THE 'VOICE': THE ISSUES

Proceedings of The Samuel Griffith Society's

Symposium on the 'Voice'

Brisbane

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Introduction

In anticipation of a referendum to be held between July and December 2023, The Samuel Griffith Society hosted a special symposium on the Albanese Government's proposal to amend the Constitution to establish an Aboriginal and Torres Strait Islander 'Voice' to Parliament and the Executive Government on Wednesday 17 May 2023 in Woolloongabba, Queensland.

The decision to do so, in addition to the Society's annual conference to be held in August, was motivated by two factors. The first was a desire to facilitate meaningful discussion and debate about what would be one of the most significant amendments to the Constitution in Australian history, before the final wording of the proposed amendment was decided by Parliament. The second was the incredibly high level of interest in the 'Voice' proposal within both our membership and the community at large.

Indeed, the symposium was a complete sell-out, with a standing-room-only crowd gathered from across the country to hear from the following pre-eminent speakers:

- Stuart Wood, AM, KC
- The Honourable Dr Gary Johns
- Warren Mundine, AO
- The Honourable Amanda Stoker
- The Honourable Ian Callinan, AC, KC

What follows is a collection of the papers presented at the symposium. The first, *Unpacking the Uluru Statement*, was given by The Honourable Dr Gary Johns, a leading member of the 'No' Case Committee. Dr Johns' paper explores the broader context behind the 'Voice' proposal, summarising of three papers published by the 'No' Case on the *Uluru Statement*.

The second, titled *Sand in the Gears of Government*, was given by former Senator for Queensland The Honourable Amanda Stoker, and deals with the much-debated question of whether the 'Voice' might create significant scope for new litigation.

The final paper is an edited version of the *Concluding Remarks* given by the President of the Society, The Honourable Ian Callinan, AC, KC – a considerable and compelling contribution to the ongoing public debate in their own right. Also included, as an accompaniment to these remarks, is a reproduction of an opinion editorial written by Mr Callinan for *The Weekend Australian* in December 2022.

The symposium also featured an enlightening conversation with Warren Mundine, AO about the history of previous Indigenous advisory and representative bodies. Although not accompanied by a paper, this conversation is available online via the Society's YouTube channel and will be built upon in a paper presented at the Society's annual conference in August.

Xavier Boffa

Unpacking the Uluru Statement: 'Voice,' Treaty and Truth in Context

The Honourable Dr Gary Johns

Australians are being told by the Albanese Government to vote in a referendum to recognise in the Constitution Aboriginal and Torres Strait Islander peoples as the First Peoples of Australia. This is misleading.

The referendum is a lot more than that. The government wants to establish a permanent Voice for Aboriginal and Torres Strait Islander peoples.

This Voice would be a huge change to the way Australia is governed. Indeed, as the Prime Minister has said, 'it would be a very brave government that said it shouldn't [follow the advice of the Voice].'

The proposed Constitutional amendment would destroy reconciliation.

A small group, selected by race, would have immense power to advise parliament and government on everything, forever.

The Albanese Government also wants to establish a powerful Makarrata Commission.

The Commission would supervise treaties between Aboriginal and Torres Strait Islanders and other Australians.

Treaties would divide Australians.

The Commission would also guide a new 'truth-telling' exercise trawling through Australian history.

A better way to recognise Aboriginal and Torres Strait Islander peoples would be for parliament and government to work directly with traditional owners at a local level to solve problems.

Such a method is more in keeping with the way Aboriginal society is organised.

The Yes case assumes that Aboriginal and Torres Strait Islander peoples do not have a Voice. They do have voices, they have the parliament, and 11 members of the parliament are of Aboriginal descent.

The proposal is an affront to equal citizenship in Australia.

The Australian Constitution

A form of recognition exists in the Constitution. Section 51(xxvi) of the Constitution gives the parliament the power to make special laws for people of any race: a power used exclusively for the benefit of Aboriginal and Torres Strait Islander peoples.

The Albanese Government is really seeking much more than recognition: it is seeking a permanent institution called a Voice.

