The 1967 Referendum: 5 Myths

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Championed as another step forward for Aboriginal[1] rights, the pending Referendum on the Voice echoes much of the 1967 Referendum, which is considered by many to be a landmark event for Aboriginal rights. However, the 1967 Referendum is surrounded by many myths. This article will discuss the five main myths surrounding the 1967 Referendum and, in doing so, explain why the current proposal to amend the Constitution to include the Voice is constitutionally unnecessary.

For convenience, it is worth setting out the section that is proposed to be included by the *Constitution Alteration (Aboriginal and Torres Strait Islander Voice) 2023,* which is to be the sole section in a new Chapter IX in the Constitution, headed "Recognition of Aboriginal and Torres Strait Islander Peoples" in the Constitution. Proposed section 129 states:

> ***"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] For the purposes of this paper, the term 'Aboriginal' refers both to Aboriginals and Torres Strait Islanders.

Myth 1 – One Referendum, Not Two

It is often forgotten that there were actually two referenda held in 1967: the first – the 'Nexus Bill'[2] – failed badly with a national 'yes' vote of 40.25%;[3] the second – the 'Aboriginal Bill'[4] – succeeded hugely with a national 'yes' vote of 90.77%,[5] the highest ever recorded in all 44 federal referenda.

The Nexus Bill was designed – as the name suggests – to break the nexus between the House of Representatives and the Senate so that the House of Representatives could grow (from 75 in 1901, 121 in 1949, to 148 in 1984[6] - with variations in between[7]) without the Senate

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[2] *Constitution Alteration (Parliament) 1967* (Cth) (See Appendix F).

[3] Commonwealth, *Commonwealth of Australia Gazette*, No. 55, 26 June 1967.

[4] *Constitution Alteration (Aboriginals) 1967* (Cth) (See Appendix E).

[5] Commonwealth, *Commonwealth of Australia Gazette*, No. 55, 26 June 1967.

[6] In 1901, 75 members represented a 'constitutional population' of 3,788,123 people, giving an average of 50,509 people per member. In 1946, the 'constitutional population' had grown to 7,465,157, with 75 members representing an average of 99,536 people per member. In 1949, the 'constitutional population' of Australia was 7,908,066. The House of Representatives was increased to 123 members (including non-voting members from the Northern Territory and the Australian Capital Territory), with each representing an average of 64,293 people per member. At the time of the 1983 expansion, the population of Australia was 15,579,391 (including the Aboriginal population – See Myth 2). The number of seats was increased from 125 to 148, with each member representing 105,266 people after the increase. By 2001, the population (including the Aboriginal population – See Myth 2) had increased to 19,413,240, and the number of members had increased to 150 (by operation of the quota), with each member representing 129,422 people: (See Australian Bureau of Statistics, *Australian Historical Population Statistics* (Catalogue No 3105.0.65.001, 5 August 2008).

[7] In 1922, the Northern Territory was given one seat in the House of Representatives, and the Australian Capital Territory received a seat in 1948. This did not alter the number of members. In 1974, the *Australian Capital Territory Representation (House of Representatives) Act 1973* (Cth) increased the representation of the Australian Capital Territory and the Northern Territory to two members each and thus increasing the number of members to 125. In 1964, the *Representation Act 1905* (Cth) s 10 was amended by the *Representation Act 1964* so that each State was entitled to an extra seat if the population in that State exceeded the quota (which was obtained by dividing the population by twice the number of Senators), even if by only one person. This resulted in an increase (over time) to 127 members. The High Court in *Attorney-General (NSW); Ex rel McKellar v Commonwealth* (1977) 139 CLR 527 found, *inter alia*, that the amendment to s 10 did not adequately meet the nexus requirement of s 24 of the Constitution and invalidated the 1964 amendment. The position then reverted to requiring more than half a quota to obtain an additional seat, and thus the number of members fell to 124 (and later increased in 1980 to 125 because of the random operation of the quota) (See Australian Electoral Commission, *Australian Federal Redistributions 1901-2003,*

growing (36 in 1901, 60 in 1949, and 76 in 1984).[8] The Aboriginal Bill was designed to do two things: delete s 127 (which had excluded 'aboriginal natives'[9] from constitutional calculations)[10] and also delete the phrase 'other than the aboriginal race' from s 51(xxvi)[11] so as to give the Commonwealth power over Aboriginal affairs.

One of the requirements of any referendum, at least since 1912, is the provision of a 'no' case prepared by the Parliamentarians who voted against the Bill.[12] The 'no' case for the Nexus Bill was prepared by a small group of DLP, independent, and renegade Liberal senators, and argued for 'no more politicians.'[13] But not one Parliamentarian voted against the Aboriginal Bill, which meant that no real 'no' case was ever put forward.[14] Thus, not only was there no 'no' case for the Aboriginal Bill, but all the major parties[15] supported the Referendum and the campaign for the 'yes' vote was unfettered.[16] It was able to, and did, pitch the case for constitutional change on broad political and emotional grounds rather than constitutional

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Report No 4 (2004); Department of Parliamentary Services, *The process of federal redistributions: a quick guide,* Research Paper Series 2022-23 (2022)).

[8] *Report from the Joint Committee on Constitutional Review, 1959* (Report, 26 November 1959), 8.

[9] Tom Clarke and Brian Galligan, ''Aboriginal native' and the institutional construction of the Australian citizen 1901-48' (1995) 26(105) *Australian historical studies* 523, 524-525.

[10] *Constitution* s 127: 'In reckoning the numbers of the people of the Commonwealth, or of a State or other part of the Commonwealth, aboriginal natives shall not be counted.'

[11] *Constitution* s 51(xxvi): 'The Parliament shall, subject to this Constitution, have power to make laws for the peace, order, and good government of the Commonwealth with respect to: the people of any race, ~~other than the aboriginal race in any State~~, for whom it is deemed necessary to make special laws.'

[12] *Referendum (Constitution Alteration) Act 1906* (Cth) s 6A(2)(a); *Referendum (Machinery Provisions) Act 1984* (Cth) s 11.

[13] Zachary Gorman and Greg Melleuish, 'The nexus clause: A peculiarly Australian obstacle' (2018) 5(1) *Cogent arts & humanities* 1517591: 1-19, 13.

[14] Expert Panel on Constitutional Recognition of Indigenous Australians, *Recognising Aboriginal and Torres Strait Islander Peoples in the Constitution: Report of the Expert Panel,* Report (2012), 31 ('Expert Panel Report 2012').

[15] By contrast, individual members of the Liberal Party, which itself does not support the Voice, are now being pressured not to oppose The Voice Bill to help generate a better result.

