

21 April 2023

Senator Nita Green,  
Chair,  
Joint Select Committee on the Aboriginal and Torres Strait Islander Voice Referendum  
Parliament House,  
Canberra, ACT 2600

Dear Senator Green,

Thank you for the opportunity to provide a submission to the Joint Select Committee on the Aboriginal and Torres Strait Islander Voice Referendum.

Please accept this submission to the Committee's inquiry into the Constitution Alteration (Aboriginal and Torres Strait Islander Voice) 2023.

Aboriginal and Torres Strait Islander peoples have lived on the land and seas around the Australian continent for more than 60,000 years. They are the First Peoples, yet there exists no such recognition in the nation's founding legal document, the Australian Constitution<sup>i</sup> that took effect in 1901.

Aboriginal and Torres Strait Islander peoples are 3.8%<sup>ii</sup> of the Australian population, but as our Constitution has offered them no protection, many enacted laws and policies<sup>iii</sup> over the years have discriminated against them.

Fairer and effective political representation for them and by them has been difficult in Australia's representative democracy which works by majority vote at the ballot box and in Parliament.

In 2009, Australia ratified the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)<sup>iv</sup>, which emphasises the importance of genuine Indigenous participation and consultation in political decisions made about their rights. Indigenous peoples' right to self-determination is a fundamental principle underpinning the UNDRIP – "an 'on-going process of choice' to ensure that Indigenous communities are able to meet their social, cultural and economic needs<sup>v</sup>."

Having no formal recognition that respects that Indigenous peoples are Australia's first people, as was recognised by law in the historic Mabo<sup>vi</sup> judgement has meant "a loss of right to choose to live according to a set of common values and beliefs, and to have that right respected by others... and to fully overcome the legacy of colonisation and dispossession<sup>vii</sup>. It is "at the heart of the current disadvantage experienced by Indigenous Australians<sup>viii</sup>."

One hundred and twenty-two years since our Constitution took effect, we have a historic opportunity to change this – to formally recognise the unique place of Aboriginal and Torres Strait Islander peoples in Australia's history as First Nations peoples, as a sovereign power that existed in Australia before its colonisation; to recognise their unique place within our

national life as their rich languages, cultures and traditions represent the world's oldest continuous cultural heritage.

We have a historic opportunity to amend the Constitution to ensure Indigenous peoples are treated more fairly than in the past.

I understand that constitutional recognition through an Aboriginal and Torres Strait Islander Voice is the form of recognition chosen by the indigenous community as a result of over twelve years of work, seven processes and ten reports. I respect and fully support this self-determined position.

The Voice needs to be able to speak to *both* the executive government of the Commonwealth and the federal parliament. This is critical to being heard, and being heard where powers to affect decisions and processes lie. Being heard by the highest level of government, the executive, underscores the standpoint of respect for listening to and wanting to take into account the considerations of First Nations peoples. It underscores the respect that should exist for a sovereign power.

How can the Voice deliver meaningful change if it is not given the opportunity to be heard where government power lies, to effect change? This is such a modest request given that parliament or the executive government are not obliged to respond to the representations, let alone give effect to them.

Despite this, the opportunity for Aboriginal and Torres Strait Islander peoples' Voice to be heard is critical, as it is clear that the gap of disadvantage between non-indigenous people and Aboriginal peoples has widened over the years in critical indicators in terms of life, mortality, early education and employment.

Enabling the Voice to make representations on what is at the heart of this profound and entrenched intergenerational disadvantage, and how it needs to be addressed, is one matter that is critical.

As Senator Patrick Dodson has said, "The track behind us is littered with the relics of policies, programs and projects that failed... mainly because they did not include Indigenous people in making the decisions<sup>ix</sup>".

Not allowing the Voice to make representations to the executive government where there is power to catalyse their representation into meaningful change for them, characterises an irresponsible and inefficient course of action, whereby their critical input and considerations for how the system can be improved is not given the consideration it deserves. Not giving the Voice the opportunity to speak to the executive government, disrespects the invested energy and effort made by Aboriginal peoples to present their truth, to participate fully in Australia's democracy.

As to whether or not the executive government would be obliged to advise or consult the Voice in advance of making laws, as constitutional expert Professor Twomey has said, "No such obligation is contained or can find its source in the text of the amendment<sup>x</sup>."

The Closing the Gap Retrospective Review Report<sup>xi</sup> of the last ten years of Closing the Gap, commissioned by the Commonwealth of Australia and published in 2019, stated that “The story of Closing the Gap is an ongoing story of dispossession and its effects, and a movement for equality and recognition for Indigenous people<sup>xii</sup>.” From the limited literature available it concluded “there has been limited progress against the seven Closing the Gap targets with only one of the targets on track to be met<sup>xiii</sup>.”