The Constitution sets out the powers of the major institutions of Australian democracy - parliament, executive government, the judiciary, and the states.

The Voice would rank alongside these foundations of Australian democracy. Unlike these institutions, the Voice would exercise power for one, self-serving group.

The remarkable thing about the obsession with Constitutional change is that section 51(xxvi) of the Constitution can be used to have the parliament establish a voice.

The government wants something much stronger than one that the parliament could create.

It would be an undemocratic and permanent institution. The people of Australia could not vote it out.

Only Aboriginal and Torres Strait Islander peoples would select the Voice. All other Australians would be excluded.

The Voice would have the ability to 'advise' the government of the day and the parliament on matters relating to Aboriginal and Torres Strait Islander peoples.

Because the descendants of the original inhabitants of Australia live in the modern world, they are affected by everything that affects all Australians – from taxation to welfare, from defence to disability and superannuation.

No other Australians have a right to a group voice in the Constitution.

The Uluru Statement

The Uluru Statement from the Heart is another part of the referendum. The Prime Minister has repeatedly stated his intention to 'commit to the Uluru Statement from the Heart in full.' The Uluru Statement was also attached to the Explanatory Memorandum and the Minister's Second Reading Speech for the referendum Bill.

The intentions of the Albanese Government are crystal clear.

The elements of the Uluru statement are the Voice, and the Makarrata Commission, which would guide treaty and 'truth telling' processes.

Australians should understand that a vote for the Voice is a vote for Voice, Treaty, and 'Truth'.

The 'Voice'

The Prime Minister makes frequent reference to the Calma-Langton report as the Voice model likely to be implemented following a referendum.

Calma-Langton devised a scheme to have 24 national members selected by 35 Aboriginal groups formed at a regional level, assembling in Canberra on a permanent basis.

The Voice model preferred by the Prime Minister refers not only to the process of giving advice, which already exists throughout the Commonwealth government and parliament, but also aims to bind the government and the parliament to 'consultation standards' across all Commonwealth public policy.

Such standards will tie government decision-making in knots.

While the Voice may not have a veto over legislation or government policy, it would have a platform on which to trade its ability to delay and grandstand for votes in the parliament.

Politicians would trade with the Voice members to do their bidding.

The Voice would have a permanent platform to lobby government on matters affecting all Australians.

There is no evidence that the proposed Constitutional amendment would 'Close the Gap' between the minority of Aboriginal people who need help and other Australians.

Take, for example, two enduring issues in Aboriginal communities – banning alcohol and the Basics Card. Aboriginal people are divided on both issues, for and against banning alcohol, and for and against the Basics Card. More voices saying the same contradictory things do not solve problems.

Votes in parliament would be traded by persuading Voice members to support members of parliament to vote up or vote

down a proposition – in return for programs or other legislative changes favourable to the Voice.

That is how politics works.

The ability to advise on matters relating to Aboriginal and Torres Strait Islander peoples would require a massive bureaucracy to support the Voice.

When the Voice did not get its way, it would complain to the courts that it had not been properly consulted. It may take years to settle in court the meaning of 'consultation standards' as proposed by Calma-Langton.

Treaty

In addition to the Voice, the Uluru statement demands a Treaty.

Are Aboriginal people really that different to all Australians that we need a treaty to talk to each other? Do people who are neighbours and work mates, people who are married to each other need a treaty to get on?

The identity of an Aboriginal person is porous. There are members of the same family that may, or may not, identify.

Most 'Aboriginal' people are Aboriginal only by genealogical descent and not by tradition or custom.

All customs operate alongside the social contract that binds all Australian citizens.

Perhaps the worst part of a treaty between Australia and the descendants of those who occupied Australia prior to 1788 is its retrospective nature. The New Zealand Treaty of Waitangi, for example, between the British and Māori, was made in 1840.

Is it possible, or wise, to turn back the clock?

New Zealand is stuck with a bad arrangement, never-ending conversations between a dependent people, pretending not to be dependent, and the nation that pays the bills.