[16] Bain Attwood and Andrew Markus, *The 1967 Referendum: Race, Power and the Australian Constitution* (Aboriginal Studies Press, 2nd ed, 2007) 44: The campaign for the 'yes' vote "…was primarily assumed by the
Federal Council for the Advancement of Aborigines and Torres Strait Islanders, though it had considerable support from churches, the Labor Party and trade unions."

ones[17] – "public discussion of the proposal and arguments in favour of the change did not reflect the terms of parliamentary debates about the power of the Commonwealth Parliament."[18]

The Nexus Bill is forgotten now, but it was the reason for the original form of the Aboriginal Bill that the Menzies government proposed in 1965.[19] The Menzies Cabinet thought that deleting s 127 (and thus including 'aboriginal natives' in constitutional calculations) would help with the progress of the Nexus Bill – a spoonful of sugar helps the medicine go down.

But it didn't. Just a month after Menzies' resignation on Australia Day 1966, the Holt Cabinet deferred putting the Nexus Bill and the original form of the Aboriginal Bill to the people.[20] The new government feared (probably rightly) that the Nexus Bill (even with the extra spoonful of s 127 sugar) would fail and that a Referendum loss months out from a general election was probably not the best way to start the re-election campaign.[21]

With the Referendum questions deferred, the Holt government won a stunning victory over the Calwell Opposition – the Liberal Party, with 61 seats, could have almost governed by itself – and together with the Country Party, it dominated the House of Representatives with 82 seats.[22] In his seven election victories, the Menzies coalition had never won over 80 seats – usually in the high 60's or low 70's. In some instances, the Coalition only governed with a majority of 1 or 2 seats.

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[17] Ibid 49: Slogans at the time included 'Towards an Australia Free and Equal: Vote Yes'; 'Let's Be Counted - Vote Yes'; 'give Aborigines a fair go'; 'When you write Yes...you are holding out the hand of friendship and wiping out nearly 200 years of injustice and inhumanity'; 'If to Aborigines you would be fair, put a YES in the bottom square'; 'As a nation we have a chance to show our willingness to really help the Aboriginal people.'

[18] Robert French, 'The Race Power: A Constitutional Chimera,' (2003) *Australian Constitutional Landmarks* 180, 189.

[19] *Constitution Alteration (Parliament) 1965* (Cth) (See Appendix B); *Constitution Alteration (Repeal of s 127) 1965* (Cth) (See Appendix C); Attwood and Markus (n 16) 35.

[20] Gorman and Melleuish (n 13) 14; French (n 18) 188: French notes that the *Constitution Alteration (Aborigines) 1966* (Cth) (See Appendix D) proposed by W. C. Wentworth also passed both Houses of Parliament but was not put to the people.

[21] Ibid; Attwood and Markus (n 16) 41-42.

[22] Stephan Barber, 'Federal election results 1901-2016,' *Parliament of Australia* (Web Page, 31 March 2017) <https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1617/FederalElectionResults#_Toc390336853>

Holt was younger than Calwell[23] – he was born in the 20th Century, Calwell in the 19th. Both were former immigration ministers; Calwell a staunch defender of the 'White Australia Policy,'[24] Holt a reformer.[25] The 1966 election thus pitted a youthful Prime Minister who had effectively dismantled the White Australia Policy[26] with an elderly Opposition Leader who campaigned on its maintenance. Holt won a landslide victory,[27] Calwell was replaced by Whitlam, and the Labor Party moved to support the Liberal Party's efforts to bring an end to White Australia.

Emboldened by his victory, Holt could return to the questions of the deferred referenda, and he did so fairly early in the new year – the Nexus Bill was reintroduced in the same form, but Menzies' Bill proposed in 1965 was changed. The Aboriginal Bill now had two aspects – the proposed deletion of s 127 was maintained, but a new proposal was added – Commonwealth control of Aboriginal affairs by deletion of the phrase 'other than the aboriginal race' from s 51(xxvi).[28] Snedden, as Menzies' Attorney-General, had tried to include the amendment to s 51(xxvi) in the original 1965 Bill[29] but had been rebuffed twice.[30] However, with Holt as Prime Minister, the new Attorney-General Nigel Bowen found the going much easier,[31] and the Holt Cabinet approved both the deletion of s 127 and amendment of s 51(xxvi) in the new Aboriginal Bill.[32]

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[23] Harold Holt (5 August 1908 – 17 December 1967) was the Prime Minister of Australia between 26 January 1966 and 17 December 1967. Before this, he had held multiple Ministerial portfolios between 1940 and 1941 and then between 1949 and 1966 under Menzies. Arthur Calwell (28 August 1896 – 8 July 1973) was the leader of the ALP from 1960 to 1967.

[24] *Australian Labor Party – Immigration Policy 1966*, ALP Year Book (NSW Branch) for 1967.

[25] Attwood and Markus (n 16) 40.

[26] Ibid.

[27] Barber (n 22): Holt's Liberal/Country Party Coalition Government won a majority of 40 seats in a 124 member House of Representatives.

[28] *Constitution Alteration (Aboriginals) Act 1967* (Cth) s 2; This proposal had also been previously debated in Parliament in 1964 when Calwell tabled the *Constitution Alteration (Aborigines) Bill 1964* (Cth) (See Appendix A). The Bill lapsed when Parliament was dissolved (See French (n 18) 188).

[29] *Constitution Alteration (Repeal of s 127) 1965* (Cth) (See Appendix C).

[30] Attwood and Markus (n 16) 35-36.

[31] Ibid 41-42.

[32] *Constitution Alteration (Aboriginals) Act 1967* (Cth).

Alas, even with this second spoonful of sugar, the Nexus Bill still failed badly.[33] But on the same day, 27 May 1967,[34] the new Aboriginal Bill gained the approval of a vast majority of the people and 6 out of 6 states.[35] It became law on 10 August 1967 as the *Constitution Alteration (Aboriginals) Act 1967* (Cth) and from then on, the Constitutional calculations did not exclude 'aboriginal natives' and the Commonwealth assumed control over Aboriginal affairs.

The Nexus Bill has been forgotten, and despite attempts in 1975 and 1988 to re-enliven it,[36] there does not seem to be any support for doing so. As a consequence, we now have 76 Senators, and by 2017, each House of Representatives member represented 164,000 people[37] rather than the approximately 50,000 at the time of Federation,[38] and the 105,266 after the 1983 expansion.[39] On 31 December 2022, there were 26,268,359 people. In order to get the House of Representatives back to around 50,000 people per member, there would be 525 members, and the Senate would have to increase to around 260. Had the Nexus Bill passed, the House of Representatives could increase with the Senate remaining at its 1949 number of around 60 Senators – a relative size differential that does not seem to have affected the status of the US Senate.[40]

Given the Aboriginal Bill did two things, it is better to deal with them separately: the myths surrounding s 127 and the myths surrounding s 51(xxvi).