The 2022 Closing the Gap Annual Report<sup>xiv</sup> indicated that only four of the eighteen socio-economic targets are on track. Minister for Indigenous Australians, the Hon. Linda Burney stated that “Fourteen years since the Closing the Gap framework was established...Successive Governments have pursued policies and programs to assist in closing the gap between First Nations and non-Indigenous Australians. Over that time we have seen progress in areas like life outcomes for children and rates of school attendance but also persistent and disappointing results in a number of other areas such as out-of-home care rates and adult imprisonment...we have been reminded of the challenges of locking in the improvements we all wish to see in the 17 socio-economic outcomes. Only 4 of the 18 socio-economic targets are on track. We can and we must do better on the four Priority Reforms and all 18 socio-economic targets. I understand that many First Nations communities are frustrated by a lack of progress<sup>xv</sup>.”

With the National Agreement on Closing the Gap<sup>xvi</sup> taking effect in 2020, in 2022 Prime Minister Albanese said, “My Government is firmly committed to opening our hearts and ears to First Nations voices – as partners in discussion and leaders with the wisdom to determine the nature and scope of the legislation and policies that affect them. Working with the Coalition of Peaks – methodically, practically, realistically – we will achieve sustained progress on the National Agreement on Closing the Gap<sup>xvii</sup>.”

While this level of shared decision-making, Aboriginal and Torres Strait Islander-led, is commendable, there is no guarantee that every other Prime Minister and his/her government will follow through or that the government and parliament will work as partners with Aboriginal and Torres Strait Islander peoples to progress actions under the National Agreement.

Whilst the National Agreement on Closing the Gap model exemplifies how government can partner with Aboriginal and Torres Strait Islander people, there is no avenue for this to happen at a national level for *all* legislation and policies that affect indigenous peoples. To enable this and ensure a stronger relationship between government and First Nations, as requested by them, and in the form requested by them, the Voice must be enshrined constitutionally. Without constitutional enshrinement, as legal experts have stated in a submission to the co-design process<sup>xviii</sup>, the Voice will not have legitimacy nor be able to achieve its objectives and perform its functions. Future governments can also abolish it if it is not protected.

Recognition of Aboriginal and Torres Strait Islander people in the Constitution will right a historic wrong. A constitutionally enshrined Voice as proposed will address the inequity

between Indigenous and non-Indigenous Australians. Recognition and Voice will establish a sound basis for progress towards healing, dignity and well-being for Aboriginal and Torres Strait Islander Australians, and for the nation as a whole.

Australian society espouses the values of the Australian Constitution. If we leave the Constitution unchanged in regards to recognition of Aboriginal and Torres Strait Islander people and enshrining a Voice for them, we perpetuate a power imbalance against the original inhabitants of Australia, and continue the colonial legacy of exclusion and control, negating their right for self-determination. This does not uphold Australian values<sup>xix</sup> of freedom, respect, and fairness as stated by the government's Department of Home Affairs. It does not espouse the principle of egalitarianism that we hold dear as a nation - that all people are equal and deserve equal rights and opportunities.

In conclusion, respecting Aboriginal peoples as Australia's First Nations peoples, and respecting their unique place in our nationhood, I firmly support their self-determined expression as encapsulated in the Uluru Statement from the Heart, and will be Voting Yes for their recognition and the Voice in the upcoming referendum.

I fully support the proposed amendment to the Constitution, which I recognise as upholding the mandate of the Uluru Statement from the Heart.

The final amendment and referendum question are fit for purpose, are legally sound and should not be changed. Clause 2 of s 129 s titled 'Aboriginal and Torres Strait Islander Voice' is appropriate. I fully endorse Kenneth Hayne, Bret Walker and Robert French's views on the suitability of Clause 2.

Thank you.

Yours sincerely

Dr Diann Rodgers-Healey<sup>1</sup>

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<sup>1</sup> I am an academic with expertise in leadership and gender and my work over the last 2 decades, as Founder and Director of the Australian Centre for Leadership for Women has involved addressing systemic barriers for women in workplaces, and enabling their recognition and leadership development, in particular marginalised women. My work has included working with indigenous leaders. I lecture in leadership related subjects and am Adjunct Professor at the Cairns Institute at James Cook University.