Australians would continue to pay a minority for an original 'sin' of settlement.

A treaty would focus on people through one fragment of their humanity - identity. People of Aboriginal descent would be assumed to think alike, and that their needs and aspirations can, and must, be addressed as a group.

Our common humanity and our individuality would be disregarded.

People at Cherbourg west of Brisbane, for example, were forced together from many parts of western Queensland generations ago. An estimated 28 'tribal' groups were present in 1935. They intermarried after moving to Cherbourg.

Why would any government start a process with the potential to cause people at Cherbourg, and many other communities across Australia, to be broken into their old tribes?

National unity around the equality of each citizen would be destroyed.

Look how our language has changed - from Aborigine to Aboriginal, to Indigenous, to First Peoples, to First Nations. Each step in this linguistic journey takes Australia further away from humanity and further into groupthink.

'First Peoples' suggests a consciousness as a group and assumes an identifiable collective. This consciousness may be apparent in remote Aboriginal communities, but in suburban and regional cities, where most Aboriginal people live, it makes little sense.

As for First Nations, in Katherine, Northern Territory, for example, there are said to be three 'emerging nations' – Jawoyn, Wardaman and Dagoman. These are families competing for power and preferment within a town. Could these families be regarded as nations?

Advocates for the Voice rarely mention real people; they rarely talk about the pathways leaders chose to escape strife. Aboriginal sports stars, academics, professionals and university and TAFE graduates made it without changing the Constitution.

Why not share their secrets of success with those who continue to struggle?

Truth

The Prime Minister's Makarrata Commission would supervise 'truth-telling about Aboriginal history'.

There is no doubt about the cruel manner in which many Aborigines were treated in the distant past. These many cruel practices and events are on the record. The question is whether any positive purpose is served in knowing what is already known.

The Makarrata Commission is not a credible way to manage relations between Australians. It would be a beacon of historic complaint and an instrument for payback against most Australians.

Aboriginal people have had many opportunities to tell their truth, to be heard. On each occasion, governments have responded generously, not always as claimants would want, but in ways that reflected what was acceptable to the electorates that elected them.

Between 1991 and 2000, three major inquiries provided opportunities for truth-telling. These were The Royal Commission into Aboriginal Deaths in Custody (1991), The National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families (1997), and The Hindmarsh Island Royal Commission (1997). The inquiries

were extensive, the recommendations wide-ranging and mostly implemented.

Following these inquiries came five inquiries into Aboriginal child sexual abuse. In 1999, Aboriginal academic Boni Robertson led an Inquiry into child sexual abuse in Queensland. The Aboriginal and Torres Strait Island Women's Task Force on Violence consisted of 50 Aboriginal women. Aborigines had a voice; they told their truth.

In 2002, Aboriginal magistrate Sue Gordon led an Inquiry into the Response by Government Agencies to Complaints of Family Violence and Child Abuse in Aboriginal Communities in Western Australia. The inquiry visited 44 communities and invited 400 Aboriginal organisations and communities to participate. Aborigines had a voice; they told their truth.

In 2006, Aboriginal woman Marcia Ella-Duncan led the Aboriginal Child Sexual Assault Taskforce in NSW to examine the incidence of child sexual assault in Aboriginal communities. The taskforce visited 29 communities throughout NSW, and 300 people were consulted. Aborigines had a voice; they told their truth.

In 2007, Rex Wild and Aboriginal woman Pat Anderson led the Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse in the Northern Territory. The inquiry held more than 260 meetings with interested parties. Aborigines had a voice; they told their truth.

In 2008, Ted Mullighan led the South Australian Children in State Care and Children on APY Lands Commission of Inquiry. The inquiry visited eight communities on the APY lands and held 147 meetings. Aborigines had a voice; they told their truth.

The 2017 Royal Commission into Institutional Responses to Child Sexual Abuse contained a special sub-report about Aboriginal and Torres Strait Islander children. It heard about the experiences of 985 Aboriginal and Torres Strait Islander survivors. Aborigines had a voice; they told their truth.

