v Commonwealth* (1988) 195 CLR 337 where a majority of the High Court refused to recognise secret women's business as a reason to protect Hindmarsh Island; *Australian Securities and Investments Commission v Kobelt* (2019) 276 CLR 1 which reinforced pejorative descriptors of Indigenous Australians and construed custom and lore as primitive in the context of statutory unconscionability; *TR v Constable Cox* [2020] NSWSC 389 where a motion for trial before a female magistrate was rejected on the basis of logistical difficulty, notwithstanding gender sensitive evidence

¹³ Robert S Nixon, Submission No 24 to Joint Select Committee on the Aboriginal and Torres Strait Islander Voice Referendum, *Inquiry into the Aboriginal and Torres Strait Islander Voice Referendum*.

wait for a representation to be made by the Voice prior to passing an enactment.¹⁴ The Voice itself is intended to be non-justiciable¹⁵ and, as mentioned above, neither the Executive Government or Parliament is bound to receive, nor consider, nor act upon any representations made by the Voice. However, Parliament may make provisions for this in the future under section 129(iii), and the NSWCCCL would implore Parliament to do so.

3.12 Fr Frank Brennan has noted in his submission, citing the Explanatory Memorandum that:

*Executive Government may have to wait while they give the Voice notice that they are thinking of making a decision and while they wait a reasonable time for the Voice to make the representation.*¹⁶

3.13 The paragraph in the Explanatory Memorandum to which he makes the above commentary reads:¹⁷

Subsection 129(ii) would not require the Parliament or the Executive Government to wait for the Voice to make a representation on a matter before taking action.

3.14 The risk of judicial review litigation is further diluted when it is repeated that there is *no obligation* on the Executive Government or Parliament to consider a representation from the Voice. By contrast, in a recent piece of litigation, the Federal Court (and the Full Court on appeal) declared an environment plan invalid because the titleholder had not consulted with the traditional owners, who were relevant persons under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth).¹⁸ Again, reminding this Committee, this judicial decision was based on the obligatory wording included in that Act, being:¹⁹

In the course of preparing an environment plan, or a revision of an environment plan, a titleholder must consult each of the following...

The proposed wording for the Voice does not include a similar obligation.

4 The meaning of 'Executive Government'

4.1 Section 129(ii) allows the Voice to make representations to the Executive Government.

4.2 The focus of the public commentary on this section is the scope of the Executive Government. Professor Greg Craven AO has said that Executive Government could '*...cover any commonwealth body from the Australian Defence Force to the ABC*'.²⁰ On the contrary, there is an established legal meaning to the term 'Executive Government'.

¹⁴ Professor Anne Twomey, Submission No 17 to Joint Select Committee on the Aboriginal and Torres Strait Islander Voice Referendum, *Inquiry into the Aboriginal and Torres Strait Islander Voice Referendum* (13 April 2023).

¹⁵ Shireen Morris, 'Refining and Agreeing on a Constitutional Amendment for a First Nations Voice' (2022) 16 UNSW Law Society Court of Conscience 11, 12-13; see also Shireen Morris, 'A Constitutional Voice to Parliament: Ensuring Parliament Is in Charge, Not the Courts', *The Conversation* (online, 27 October 2022) <<https://theconversation.com/a-constitutional-voice-to-parliament-ensuring-parliament-is-in-charge-not-the-courts-193017>>.

¹⁶ Fr Frank Brennan SJ AO, Submission No 18 to Joint Select Committee on the Aboriginal and Torres Strait Islander Voice Referendum, *Inquiry into the Aboriginal and Torres Strait Islander Voice Referendum* (13 April 2023) 8.

¹⁷ Explanatory Memorandum, *Constitution Alteration (Aboriginal and Torres Strait Islander Voice) 2023* (Cth), 11 [14].

¹⁸ *Tipakalippa v National Offshore Petroleum Safety and Environmental Management Authority (No 2)* (2022) 406 ALR 41; See also *Santos NA Barossa Pty Ltd v Tipakalippa* (2022) 406 ALR 358.

¹⁹ *Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009* (Cth) reg 11A(1).

²⁰ Danyal Hussain, 'Law expert slams Anthony Albanese's Voice to Parliament as a 'ruthless con job' that's far worse than expected', *Daily Mail Australia* (online, 24 March 2023) <<https://www.dailymail.co.uk/news/article-11896515/Voice-Parliament-Constitutional-law-expert-Greg-Craven-slams-Anthony-Albanese.html>>.