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[33] Commonwealth, *Commonwealth of Australia Gazette*, No. 55, 26 June 1967.

[34] The two original bills proposed by the Menzies government were due to be put to the people on 28 May 1966, meaning the Referendum had been deferred by about one year.

[35] Commonwealth, *Commonwealth of Australia Gazette*, No. 55, 26 June 1967.

[36] Gorman and Melleuish (n 13) 2-3.

[37] Ibid 2; Australian Bureau of Statistics, *Australian Demographic Statistics* (Catalogue No 3101.0, 14 December 2017): The population in 2017 was estimated at 24,598,900.

[38] *Report from the Joint Committee on Constitutional Review, 1959* (Report, 26 November 1959), 8.

[39] See above (n 6).

[40] *Report from the Joint Committee on Constitutional Review, 1959* (Report, 26 November 1959): It is worth comparing the level of detail that the 1959 Report contains compared to the Joint Committee on the Aboriginal and Torres Strait Islander Voice Referendum, '*Indigenous Voice Co-Design Process: Final Report to the Australian Government*' (Report, 31 July 2021). The former is over 200 pages in length, was produced over a number of years (1956-1959) and is a work of real historical and legal scholarship. The latter was produced after 6 weeks and while it is over 250 pages long, it is a thoroughly incomplete assessment of the constitutional ramifications of the proposal.

Myth 2 – Aboriginals were not counted in the Census

"*In 1967 we were counted, in 2017 we seek to be heard."*[41]

"After 1836, no colonial legislation…had excluded Aboriginal people from being counted in the census."[42]

"Don't just count us, let us count."[43]

"In 1967 a national referendum, passed by an overwhelming majority of Australians, determined that the original Australians should be counted in the census."[44]

"For 10 years I lived my life in invisibility so far as the NSW government was concerned."[45]

"I was born at a time when the Australian government knew how many sheep there were but not how many Aboriginal people. I was 10 years old before the '67 referendum fixed that."[46]

From the time of the 1967 Referendum right up till now, there has been confusion over what the Aboriginal Bill did and did not do, especially as it concerned the constitutional 'counting' or 'reckoning' required by s 127. Before its deletion on 10 August 1967, s 127 was headed 'Aborigines not to be counted in reckoning population' and it stated:

"In reckoning the numbers of the people of the Commonwealth, or of a State or other part of the Commonwealth, aboriginal natives shall not be counted."

The first thing to note is this is a rule of constitutional counting; that is, s 127 did not prevent anyone at any time from counting 'aboriginal natives' – merely that for the purposes of the constitutional calculations of the numbers of people, 'aboriginal natives' should not be included.

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[41] Uluru Statement from the Heart.

[42] Greg Taylor, 'A history of section 127 of the Commonwealth Constitution' (2016) 42(1) *Monash University Law Review* 206, 216.

[43] Attwood and Markus (n 16) 38.

[44] Pat Stretton and Christine Finnimore, 'Black fellow citizens: Aborigines and the commonwealth franchise,' (1993) 25(101) *Australian historical studies* 521, 534.

[45] Linda Burney, 2017 (See Editorial, 'Learn lessons from 1967 referendum: Burney,' *9 News* (17 May 2017).

[46] Linda Burney, 'Maiden Speech' (Speech, House of Representatives, 31 August 2016).

It is obvious that they were counted for reasons many and varied,[47] and repeatedly so over two centuries, [48] though sometimes systematically and sometimes not. Such information was used for good and for ill, all of which now form part of the historical record. And despite there being 67 definitions of 'Aboriginals' across 700 different forms of legislation,[49] there is no evidence (however defined) that the Aboriginals were ever counted under the so-called 'Flora and Fauna Act NSW.'

It has been regularly repeated in public discourse by the media, academics, and even Aboriginal people themselves, such as Indigenous actor Shareena Clanton[50] and most prominently by Linda Burney, the current Minister for Indigenous Affairs, that Aboriginals were counted under a 'Flora and Fauna Act NSW.'[51] Yet, this claim is entirely erroneous.[52] There was never any 'Flora and Fauna Act NSW,' and the 1967 Referendum certainly had no effect on whether Aboriginals were considered 'human beings.'[53] The ABC suggests that this myth may have originated in the 1970's, partially as a result of the 'yes' campaign of the

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[47] Leonard Smith, *The Aboriginal Population of Australia* (Australian National University, 1st ed, 1980) 57.

[48] Taylor (n 42) 219: "As early as 1861 the Central Board Appointed to Watch over the Interests of the Aborigines (the first of its type in Australia) reported that it had 'selected a person who appears to be fully qualified by experience and character to ... obtain an almost perfect census of the Aboriginal population"; Smith (n 47) 31, 35, 39: Between 1924 and 1944, the Australian Bureau of Statistics conducted a series of annual censuses that only enumerated the Aboriginal population. The ABS also cooperated with the Protectors of Aborigines in the States between 1921 and 1966 to try and get more accurate data. Queensland conducted its own yearly censuses of this kind between 1928 and 1944, as, according to Smith, the Aboriginal population had the potential to affect their seat allocation.

[49] Kate Ross, 'Population Issues, Indigenous Australians' (Occasional Paper, Australian Bureau of Statistics, 1996) 2; Clarke and Galligan (n 9) 524: This includes the *Commonwealth Franchise Act 1902-1918* (Cth) and *Commonwealth Electoral Act 1918-1962* (Cth).

[50] Sushi Das, 'Fact check: Were Indigenous Australians classified under a flora and fauna act until the 1967 referendum?,' *ABC News* (Article, 12 June 2018) <https://www.abc.net.au/news/2018-03-20/fact-check-flora-and-fauna-1967-referendum/9550650>

[51] See Johnathan Pearlman and John Gibson, 'When I was fauna: citizen's rallying call,' *The Sydney Morning Herald* (23 May 2007): Linda Burney stated that Aboriginals were counted under the 'Flora and Fauna Act of NSW' in a speech on the 40th Anniversary of the 1967 Referendum.

[52] Helen Irving, 'Indigenous Recognition and Constitutional Myths,' *Constitutional Critique, University of Sydney* (Blog Post, 9 June 2015) <https://conreform.sydney.edu.au/2015/06/indigenous-recognition-and-constitutional-myths/>; Geoffrey Blainey, 'Before we vote on Indigenous voice to parliament, let's get all our facts in order,' *The Australian* (1 July 2023); Gerard Henderson, 'Appropriate time to debunk myths of the Vietnam War,' *The Weekend Australian* (20 August 2023).

[53] Das (n 50).

1967 Referendum and the emotional and political slogans used,[54] and the many misinterpretations of s 127 that resulted.