Each and every one of these reports has made numerous recommendations to governments, and governments have responded fulsomely. Any recommendations not supported were often irrelevant to the life of Aboriginal people, or beyond the gift of government.

The actual living conditions of people in trouble are rarely mentioned by the 'Yes' campaign. Most Aborigines are doing about as well as other Australians. Only some Aborigines have been unable to adapt to their circumstances.

Much has been done. Aborigines have a voice and are heard.

None of this will change lives if the mindset of policy-makers, people who support this radical change to Australian politics, never changes.

Changing the Australian Constitution is not the answer.

No, thanks. The Voice is not the answer.

Sand in the Gears of Government: The Justiciability of Ministerial Decisions and the Indigenous 'Voice'

The Honourable Amanda Stoker

Much is made by proponents of the voice of the use of non-mandatory language in the proposed amendment to the Constitution, insofar as it deals with the power to make representations.

The argument that is made by proponents is, in essence, that because the power of the Voice is to make representations – rather than, for instance, to have a veto – it is a harmless device for ensuring consultation.

In context, the wording to which I refer is:

> *"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:*
>
> 1. *There shall be a body to be called the Aboriginal and Torres Strait Islander Voice;*
> 2. *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;

3. *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."* (emphasis added)

The words "may make representations" sound benign – and I suggest that is by design. Yet, in the context of a scope for the amendment that encompasses executive government decision-making, the very fact of a right to make representations triggers impacts for the law of administrative decision-making that are much more profound.

That impact is compounded by the right of the proposed Voice to make representations on any matter that relates to Aboriginal and Torres Strait Islander peoples. Unless one were to take a view of Aboriginal and Torres Strait Islander people that suggests their needs and interests were somehow less than that of people from other cultural backgrounds – a view that I would argue is offensive and wrong in fact and in morality – then all of the work of government and the executive, touching every area of life, must be understood to come within the remit of "matters relating to". An Aboriginal person has as much of an

interest in, for example, environmental policy, tax policy, migration settings, economic policy, health and education funding as a non-Aboriginal Australian does. While an Aboriginal Australian might have an additional interest in native title and cultural heritage law beyond the level of interest held by some other cohorts in our community, to add those particular matters to the list does not diminish the relevance of every other area of government decision-making and policy to Aboriginal people.

The combined effect of these two attributes, a right to make representations to the executive and a scope that covers the entirety of federal decisions and policy-making, is to confer upon Aboriginal and Torres Strait Islander people and anyone taking an interest in the impact of policy upon them a powerful tool of lawfare with the capacity to slow down and even stonewall the projects necessary for economic development. That carries with it the real prospect of making a climate for investment in Australia that is fraught with delay and cost that makes ambitious projects non-viable.

Perversely, that would be a particular deterrent for the industries most likely to bring jobs, services and wealth to the remote communities where so many of this nation's most disadvantaged Aboriginal Australians live.

In this paper, I intend to discuss the rights in judicial review that will arise in the event that the amendment to the

Constitution proposed is successful at a referendum in its current form.

Core to those rights are questions of standing, with which I will also deal.

Justiciability

I have been struck in public debates surrounding the effect of the proposed amendment to the Constitution to see that even well-educated and politically engaged people are regularly unaware of the way in which the requirement to:

(a) take all relevant considerations into account in making an administrative decision;
(b) to avoid taking irrelevant considerations into account in making a decision; and
(c) to make a decision that is reasonable;

would operate to give the language of "may make representations" in the Constitution a justiciability that would see the correctness of ministerial decisions litigated and decided upon by the courts.

For those unfamiliar with administrative law, an administrative decision will be affected by jurisdictional error if it fails to properly take into account all relevant considerations and avoid taking account of irrelevant considerations. That is a matter

determined after the decision is made by a minister, and decided upon by a judge or judges.

Similarly, those considerations need to be used in a decision-making process that is reasonable in all of the circumstances. Again, this is a matter determined after the decision is made by a minister, and decided upon by a judge or judges.

Should the decision fail to satisfy the judge of these matters, it will be remitted to the original decision maker, in this case the minister, to be re-made.