Legal framework defining 'Executive Government'

- 4.3 The Explanatory Memorandum notes that 'Executive Government' has the same meaning as elsewhere in the Constitution.²¹ Acknowledging Executive Government is not expressly defined in the Constitution, properly construed, the members of the Executive Government should be derived from Chapter II of the Constitution. The composition of the Executive therefore includes:
- (a) the Governor-General in Council;²²
 - (b) the Federal Executive Council;²³
 - (c) Ministers of State;²⁴ and
 - (d) some civil servants.²⁵
- 4.4 However, that position is further limited as not all statutory bodies or civil servants will fall within the scope of Executive Government.²⁶ The High Court has confirmed that:²⁷
- ...[a] creature brought into existence by one of (the Executive Government's) laws and endowed by (the Executive Government) by it with particular functions and powers...is not in the same position as the executive branch of the government charged by the broad terms of s 61 of the Constitution...*
- 4.5 It will depend on what the statute governing the body says. For example, the *Transport (Division of Functions) Act 1932–1952* (NSW) stated that '*...for the purposes of any Act the Commissioner for Railways shall be deemed a statutory body representing the Crown*'.²⁸ On this basis, the Reserve Bank of Australia, for example, would not be considered part of the Executive Government as it is instead an 'independent body corporate'.²⁹
- 4.6 Independent statutory offices established in the exercise of legislative power are also likely excluded from the ambit of 'Executive Government'.³⁰
- 4.7 The NSWCCCL agrees with the comments made by Professor Twomey (who herself agreed with Craig Lenahan SC) that the 'executive government' is not as far reaching as some would suggest.³¹

²¹ Explanatory Memorandum, *Constitution Alteration (Aboriginal and Torres Strait Islander Voice) 2023* (Cth), 12 [20].

²² *Constitution* ss 61, 63.

²³ *Ibid* s 62

²⁴ *Ibid* s 64

²⁵ *Ibid* s 67

²⁶ Craig Lenahan SC, 'The Voice: imagined legal problems distract from the substance', *AusPubLaw* (online, forthcoming) citing *Re Residential Tenancies Tribunal (NSW); Ex Parte Defence Housing Authority* (1997) 190 CLR 410, 468-472 (Gummow J); *Airservices Australia v Canadian Airlines* (1999) 202 CLR 133, [373] (Gummow J); *Austral Pacific v Airservices Australia* (2000) 203 CLR 136, [14] (Gleeson CJ, Gummow and Hayne JJ); *Macleod v Australian Securities and Investments Commission* (2002) 211 CLR 287, [7] (Gleeson CJ, Gaudron, McHugh, Gummow, Hayne and Callinan JJ); *Hocking v Director-General of the National Archives of Australia* (2020) 271 CLR 1, [75], [76] (Kiefel CJ, Bell, Gageler and Keane JJ)

²⁷ *Macleod v Australian Securities and Investments Commission* (2002) 211 CLR 287, [7] (Gleeson CJ, Gaudron, McHugh, Gummow, Hayne and Callinan JJ)

²⁸ *Transport (Division of Functions) Act 1932–1952* (NSW) s 4(2) cited in *Wynyard Investments Pty Ltd v Commissioner for Railways (NSW)* (1955) 93 CLR 376, 385 (Williams, Webb and Taylor JJ); See also *Australian Competition and Consumer Commission v NSW Ports Operations Hold Co Pty Ltd* [2023] FCAFC 16 [598]-[601] (Beach J, agreeing with Allsop CJ and Yates J).

²⁹ *Reserve Bank Act 1959* (Cth) s 7

³⁰ Craig Lenahan SC, 'The Voice: imagined legal problems distract from the substance', *AusPubLaw* (online, forthcoming) citing *Plaintiff M68/2015 v Minister for Immigration and Border Protection* (2016) 257 CLR 42, [127] (Gageler J).

³¹ Joint Aboriginal and Torres Strait Islander Voice Referendum Committee (Official Recording, Parliament of Australia, 14 April 2023) 14:52:20:07 – 14:53:34:19.

- 4.8 Regardless of the breadth of the definition of Executive Government formally adopted for the purposes of the Voice's power to make representations, there is clearly established legal principles and High Court precedent that aid in interpretation.