However, leaving this furphy aside, the exclusion in s 127 was never the subject of constitutional interpretation – in its 66-year life, the High Court never told us what 'aboriginal natives' meant. In other words, how far did the exclusion go?

Despite the High Court never doing so, Alfred Deakin as Attorney-General did, and his interpretation – the 'preponderance of blood interpretation' – governed the approach for the whole of its life.[55] Sir Robert Garran agreed with this view in 1905 in interpreting the *Franchise Act 1902*.[56] In short terms, this meant that only 'full-blooded' or, more accurately, only persons with over 50% Aboriginal 'blood' were excluded.[57] People with one Aboriginal and one non-Aboriginal parent were not excluded by s 127. Leaving aside the problems of the application of the 'preponderance of blood test' – particularly in the self-assessment environment of a census[58] – such an approach is a long way from our modern approach to Aboriginality – self-identification, acceptance, and some blood.[59] To put this in context, the

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[54] See (n 16).

[55] Australian Law Report Commission, *Recognition of Aboriginal Customary Laws* (Report No 31, June 1986), 90; Solicitor-General Sir Kenneth Bailey in 1961 applied the definition to s 51(xxvi) in his advice to the House of Representatives Select Committee on Voting Rights of Aboriginals; Expert Panel Report 2012 (n 14) 21.

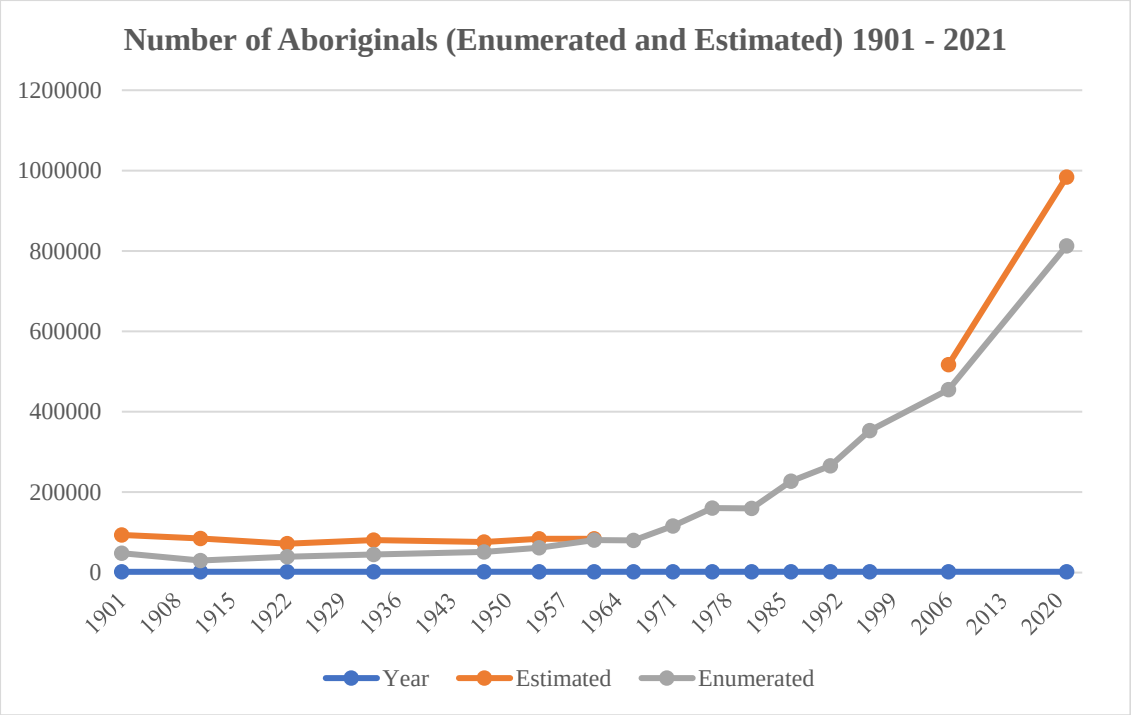
[56] Clarke and Galligan (n 9) 525.

[57] Smith (n 47) 27: As a result of Deakin's definition, Queensland gained an extra seat.

[58] Ibid 41-42: Self-assessment of Aboriginality has caused data skewing previously. For example, the 1966 Census got rid of the 'half-caste' status and requested particulars of heritage, such as ¾ Aboriginal. 15% of persons who identified as 'half-caste' in the 1961 Census marked themselves as 'Aboriginal' in the 1966 Census and were coded as 'full-bloods,' which a special investigation into the 1966 Census concluded was because when individuals were unsure of their 'blood level,' they would mark themselves as Aboriginal; Australian Bureau of Statistics, *Estimated of Aboriginal and Torres Strait Islander Australians* (Catalogue No 3238.0.55.001, 21 September 2022).

[59] Ross (n 49) 3: In 1968, the then Minister-in-Charge of Aboriginal Affairs W.C. Wentworth changed the definition of Aboriginal to include anyone with 'some Aboriginal blood who considers himself an Aboriginal,' introducing the concept of self-identification; building on this, the 1971 census used the test of 'Aboriginal Origin,' which required a person of mixed race to tick the box 'which he considers himself to belong,' which demonstrates a shift to a self-identification concept of race (See Smith (n 47) 44) (See Australian Bureau of Statistics, *Census of Population and Housing, 1971* (Catalogue No 2105.0, 30 June 1966) xii); This has morphed into the tripartite test set out in *Mabo v Queensland (No 2)* (1992) 175 CLR 1 ('Mabo (No 2)'), and *Love v Commonwealth of Australia; Thoms v*

various colonial and early Commonwealth censuses (to which I will come) up to 1966, estimated the Aboriginal population at around 80,000 to 100,000[60] – a figure which had remained constant for the 80 years prior.



[61]

It now stands at over 10-fold, with 812,728 Aboriginals enumerated in the 2021 Census,[62] and an estimated 984,002 Aboriginals (3.8% of the Australian Population).[63] The definitional

Commonwealth of Australia [2020] HCA 3 (*'Love v Commonwealth'*) and is currently the correct legal test for Aboriginality.

[60] Ross (n 49) 7.

[61] The following sources were compiled for the data used in this table: Ross (n 49) 10, (Estimates and Enumerations from the 1901, 1911, 1921, 1933, 1947, 1954, 1961, 1966, 1971, 1976, 1981, 1986, 1991 and 1996 Censuses – See (n 66)); Australian Bureau of Statistics, *Population Distribution, Aboriginal and Torres Strait Islander Australians, 2006* (Catalogue No 4705.0, 15 August 2007) & Expert Panel Report 2012 (n 14): Estimate and Enumeration of Aboriginals in 2006; Australian Bureau of Statistics, *Census of Population and Housing – Counts of Aboriginal and Torres Strait Islander Australians* (Catalogue No 2075.0, 31 August 2021): Enumerated Aboriginal population as at the 2021 Census; Australian Bureau of Statistics, *Estimates of Aboriginal and Torres Strait Islander Australians* (Catalogue No 3238.0.55.001, 21 September 2022)

[62] Australian Bureau of Statistics, *Understanding change in counts of Aboriginal and Torres Strait Islander Australians: Census* (Catalogue No 2077.0, 4 April 2023).