After the legal requirements of the re-made decision are the same, as are the subsequent rights. It means that, following a re-made decision, the Voice or interested groups consider that the decision continues to be affected by jurisdictional error, the right to seek judicial review remains open – and the entire process can repeat.

Indeed, it can repeat as many times as it is necessary for the court to reach the view that the minister has "got it right".

The impact of this process is three-fold. First, there is an obvious delay associated with the fact that a decision is subject to this process. That delay has an impact upon the commerciality of a range of projects and the taxpayer value offered by potential government programs.

Second, there is a cost associated with engagement in the process. While the Voice will no doubt be taxpayer-resourced for such litigation, and activist groups will happily expend their resources to achieve their tactical outcomes, the cost to those who would seek to progress new ideas, projects and economic development opportunities face a cost sensitivity that can put engagement in Australia's approvals process – and with it, our community – at risk. There comes a point at which commercial projects are made non-viable by the lawfare involved, and the entire proposal fizzles. Indeed, the achievement of this is an objective stated plainly from time to time by activist groups, particularly in the environmental space.

Third, this process effects a structural transfer of authority in our democracy from the executive, who are drawn from an elected government, to the judiciary. Politicians, for all of their faults, at least face public accountability at regular intervals in the form of the ballot box. The same cannot be said for the bench. None of that is to impugn the professionalism or intellect of our judiciary. It is simply to say that decision-making in relation to political matters properly lies in our democracy with those who are elected.

Critics of this argument will observe that rights to seek judicial review of decisions of the executive have long been in place for those who have standing to seek those orders. Of course, that is true. However, the amendment of the Constitution, as

proposed, adds yet another item to the list of relevant considerations, and it is an item that is both enormously broad and capable of being litigated by actors beyond the group of people that will be selected (by means yet to be identified by the government) to represent Aboriginal and Torres Strait Islander people on the national Voice. I will discuss this matter next.

Standing

Part of the risk that comes with the proposed amendment to the Constitution becomes apparent when the rights therein are read in conjunction with an understanding of how broad the law in Australia has become in relation to who has standing to challenge an administrative decision.

Lest you think I'm being dramatic, the tactic of lawfare is one that is actively promoted by activist groups in this country. While historically the law in relation to standing required a level of direct affect that excluded groups of this kind from driving legal proceedings in relation to public policy issues, that has shifted substantially since the 1980s.

The law in relation to the standing of activist groups to bring proceedings to object to various projects that had obtained government approval was, as at 1980, settled. Then, in *Australian Conservation Foundation v Commonwealth* (1980) 146 CLR 493, the High Court, by a majority of four to one, held

that the ACF had no standing to challenge a development application for alleged failure to follow administrative procedures. The judgment of Aickin J cited with approval the following passage from *Boyce v. Paddington Borough Council* (1903) 1 Ch 109, at p 114 by Buckley J. where his Lordship said:

> *"A plaintiff can sue without joining the Attorney-General in two cases: first, where the interference with the public right is such as that some private right of his is at the same time interfered with (e.g., where an obstruction is so placed in a highway that the owner of premises abutting upon the highway is specially affected by reason that the obstruction interferes with his private right to access from and to his premises to and from the highway); and, secondly, where no private right is interfered with, but the plaintiff, in respect of his public right, suffers special damage peculiar to himself from the interference with the public right."*

At paragraph [19] of his judgment, Stephen J held:

> *"An individual does not suffer such damage as gives rise to standing to sue merely because he voices a particular concern and regards the actions of another as injurious to the object of that concern."*

With an eye to the bigger picture, Mason J explained at paragraph [14] of his judgment:

> *"The court would exceed its function if it accepted the invitation issued by the appellant's counsel to jettison the settled principle of law relating to locus standi and substitute for it a new rule recognizing a mere belief as an adequate special interest on the part of the plaintiff. There are limits to what the courts can and should do by way of altering the law."*

Through the persistent bringing of proceedings by the Australian Conservation Foundation (ACF) and like organisations, that position has shifted substantially.