Revisiting the function of the Voice

- 4.9 This Committee should not be swayed by the detractors of the Voice who seek to trivialise and ridicule what is an important and necessary step forward for Australia which has been developed by Aboriginal and Torres Strait Island Peoples over a long and deliberative process. Simply, the Voice is an advisory body which has powers to make representations and is the first step that needs to be taken by Australia to response to the invitation from Aboriginal and Torres Strait Island Peoples to the Australian state through the Uluru Dialogues. How Parliament chooses to give life to the Voice pursuant to section 129 is not a matter for this Inquiry and something that will be determined by the democratic will of the people at each foregoing election if the Voice is passed into law.

5 The meaning of 'relating to Aboriginal and Torres Strait Islander Peoples'

- 5.1 Section 129(ii) provides that representations can be made on matters 'relating to Aboriginal and Torres Strait Islander Peoples'. This has provoked an ill-conceived debate around population percentages and the extent to which Indigenous Australians are impacted by a particular decision.
- 5.2 For example, the Rule of Law Institute has claimed that the scope of the power is so broad as to *'...leave...open for the Voice to involve itself in matters of general application that relate only marginally to Indigenous people.'*³² The Rule of Law Institute goes further to claim that the Voice would operate as de-facto 'shadow government'.³³ These positions fall afoul of reason when considering the both the design principles, and basic constitutional principles.
- 5.3 Section 51 of the Constitution, which concerns the legislative powers of the Parliament, uses the phrase 'with respect to' to define the limits of this power.³⁴ This phrase has been interpreted to mean that the law itself must have a sufficiently close connection with the subject matter power contained in section 51.³⁵ Thus, where a law that was dubbed to be made *with respect to* marriage dealt more so with maintenance agreements and transfers of property, that law was declared invalid.³⁶
- 5.4 Reasonable minds may differ on whether a representation made by the Voice on a particular decision is 'relating to Aboriginal and Torres Strait Islander Peoples'. However, this Committee should take comfort in the knowledge that these types of considerations follow a well-trodden path, that the High Court recognises that nuance exists, and that 'the practical, as well as the legal, operation of the law must be examined (in determining whether the connection exists)'.³⁷

³² Chris Merritt on behalf of the Rule of Law Institute, Submission No 36 to Joint Select Committee on the Aboriginal and Torres Strait Islander Voice Referendum, *Inquiry into the Aboriginal and Torres Strait Islander Voice Referendum* (12 April 2023) 5.

³³ Ibid.

³⁴ Constitution s 51.

³⁵ See *R v Lambert; Ex parte Plummer* (1980) 146 CLR 447, 457 (Gibbs J with whom Barwick CJ agreed).

³⁶ See *Gazzo v Comptroller of Stamps (Vic)* (1981) 149 CLR 227.

³⁷ *Re Dingjan; Ex parte Wagner* (1995) 183 CLR 323, 369 (McHugh J) affirmed in *Grain Pool of Western Australia v Commonwealth* (2000) 202 CLR 479.

- 5.5 In this regard, the NSWCCCL could see the Voice making representations regarding:
- whether to issue emergency declarations protecting sites of cultural significance and importance to Indigenous Australians;³⁸
 - the operation of the Northern Australia Infrastructure Facility to the extent that it provides funding to projects which negatively impact Indigenous communities; and
 - the proposed regimes and terms for declaring land as Aboriginal Land within the Jervis Bay Territory.³⁹
- 5.6 Further, it will not be sufficient for a decision to have an 'insubstantial, tenuous or distant connection' to Aboriginal and Torres Strait Islander Peoples.⁴⁰ For this reason, it may be inappropriate for the Voice to comment on:
- the Department of Foreign Affairs' decision to provide foreign aid to Vanuatu, Fiji and other Pacific Island Nations;
 - the Attorney General's decision to appoint a person to a Commonwealth Court; and/or
 - whether ASIO surveys individuals returning from ISIL or ISIS controlled territories and/or cancel the citizenship of individuals who engage in terrorism related activities overseas.
- 5.7 Notwithstanding our comments in section 4 above, even if it was within the Voice's terms of reference to make representations on every decision that was made by the Executive or Parliament on the basis that it may have some impact on an Indigenous person, neither the Parliament nor the Executive are compelled to heed or implement any such representation.