[63] Australian Bureau of Statistics, *Aboriginal and Torres Strait Islander population approaching 1 million* (Catalogue No 2077.0, 4 April 2023); Australian Bureau of Statistics, *Estimates of Aboriginal and Torres Strait Islander Australians* (Catalogue No 3238.0.55.001, 21 September 2022).

change from the 'preponderance of blood' test to the tripartite test (together with increasing incentives – both societal and financial – encouraging Aboriginal self-identification) means that the 'we' of the Uluru Statement are not the same 'we' excluded by s 127. In other words, perhaps 90% of the 812,728 persons who currently self-identify as Aboriginals would not have been excluded by the 'preponderance of blood' test and would have been included in the s 127 constitutional count.[64]

Also, and moving now from s 127 to the census, it should be noted that s 127 is not the source of information, it is simply a rule of counting based on figures collected elsewhere; that is, the various pre-Federation and post-Federation censuses could count 'Aboriginals,' and they did. Despite 'exclusive of full-blooded Aborigines' being emblazoned on almost every national census table from 1911 until 1967,[65] every national census from 1911 to the present has counted Aboriginals and tabulated them in various ways.[66] It is merely (or perhaps not merely) that having regard to the then current legal interpretation of s 127 – in order to make the information in the census useful for the purposes of s 127 from 1911 to 1966 – the Aboriginal population was broken into two – for example, using the language of the censuses between 1911 and 1966, into full-blooded aboriginals and half-castes.[67]

So, even if the 'we' the Uluru statement refers to is the pre-1967 s 127 definition of 'aboriginal native' (which it most assuredly is not), such 'full-bloods' were always counted

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[64] Smith (n 47) also includes full-bloods and half-castes in his count of the Aboriginal population. Hence, potentially an even higher proportion of the 812,728 people who self-identify as Aboriginals would not have been excluded by s 127.

[65] Ibid 20.

[66] Elisa Arcioni, 'Excluding Indigenous Australians from "the People": A Reconsideration of Sections 25 and 127 of the Constitution' (2012) 40(3) *Federal Law Review* 287, 300; Smith (n 47) 27; See Australian Bureau of Statistics, *Census of the Commonwealth of Australia, 1911* (Catalogue No 2112.0, 03 April 1911); Australian Bureau of Statistics, *Census of the Commonwealth of Australia, 1921* (Catalogue No 2111.0, 03 April 1921); Australian Bureau of Statistics, *Census of the Commonwealth of Australia, 1933* (Catalogue No 2110.0, 30 June 1933): Aboriginals were counted in a separate bulletin; Australian Bureau of Statistics, *Census of the Commonwealth of Australia, 1947* (Catalogue No 2109.0, 30 June 1947): The 1947 census was postponed due to WWII (See Smith (n 47) 61); Australian Bureau of Statistics, *Census of the Commonwealth of Australia, 1954* (Catalogue No 2108.0, 30 June 1954); Australian Bureau of Statistics, *Census of the Commonwealth of Australia, 1961* (Catalogue No 2107.0, 30 June 1961); Australian Bureau of Statistics, *Census of Population and Housing, 1966* (Catalogue No 2106.0, 30 June 1966).

[67] Australian Bureau of Statistics, *Census of the Commonwealth of Australia* (Catalogue No 2112.0, 3 April 1911).

(or estimated) but were tabulated separately,[68] and though it is correct to say that they were not included in the overall population figure – which was to be used for constitutional purposes – they could easily be added to those overall population figures – by simply adding them! As it turns out, the estimates of the 'aboriginal natives' in both the pre-Federation censuses and early Commonwealth censuses were gross overestimates[69] (this may be one reason the Aboriginal population appeared to stay relatively constant at around 80,000 to 100,000).[70]

The rationale for the exclusion of 'aboriginal natives' in s 127 was the subject of almost no discussion during the convention debates.[71] One reason for excluding 'aboriginal natives' was that it was 'fair.'[72] Another was that their numbers were not enough to make a difference.[73] The most likely reason – and the one put forward most often, given that many Aboriginals still lived nomadically,[74] which would explain the paucity of the debate – is that in the late 1800s, pre-car and plane,[75] and with the memories of the death of Burke and Wills still painfully fresh,[76] it was simply considered impossible to count the aboriginal natives with the accuracy required by the constitutional purposes governed by s 127; namely, the distribution of money and seats.[77] It is clear that the underlying rationale of s 127 was this practical one – 'Section 127 was a means of solving a simple practical problem and ensuring that there was no obligation to count unknown people, not a means of forever denying Aboriginal people the

[68] Ibid.
[69] Smith (n 47) 243.
[70] Ibid; Ross (n 49) 10.
[71] Taylor 2016 (n 42) 229-230 – While s 127 was not discussed extensively in any of the Convention Debates (then numbered s 120), there was much debate when the Constitution was put to the State Houses of Parliament, such as in the House of Assembly of South Australia.
[72] *Official record of the debates of the Australasian Federal Convention*, Melbourne, 20 January 1898, 713 (Edmund Barton).
[73] *Report from the Joint Committee on Constitutional Review, 1959* (Report, 26 November 1959), 55, paragraph 390; Gorman and Melleuish (n 13) 11.
[74] Geoffrey Sawer, 'The Australian Constitution and the Australian Aborigine' (1966) 2(1) *Federal Law Review* 17, 30.
[75] Australian Bureau of Statistics, *Census of the Commonwealth of Australia, 1911* (Catalogue No 2112.0, 03 April 1911, 9: This census was even conducted by camel.
[76] Burke and Wills died in 1861.
[77] Taylor (n 42) 220; Not only were the early estimates wrong, but the enumeration became more and more accurate as circumstances allowed.

vote - a question which [Sir Samuel Griffith A-G QC] thought "must be dealt with" independently of the census - let alone a means of negating their humanity.'[78]

Regardless, by 1967, the fiscal role of s 127 had long since gone, and despite the fact that aboriginal natives were still being discovered as late as the 1980s,[79] and the difficulties of counting aboriginal natives had lessened so much that it was hard to say how any legitimate argument based on utility could still be made.[80]

Myth 3 – The 1967 Referendum gave Aboriginals citizenship and the right to vote

> *"The first decade of my life was spent as a noncitizen."*[81]
>
> *"I was a child. It still staggers me that for the first 10 years of my life, I existed under the Flora and Fauna Act of NSW." Then came the 1967 referendum, when Australians voted to extend full citizenship to Aborigines."*[82]
>
> *"On 27 MAY 1967, 90.77 per cent of Australians voted 'yes' in a constitutional referendum to improve indigenous rights and award citizenship to Aborigines and Torres Strait Islanders."*[83]

[78] Ibid 226. It is worth noting that the 1966 Census, before the 1967 Referendum, made extensive arrangements to ensure that full-blooded Aboriginals were counted as completely as possible and acknowledged that the increase in infrastructure and Aboriginal interaction with populated areas were key factors that increased the adequacy of the data obtained (See Australian Bureau of Statistics, *Census of Population and Housing, 1966* (Catalogue No 2106.0, 30 June 1966), Aboriginal Population – Special Statement, paragraph 4).