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- <sup>i</sup> Parliament of Australia. The Australian Constitution. <https://www.aph.gov.au/constitution>
- <sup>ii</sup> Australian Bureau of Statistics. Aboriginal and Torres Strait Islander population approaching 1 million Media Release. 21/09/2022. [https://www.abs.gov.au/media-centre/media-releases/aboriginal-and-torres-strait-islander-population-approaching-1-million#:~:text=ABS,-Copy&text=Australian%20Bureau%20of%20Statistics%20\(21,Website%2C%20accessed%2010%20April%202023.](https://www.abs.gov.au/media-centre/media-releases/aboriginal-and-torres-strait-islander-population-approaching-1-million#:~:text=ABS,-Copy&text=Australian%20Bureau%20of%20Statistics%20(21,Website%2C%20accessed%2010%20April%202023.)
- <sup>iii</sup> NSW Government Education Department. RacismNoWay - Anti-racism Education for Australian Schools. <https://racismnoway.com.au/about-racism/timeline/1900s/>
- <sup>iv</sup> United Nations. 2008. Office of the High Commissioner for Human Rights. [https://www.ohchr.org/sites/default/files/Documents/Publications/Declaration\\_indigenous\\_en.pdf](https://www.ohchr.org/sites/default/files/Documents/Publications/Declaration_indigenous_en.pdf)
- <sup>v</sup> Australian Human Rights Commission. Right to Self-determination. <https://humanrights.gov.au/our-work/rights-and-freedoms/right-self-determination>
- <sup>vi</sup> High Court of Australia. 1992. Mabo v Queensland (No 2) ("Mabo case") [1992] HCA 23; (1992) 175 CLR 1 (3 June 1992). <http://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCA/1992/23.html>
- <sup>vii</sup> Australian Human Rights Commission. Constitutional reform: Fact Sheet - Recognising Aboriginal & Torres Strait Islander people in the Constitution. <https://humanrights.gov.au/our-work/constitutional-reform-fact-sheet-recognising-aboriginal-torres-strait-islander-people#:~:text=Aboriginal%20and%20Torres%20Strait%20Islander%20peoples%20have%20consistently%20fought%20to,Islander%20peoples%20in%20these%20struggles.>
- <sup>viii</sup> Ibid.
- <sup>ix</sup> Patrick Dodson, 'Reconciliation at the Crossroads', The National Press Club 18 April 1996, Canberra, Australian Government Publishing Service, 1996. [http://www.multiculturalaustralia.edu.au/doc/dodson\\_1.pdf](http://www.multiculturalaustralia.edu.au/doc/dodson_1.pdf) cited in Commonwealth Closing the Gap Annual Report 2022. p.4. <https://www.niaa.gov.au/sites/default/files/publications/niaa-closing-the-gap-annual-report-2022.pdf>
- <sup>x</sup> Worthington, Brett. 2023. Legal experts weigh in on the Voice's two most controversial words: 'executive government' ABC news. 16 April 2023. <https://www.abc.net.au/news/2023-04-16/voice-constitution-two-words-executive-government-albanese/102217212>
- <sup>xi</sup> Commonwealth Closing the Gap Retrospective Review. <https://www.niaa.gov.au/sites/default/files/publications/closing-gap-retrospective-review-accessible.pdf>
- <sup>xii</sup> Commonwealth Closing the Gap Retrospective Review. <https://www.niaa.gov.au/sites/default/files/publications/closing-gap-retrospective-review-accessible.pdf> P.8.
- <sup>xiii</sup> Commonwealth Closing the Gap Retrospective Review. <https://www.niaa.gov.au/sites/default/files/publications/closing-gap-retrospective-review-accessible.pdf> P.14.
- <sup>xiv</sup> Commonwealth Closing the Gap Annual Report 2022. <https://www.niaa.gov.au/sites/default/files/publications/niaa-closing-the-gap-annual-report-2022.pdf>.
- <sup>xv</sup> Commonwealth Closing the Gap Annual Report 2022. <https://www.niaa.gov.au/sites/default/files/publications/niaa-closing-the-gap-annual-report-2022.pdf>.p.6.
- <sup>xvi</sup> National Agreement on Closing the Gap 2020. [https://www.closingthegap.gov.au/sites/default/files/2022-09/ctg-national-agreement\\_apr-21-comm-infra-targets-updated-24-august-2022\\_0.pdf](https://www.closingthegap.gov.au/sites/default/files/2022-09/ctg-national-agreement_apr-21-comm-infra-targets-updated-24-august-2022_0.pdf)
- <sup>xvii</sup> Commonwealth Closing the Gap Annual Report 2022. <https://www.niaa.gov.au/sites/default/files/publications/niaa-closing-the-gap-annual-report-2022.pdf>. P.4.
- <sup>xviii</sup> The Australian. 20 January 2021. <https://www.theaustralian.com.au/nation/politics/indigenous-voice-needs-constitutional-shield-says-legal-experts/news-story/cb51a5bc7e287eae368a2211570f001e>
- <sup>xix</sup> Australian Government. Department of Home Affairs. <https://immi.homeaffairs.gov.au/support-subsite/files/life-in-australia/life-in-australia.pdf>. P.6.