In *Australian Conservation Foundation v Forestry Commission of Tasmania* (1988) 19 FCR 127, ACF and two other conservation groups challenged by judicial review the decisions of a Commission of Inquiry contained in an interim report. The Commission was appointed to inquire into and report on a number of matters relating to world heritage and areas in Tasmania. The Commission made an interim report specifying areas which, in its opinion, were clearly not qualifying areas. The ACF contended that the Commission had failed to take account of relevant issues and had taken into account irrelevant issues in making its decisions. It was the view of Burchett J in the Federal Court that the applicants had a right to have their submissions considered according to law:

(1988) 19 FCR 127 at 131. That was the case notwithstanding that the ACF did not have standing in the sense outlined in the High Court in 1980.

It was significant in that case that the Commission had allowed the ACF to make submissions and participate in hearings, even though it did not have any private right or risk of peculiar damage arising from the public rights considered. However, that is precisely what is proposed in the present case: a permanent invitation for the Voice to make submissions on, in effect, any matter. On the law as at 1988 the Voice would surely have standing to bring an application for judicial review. Given the development of the law since, such that groups like ACF have been granted standing in proceedings with an even more limited connection than it had to the Commission of Inquiry, I have no doubt whatsoever that a Voice, or arguably any lobbying body that takes a similar policy position to it, would have standing at the present time.

That said, Gibbs J was clear in *ACF v Commonwealth* that the plaintiff only had a right to make submissions of a kind held by every other member of the public, and that the exercise of that right did not bring with it a further right to appear at a hearing or any other right of standing. His Honour said:

"The fact that the Foundation sent the written comments, as permitted by the administrative procedures, is logically irrelevant to the question of whether it has a special interest

giving it standing. That fact would only have some significance in relation to this question if the administrative procedures revealed an intention that a person who sent written comments thereby acquired further rights. As I have endeavoured to show, that is not the case… [*Sinclair v Maryborough Mining Warden* (1975) 132 CLR 473] clearly brings out the point of distinction between that case and the present -there, the objector had a right which he was entitled to enforce; here, the person submitting the written comments had no further right."

On this analysis, the Voice itself would plainly have standing to bring an application for judicial review. On Gibbs' formulation, other people or bodies with a shared or similar point of view would not have standing. However, as I have said, the law has developed considerably on this front since 1980.

Indeed, in 1989 the Federal Court found the ACF had a "special interest" in the subject matter of the grant of licenses to export woodchips, permitting it to challenge a decision to grant such licenses. This case famously extended the ability of public interest groups to challenge decisions made by government.

In that decision, *Australian Conservation Foundation v Minister for Resources* (1989) 76 LGRA 200, Davies J considered the following matters were relevant to determining whether a public lobby group like ACF had standing to bring a judicial review application:

(a) the nature of the controversy underlying the dispute in the proceedings, and the significance of that issue at the time (at 205);

(b) whether it was an issue of national significance (at 205);

(c) the increased public perception of the issue and the need for bodies to act in the public interest (at 205);

(d) the pre-eminence of the organisation on the issue (at 205);

(e) whether the body has funding from Commonwealth and State governments (at 205-6); and

(f) the leading role played by the organisation in lobbying on the issues relevant to the proceeding (at 205).

His Honour concluded:

> *"While the Australian Conservation Foundation does not have standing to challenge any decision which might affect the environment, the evidence thus establishes that the Australian Conservation Foundation has a special interest in relation to the South East Forests and certainly in those areas of the South East Forests that are National Estate. The Australian Conservation Foundation is not just a busybody in this area. It was established and functions*

> *with governmental financial support to concern itself with such an issue. It is pre-eminently the body concerned with that issue. If the Australian Conservation Foundation does not have a special interest in the South East Forests, there is no reason for its existence…. In my opinion, the community at the present time expect that there will be a body such as the Australian Conservation Foundation to concern itself with this particular issue and expects the Australian Conservation Foundation to act in the public interest to put forward a conservation viewpoint as a counter to the viewpoint of economic exploitation" (at 206).*

In *North Coast Environment Council Inc v Minister for Resources* (1994) 55 FCR 492, Sackville J applied this approach in a circumstance where the body involved had comparatively little taxpayer funding, and nevertheless found standing for the activist group.