[79] The last group of Aboriginals discovered was in 1984, known as the Pintupi Nine. They were completely unaware of Australian Colonisation.

[80] Commonwealth, *Parliamentary Debates*, House of Representatives, 11 November 1965 (Robert Menzies, Prime Minister); *Report from the Joint Committee on Constitutional Review, 1959* (Report, 26 November 1959), 55, paragraph 393. Though Sawer did make such an argument: see Taylor (n 42).

[81] Linda Burney, 'Maiden Speech' (Speech, House of Representatives, 31 August 2016).

[82] Pearlman and Gibson (n 51).

[83] Elliot Brennan, 'On this day: indigenous people get citizenship,' *Australian Geographic* (Article, 7 November 2013) <https://www.australiangeographic.com.au/blogs/on-this-day/2013/11/on-this-day-indigenous-people-get-citizenship/>

> *"[The Federal Council for the Advancement of Aborigines and Torres Strait Islanders campaign in 1967] equated the constitutional changes proposed with … the winning of rights or citizenship for Aborigines."*[84]

Dealing with citizenship first – the 1967 Referendum had nothing to do with either voting or citizenship. By 1829, every Aboriginal born in Australia was a subject of the Crown[85] (the 19th Century version of citizenship). Over time, the concept of a subject of the Crown gradually morphed into the idea of Australian citizenship – a process finally given statutory backing by the *Nationality and Citizenship Act 1948* (Cth).[86] At all times since 1829, Aboriginals have always been citizens or (as has previously been understood) subjects of the Crown, and have been equally entitled to all protections, subject to any law to the contrary, that this status gave them. There was thus no change brought about by the 1967 Referendum to the citizenship status of Aboriginals. In essence, citizenship was used, and still is, as a political slogan rather than a legal or constitutional concept.[87]

> *"1967 … is still commonly held to be the year that 'Aborigines got the vote.'"* [88]

> *"…there was a perception that Aboriginal and Torres Strait Islander Australians first got the vote as a result of the 1967 Referendum."*[89]

> *"Most Aboriginal people have come to believe that their right to vote dates from 1967; in 1992 some leaders celebrated its twenty-fifth anniversary."*[90]

As for voting, the position in 1967 was similar. Both male and female Aboriginals of age had the right to vote in all Commonwealth elections by 1962.[91] Perhaps because of confusion generated by the media and political campaign surrounding the 1967 Referendum,[92] the myth that the 1967 Referendum gave the vote was created and sustained. It travels well beyond the

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[84] Attwood and Markus (n 16) 44.
[85] Stretton and Finnimore (n 44) 522.
[86] *Chetcuti v Commonwealth of Australia* [2021] HCA 25 at [5] (per Kiefel CJ, Gageler, Keane and Gleeson JJ)
[87] Attwood and Markus (n 16) 45.
[88] Margaret Reid, 'Caste-ing the vote: Aboriginal and Torres Strait Islander voting rights in Queensland,' 30(2) (2004) *Hecate* 71, 78.
[89] Expert Panel Report 2012 (n 14) 26.
[90] Stretton and Finnimore (n 44) 521.
[91] *Commonwealth Electoral Act 1962* (Cth).
[92] Attwood and Markus (n 16) 46-47.

scope of this paper, but it is worth noting that the pre-1962 Aboriginal voting rights were, relatively speaking, quite liberal. As Blainey has pointed out, Aboriginal women in South Australia voted for the first federal Parliament – as did Aboriginal men in the four main states.[93] True it is that the Queensland and Western Australia positions were more confused,[94] but South Australian Aboriginal women had the vote two decades before women in the UK or the US.[95]

Of course, in 1902, the Commonwealth Parliament voted to extend the federal franchise to women, but not to Aboriginals.[96] Nevertheless, the position improved throughout the first half of last century – culminating, federally, with the perfection of the franchise for Aboriginals in 1962, some five years before the 1967 Referendum.

Myth 4 – What Commonwealth control promised to do

> *"I do not want it to be thought that we support this Commonwealth power purely from a negative or overriding point of view. The fact is that with the excision of the words from paragraph (xxvi) of section 51 the members of this Parliament will be able for the first time to do something for Aboriginals - Aboriginals representing the greatest pockets of poverty and disease in this country. The incidence of leprosy, tuberculosis and infant mortality is higher among Aboriginals than among any other discernible section of the world's population and, as we know, the opportunities for Aboriginals even to have education - and certainly to pursue a calling after they have left school - to enjoy good housing conditions and to enjoy good public hygiene are less than those of other Australians. Hitherto it has been impossible for the Commonwealth to do these things directly itself. Hereafter it will be possible for the Commonwealth to*

[93] Keith Windschuttle, 'Why Aboriginals Always Had the Vote' (31 July 2023) *Quadrant*.
[94] The Commonwealth gave all Aboriginals the right to vote in 1962: *Commonwealth Electoral Act 1962* (Cth) along with Western Australia: *Electoral Act Amendment Act 1962* (WA). Queensland was the last State to give Aboriginals the vote in 1965: *Elections Act Amendment Act 1965* (Qld). The precise nature of these exclusions is somewhat confused (See Windschuttle (n 93); Taylor (n 42) 224).
[95] Blainey (n 52); Judith Brett, 'Yes case can't be silenced by 'cherry picking history',' *The Australian* (22 August 2023).
[96] *Commonwealth Franchise Act 1902* (Cth), but Aboriginals who already had the right to vote at State elections were able to vote (*Constitution* s 41) and Aboriginals who had served in the armed forces obtained the right to vote (*Commonwealth Electoral Act 1949* (Cth) s 3), regardless of what State they were from.

provide the Aboriginals with some of that social capital with which most other Australians are already endowed."[97]