6 Plenary Powers

- 6.1 Proposed section 129(iii) contains a plenary power for the Parliament to determine the composition, functions, powers and procedures of the Voice.
- 6.2 Universally, criticism levelled against the proposed wording of the amendment fails to consider this plenary power. Commentators criticising the proposed wording neglect to acknowledge the democratic parliamentary process insofar as Parliament will have the ultimate say on how the Voice is to interact with the Executive Government and Parliament, making it, in many ways, not different to the establishment of the High Court under the Constitution or any other such subsidiary body.
- 6.3 It is a scathing indictment on Australian politics and civics education when politicians commenting on the proposed wording forget that they hold the legislative pen. This Committee should be slow to consider making changes to the proposed wording of the amendment on the basis that some of your colleagues have forgotten how to perform their constitutional function, and the power that their position grants them to legislate. We accept that this means that the Voice will change from time to time based on the democratic will of the people and the government that is elected. We,

³⁸ See Noel Pearson and Dr Shireen Morris, Submission No 21 to Joint Select Committee on the Aboriginal and Torres Strait Islander Voice Referendum, *Inquiry into the Aboriginal and Torres Strait Islander Voice Referendum* (14 April 2023) 5-6 for a discussion of Juukan Gorge; See also *Chapman v Luminis Pty Ltd (No 4)* (2001) 123 FCR 62 for a comprehensive review of the failure to consult in the Hindmarsh Island Bridge saga.

³⁹ As set out in the *Aboriginal Land Grant (Jervis Bay Territory) Amendment (Strengthening Land And Governance Provisions) Bill 2022* (Cth).

⁴⁰ *Melbourne Corporation v Commonwealth* (1947) 74 CLR 31, 79 (Dixon J) affirmed in *Re Dingjan; Ex parte Wagner* (1995) 183 CLR 323, 369 (McHugh J).

however, trust that a government that does not provide due respect to the Voice will be given short shrift by electors.

6.4 Under section 129(iii), Parliament could foreseeably legislate for:

- the process for making a representation: to whom is the representation made, the form, and the timing of the representation, whether the representation must or may be considered by a decision maker;
- the composition for the Voice: the electoral process, the members who will form the Voice, and quotas if necessary; and
- other miscellaneous provisions: when does the Voice meet, how will Parliament request a representation if desired, and provisions for an annual report to be tabled in Parliament for transparency.

6.5 In each case, it remains Parliament that controls the composition, functions, powers and procedures of the Voice under commonplace legislation. As such, any attempt by politicians to suggest that the Voice will take power away from our elected lawmakers should be seen as a poorly thought-out critique, at best, or narcissism at the more extreme end of the scale.

6.6 Whilst there is much that the NSWCCCL would like to submit on the composition, functions, powers and procedures of the Voice, in particular as they relate to the rights outlined in the UNDRIP, we fully appreciate that this Inquiry is not the venue for such discussion. Some other commentators would do well to remember that also.

7 Conclusion

7.1 The proposed wording is clear and requires no amendment. It has been interpreted as so by the Solicitor General Stephen Donoghue KC,⁴¹ retired High Court justices (including at least one Chief Justice), barristers of high esteem, and leading academics in constitutional law; their conclusions are all backed by case law and established principles.

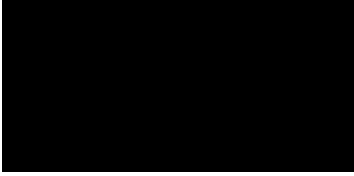
7.2 There is no risk that the Voice will slow Executive or Parliamentary decision making process by requiring long consultations or by making representations that are required to be acted upon – the boundaries around its role are unambiguous.

7.3 The Voice proposal and wording has been developed by Aboriginal and Torres Strait Island peoples over a long and careful deliberative process through the development of the Uluru Statement from the Heart. It is a generous invitation to the wider Australian community to walk a step further with Aboriginal and Torres Strait Island peoples towards self-determination.

⁴¹ The Hon Mark Dreyfus KC MP, Submission No 64 to Joint Select Committee on the Aboriginal and Torres Strait Islander Voice Referendum, *Inquiry into the Aboriginal and Torres Strait Islander Voice Referendum* (21 April 2023) enclosing Opinion of the Solicitor General, SG No. 10 of 2023.

- 7.4 For these reasons, as well as the others set out throughout this submission, the constitutional amendment is sound, aligns with the rights provided in the UNDRIP, and is ready to be put to the Australian people.

Yours sincerely,



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President
NSW Council for Civil Liberties

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