The approach taken by Davies J has now become orthodox, applied in a host of cases since and in a manner that has become settled.

The threshold for an organization without a direct interest in public policy or executive decisions but rather as an incorporated association or not-for-profit body that seeks to lobby government and the public to bring an administrative law

proceeding has, as this small sample of cases demonstrates, been lowered considerably since the 1980s.

Even on the 1980 formulation, the Voice itself will have a clear right to bring a judicial review application arising from the failure of a minister to have appropriate regard to the relevant consideration that is its representations in the making of his or her decision.

However, the jurisprudence since indicates that standing to bring an application is likely to be cast much wider to include organisations that lobby in relation to the issues involved. That is particularly so given the significance of national and public interest in the important outcome of helping to lift life outcomes for the segment of the Aboriginal community that continues to live in circumstances that are considered unacceptable by modern standards.

The consequence for public understanding of the impact of the Voice on executive decision-making is that bodies with an interest in policy or decision-making touching the interests of Aboriginal Australians will be highly likely to have rights to bring administrative law proceedings to challenge executive decisions on the grounds of failure to adequately consider the representations made by the voice in the making of a decision.

The historical lesson to take from it is also salient. In just nine years, the jurisprudence in relation to standing shifted, under

the strain of persistent activist litigation, from bodies of this kind having no standing to having it most of the time. It would be naïve to think that the same lessons would not be applied by those who would seek to weaponize the Voice.

Conclusion

On a plain understanding of the proposed amendment to the Constitution, it will certainly give rise to rights to challenge ministerial decisions on the basis that they are affected by jurisdictional error. That jurisdictional error will arise in a range of circumstances, including but not limited to situations where the Minister has failed to adequately take into account the relevant consideration that is the representations of the Voice, or failed to make a reasonable decision in light of the contents of those representations.

Of course, a determination of whether or not a jurisdictional error has occurred necessitates a process before the courts to make that decision. The very fact of adding another, broad basis for the challenge of decisions – particularly decisions that involve significant private and public investment – is a deterrent to the very economic development this nation needs, particularly in the remote communities in which many disadvantaged Aboriginal Australians reside.

None of this is to suggest that the scope of administrative law should be redrawn. It is simply to be up-front with Australians

about the nature of the impact that can be expected should they decide to add this chapter to the Constitution, with the rights it provides for the Voice to insert itself into the whole gamut of ministerial decision-making.

Concluding Remarks

The Honourable Ian Callinan, AC, KC

I thank the speakers for their reasoned and informed words, and for the close attention of the audience who listened to them.

I did not choose this venue at Woolloongabba, but I am very pleased to be here. I would like to thank the Australian Institute for Progress for making it available, and for its support of this Symposium.

You may have noticed that none of the speakers has so far made what has come to be conventional in recent times, an acknowledgement of the First People who lived and roamed here before 1824. This may have been because those speakers do not have the same familiarity with this area as I have. I, therefore, acknowledge those People.

This is not, and the Voice should not be seen as, a competition between attachments to, or connexions with, land.

I am, however, particularly familiar with this area and have had a close attachment to it for more than 80 years. My father came to Queensland in the year that I was born, after being dispossessed, as many people were, by his bank during the depression, of his modest house and small

business in New South Wales. We came to reside in a worker's cottage, now much gentrified, at Coorparoo about 6 or 7 kilometres east of here, and later at Camp Hill a few kilometres further away. My first recollection of Woolloongabba is of coming here with my mother, who would today be regarded as a Support Person for a younger woman for a prenatal check-up at a state government maternity clinic just across this road. My brother Jimmy worked as a labourer in a tyre factory about a hundred metres along this road before volunteering for the AIF and fighting the Nazis at Tobruk and in the Second Battle of El Alamein, and the Japanese in Papua New Guinea. Postwar, my brother Jim was one of those ex-servicemen to whom Warren Mundine referred, who insisted that those Aboriginal people with whom they had served enjoy the same rights as they did. On his return from active service in the Air Force at Milne Bay and Goodenough Island, my father started a small business about a kilometre from here in Stanley Street near the Clarence corner in partnership with another former airman.