"… the members of this Parliament will be able for the first time to do something for Aboriginals — Aboriginals representing the greatest pockets of poverty and disease in this country … The Commonwealth can at least bring the resources of the whole nation to bear in favour of the Aboriginals where they live."[98]

"A Yes vote [in the 1967 referendum] will pave the way for improving [Aboriginal] health, education and housing."[99]

"The Voice would help address issues in health, education, and housing."[100]

"Voting YES is about making practical progress in Indigenous health, education, employment and housing, so people have a better life"[101]

"Things like incarceration and child removal. Housing, health and educational outcomes. This voice is about making sure that what happens in the federal parliament is going to be a positive step forward both in terms of us as a nation, but also the life outcomes for First Nations people in Australia."[102]

As can be seen from these quotes, the promises made by the advocates for Commonwealth control of Aboriginal affairs leading up to the 1967 Referendum were almost identical to those who are now advocating for the Voice. The language and promises now made before the Voice Referendum by Albanese (and Minister for Indigenous Affairs Linda Burney) [103] are almost word for word identical to the promises made by then-Opposition Leader Whitlam.

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[97] Commonwealth, *Parliamentary Debates*, House of Representatives, 1 March 1967, 264 (Gough Whitlam, Leader of the Opposition)

[98] Ibid.

[99] Attwood and Markus (n 16) 49, quoting *The Age* (24 May 1967) regarding the 1967 Referendum.

[100] Josh Butler, 'Anthony Albanese says voice will help ensure taxpayer dollars are 'spent better and more effectively,' *The Guardian* (Article, 22 June 2023).

[101] Australian Government, *Your official Yes/No referendum pamphlet* (Pamphlet, 18 July 2023).

[102] Linda Burney, quoted in Lorena Allam, 'What is the Indigenous Voice to parliament, how would it work, and what happens next?,' *The Guardian* (Article, 14 August 2023).

[103] Tom McIlleroy, 'Voice will have policy focus on health, housing: Burney,' *Australian Financial Review* (Article, 4 July 2023); Finn McHugh, ''Changing lives, not holidays': The key takeaways as Linda Burney reveals Voice's priorities,' *SBS News* (Article, 5 July 2023).

Aboriginal education outcomes are still well below the rest of the Australian population,[104] health and well-being is still an issue with life expectancy in 2021 being far lower than the national average,[105] and despite small gains in certain target areas,[106] Aboriginals are still disproportionately victims and perpetrators of violence,[107] even after 56 years of Commonwealth control. So, in this regard, the benefits that were supposed to flow from the 1967 Referendum giving the Commonwealth control over Aboriginal affairs have not materialised.[108] People on opposite sides of the argument, such as Linda Burney,[109] Megan Davis[110] and John Stone,[111] seem to agree that 56 years of Commonwealth control does not appear to have substantially improved the plight of the most disadvantaged Aboriginals.

There could have been, in 1967, a fairly orthodox debate about federal control of Aboriginal affairs; namely, that the centralists say that the resources of the Commonwealth, coupled with the national attention Canberra brings and a uniform approach to Aboriginals should be preferred.[112] On the other hand, the orthodox argument for allowing Aboriginal affairs to remain in the hands of the States and Territories is that services are better administered locally by States[113] and that each jurisdiction, State or Territory, can experiment with policies and that this experimental diversity of approach usually leads over time to better outcomes.

There was no such debate, and whether this is worth re-enlivening is beyond the scope of this paper. But the key point remains that the promises of the advocates for Commonwealth control leading up to the 1967 Referendum have largely been forgotten, and so their similarity to the promises now made by the advocates of the Voice have largely gone

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[104] Australian Institute of Health and Welfare, *Indigenous Education and Skills* (Snapshot, 16 September 2021)

[105] Australian Institute of Health and Welfare, *Indigenous health and wellbeing* (Snapshot, 07 July 2022): Some indicators include: life expectancy of 71.6 for men and 75.6 for women and intentional self-harm is still a leading cause of death for Aboriginals.

[106] National Indigenous Australians Agency, *Commonwealth Closing the Gap Annual Report 2022* (Report, 30 November 2022).

[107] Ibid.

[108] Megan Davis, 'Voice of Reason: On Recognition and Renewal' 90 (June 2023) *Quarterly Essay*.

[109] John Stone, 'Enough is Enough!' (2017).

[110] Davis (n 108).

[111] Stone (n 109).

[112] Davis (n 108) advocates for a 'coherent approach' to Aboriginal affairs.

[113] Attwood and Markus (n 16) 9; *Royal Commission on the Constitution* (Report, 1929-1931), vol. 2, 270.

unnoticed. The consequence is that it is made to appear that this particular form of Commonwealth control (the Voice) and the opportunities it is said to present are entirely new, whereas they are actually quite old and the opportunities have, tragically, not been realised.

Myth 5 – The Commonwealth lacks Constitutional Power to legislate the Voice

Related to Myth 4, remember that the Voice is a constitutional amendment.[114] The normal or orthodox approach to constitutional amendment in all 44 previous referenda has been that the "power sharing" document that is our Constitution,[115] power shared horizontally (between the Executive, Parliament, Judiciary and Crown), and power shared vertically (between the States, Territories, and Commonwealth), has some deficiency which requires a remedy. Every referendum before this one fits into that category.[116] In all cases, the issue was an absence of a constitutional power or right.[117] For example, the 1988 Referendum proposed to introduce a new s 115A and s 115B into the Constitution, which prohibited the acquisition of property by a state or territory law except on just terms.[118]

In the present case, the question of whether the Commonwealth has power to legislate the Voice or a 'Voice'-like consultative body through an ordinary Act of Parliament is undoubted – there is no constitutional debate that it has that power. It has exercised that power at least six times since 1967.[119] Also, the High Court has held that the power allows the

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[114] *Constitution Alteration (Aboriginal and Torres Strait Islander Voice) Bill 2023* (Cth)

[115] Patrick Keane, 'In Celebration of the Constitution,' (Speech delivered in the Banco Court, Brisbane, 12 June 2008)" (QSC) [2008] QldJSchol 64.

[116] See, as examples: The 1946 Referendum sought to extend the powers of the Commonwealth to the areas of social security for the purpose of introducing an old age pension; The 1944 Referendum proposed to alter the Constitution to give the Commonwealth fourteen additional powers for a period of 5 years after WWII, including temporary control of Aboriginal affairs; The 1977 Referendum dealt with, *inter alia*, giving power to the Territories to vote on Constitutional matters.

[117] For example, the 1988 Referendum proposed to introduce a s 115A, which prohibited the acquisition of property by a state law except on just terms. Hence, although this was regarding property rights, it was still regarding a State Parliament's legal power to acquire property by law.

[118] As an aside, if this referendum had passed, it would have limited the power of the ACT to acquire Calvary Hospital other than on just terms.

[119] Stone (n 109) 277-278: 1967 – Council for Aboriginal Affairs; 1972 – National Aboriginal Consultative Committee, Department of Aboriginal Affairs; 1977 – National Aboriginal Conference; 1981 – Council for Aboriginal Development superseded by Aboriginal Development Commission; 1990 – Aboriginal and Torres Strait Islander Commission (ATSIC); 1991- Council for Aboriginal Reconciliation established. Sarah Pritchard, 'The 'race' power in section 51(xxvi) of the Constitution,'

Commonwealth to make any special law regarding Aboriginal affairs,[120] and the High Court's conception of the 'aboriginal race' for the purposes of s 51(xxvi) is extraordinarily broad, i.e., the tripartite test.[121] Thus, we have a constitutional solution, namely a constitutionally-entrenched Voice, to solve a constitutional problem which does not exist. None of the arguments in support of the Voice, whether in the Uluru Statement or elsewhere, deals with the Voice as a solution to a constitutional problem. Some lawyers have even gone so far as to argue that the debate should move away from these fundamental legal and constitutional considerations.[122] Even critics of the so-called 'race power' advocate for its removal on the basis that there is little limitation on its possible misuse,[123] and even propose a race-based replacement[124] – a specific power to make laws with respect to Aboriginals and Torres Strait Islanders. Put another way, no lack of constitutional power for the Commonwealth to do whatever it likes in relation to Aboriginal affairs has been identified on behalf of proponents of the Voice.

No lawyer on the 'yes' side of the debate has sought to contradict the undoubted fact that the Commonwealth already has the power to legislate in relation to Aboriginal affairs. The late David Jackson AM KC, Australia's leading constitutional silk and a great Queenslander, published a note to his colleagues[125] making this very point:

15(2) (2011) *Australian indigenous law* review 44, 52. For example, Pritchard notes that without s 51(xxvi), the Commonwealth Parliament might not have enough constitutional power to enact laws relating to Aboriginal affairs.

[120] *Kartinyeri v The Commonwealth* (1998) 152 ALR 540, 550 at [17[-[18] (per Brennan CJ and McHugh J) ('Hindmarsh Bridge Case').

[121] *Mabo (No 2)* (n 59); *Love v Commonwealth* (n 59) at [81] (per Bell J): The meaning of 'Aboriginal Australians' should be understood by reference to the tripartite test in *Mabo (No 2).*

[122] Michael Pelly, 'Lawyers have said enough on Voice: leading silk Bret Walker,' *Financial Review* (online, 6 August 2023) <https://www.afr.com/politics/federal/lawyers-have-said-enough-on-voice-leading-silk-bret-walker-20230806-p5du7x#:~:text=The%20Australian%20Financial%20Review%20asked,focus%20should%20be%20on%20outcomes.>

[123] French (n 18) 206.

[124] Pritchard (n 118) 52; Expert Panel Report 2012 (n 14) 128, 145; French (n 18) 208: As French says, the removal of the race power is 'consistent with the retention of a power to make laws with respect to indigenous peoples. Such laws are based not on race but on the special place of those peoples in the history of the nation.'

[125] Some of his colleagues in New Chambers are leading advocates for the Voice.

> "It cannot be seriously argued that s 51(xxvi) is not widely enough expressed to cover, i.e. empower, the making of a law creating a body of the nature contemplated by the proposed referendum. Any such law of its nature would be a law with respect to the people of a race (in fact two races – Aboriginal and Torres Strait Islander) and it would be a 'special law' which the Parliament has 'deemed necessary' for the people of those races."[126]

Jackson, in his later Senate Committee Submission, expanded on his point: "The short fact is that there is no reason at all why Parliament cannot now legislate to establish a body which has similar features to those proposed for the Voice in proposed s 129."[127] There has been no response.

Conclusion

Perhaps because of the absence of a 'no' case, myths surrounding the 1967 Referendum have been allowed to develop and prosper. Those myths conceal what was actually done and promised by dint of the 1967 amendments to the Constitution. Dispelling those myths allows us to come to the realisation that there is no power lacking at the Commonwealth level to implement a Voice-type consultative body. Indeed, the first step after a successful referendum will be for the Parliament to do that which it undoubtedly has the power to do – namely, legislate a Voice.

It seems quite antithetical to normal notions of sensible, sober and good government to amend a constitution which has helped make Australia one of the wealthiest,[128] freest, most peaceful, most inclusive, and most just nations in circumstances where there is no constitutional need to do so – 'The ingredients for stable democracy should be zealously protected. For Australia, our Constitution is undoubtedly one such ingredient.'[129]

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[126] David Jackson, *Further Note RE Proposed Referendum* (Paper, 30 March 2023).

[127] David Jackson, Submission No 31 to the Joint Select Committee on the Aboriginal and Torres Strait Islander Voice Referendum, *Inquiry into the Aboriginal and Torres Strait Islander Voice Referendum* (11 April 2023) 18.

[128] Australia has the 9th highest GDP per capita in the world (See Department of Foreign Affairs and Trade, *Australia is a Top 20 Country* (August 2022)).

[129] Liberal Members Dissenting Report, 1.10.

Given the promises made and the assurances provided in 1967 (which John Stone describes as "lies")[130] are relevantly identical to the promised benefits that will flow from a constitutionally entrenched Voice, one can see that there is not only an overwhelming constitutional reason for the people not to approve the Voice, but also very good political grounds not to do so. I trust this paper has shed some light upon the circumstances surrounding and changes made by the 1967 Referendum. I have drawn heavily upon Attwood and Markus,[131] Stone,[132] Windschuttle,[133] Taylor,[134] and Smith,[135] and I would like to thank Luca, a final-year student studying law at Monash University, who has provided thorough and dedicated assistance in the preparation of this article.

STUART WOOD AM KC

Sunday, 27 April 2023

Park Hyatt, Melbourne

[130] Stone (n 109) 277.
[131] See (n 16).
[132] See (n 109).
[133] See (n 93).
[134] See (n 42).
[135] See (n 47).

APPENDIX A

Constitution Alteration (Aborigines) Bill 1964 **(Cth)**

APPENDIX B

Constitution Alteration (Parliament) 1965 **(Cth)**

APPENDIX C

Constitution Alteration (Repeal of section 127) 1965 **(Cth)**

APPENDIX D

Constitution Alteration (Aborigines) 1966 **(Cth)**

APPENDIX E

Constitution Alteration (Aboriginals) Act 1967 **(Cth)**

APPENDIX F

Constitution Alteration (Parliament) Act 1967 **(Cth)**

APPENDIX G

Constitution Alteration (Aboriginal and Torres Strait Islander Voice) Bill 2023 **(Cth)**