I saw Bradman make a century in the first post-war Ashes test at The Gabba, and another one against India a year or so later. I batted and bowled on The Gabba many times. I watched the West Indian cricket team that included those wonderful players of colour, the three Ws (Worrell, Walcott and Weekes) bat, and the wily spinners Ramadhin

and Valentine bowl their wristy breaks. I watched Rugby League tests at the Gabba. I used to have a milkshake at the café run by first and second-generation Australian Greeks just over there on the other side of the Five Ways. We bought our fruit from a first-generation Australian Lebanese fruiterer in Stanly Street. I attended a wedding of a friend at the nearby Orthodox Church. I had a drink occasionally at the old German Club in Vulture Street, directly opposite the members' stand at The Gabba. I passed through the Five Ways in a bus or tram daily, often more than once, coming and going to secondary school, to my first full-time job in the city in 1956 and to the University where I was studying at night. I was married in a stone church built 150 years ago out of the hard rock hewn from the cliffs of Kangaroo Point to my wife, who is in the audience today. That church is about one and a half kilometres from here. We were married on a Saturday afternoon. I spent the morning at The Gabba to steady my nerves for the nuptials. It was the first Calypso test that ended in the famous tie. After my other brother, Peter, retired from paid employment, he established a small second-hand and antique shop in the same building as the old tyre factory. I went there often to see him and to browse in three other antique shops there whose proprietors were respectively Belgium, Scottish and English by birth.

Having said that, I would make another, and special, acknowledgement of Eddy Gilbert, the great Queensland Depression Era Indigenous fast bowler whom Bradman described as the fastest he had seen. I knew about Gilbert because my father admired him and a rued his sad life after his first-class cricket career ended. Gilbert is now appropriately remembered by a bronze statue at the Allan Border Oval in this city.

Reference to 1956 brings back other memories. I worked that year as a base-grade clerk in the Commonwealth Migration Department Office in Coronation House in the city. In the best Kafka-esque style, presumably because I could answer very few of them, I was assigned to the inquiries counter in the naturalisation section of the office. It was a busy year for the naturalisation section because so many displaced and dispossessed people who had migrated to Australia had completed five years of residence here and were seeking naturalisation. It was an education for a young man to see the concentration camp numbers tattooed on the writs of some of them and their pathetic attachment to old and worthless passports of nations that had ceased to exist. Almost all of them travelled to this country on an International Refugee Organisation travel document good only for a one-way journey to this county.

I do not know whether it would be right to say that I have a spiritual connexion with this locality, but I certainly feel that I have a cultural one of more than 80 years. But as I have said, debate about the Voice should not be a contest of connexions.

In public commentary, I have largely confined my comments to my understanding of the legal repercussions of a Constitutional Voice. There are, however, other aspects of this affair upon which I have some opinions.

One aspect is the tone, the dogmatism, the certitude, intimidation even, and the personally denunciatory language of some of the opinions expressed. They are entirely different from almost all of those before the 1967 referendum in which I enthusiastically voted yes for the change to s 51(xxvi) into the constitution. There are also a certitude and presumption in the advocacy for a constitutionally entrenched Voice. Various boards and CEOs of corporations, and councils of industries have done this. There are charities, too, that have advocated for the Voice. Numerous Law Societies and the NSW Bar Association, among others, have publicly supported the Voice. Not one of these, so far as I am aware, has had a poll of shareholders, of their members, or the charities of their donors. The NSW Bar Association and the Law Societies have not asked their members what their opinions

are. A large number of local authorities, that is to say the elected councillors, are advocating a constitutional Voice. One might ask: where does this come from? The business of councils is to look after their ratepayers and residents who will have their vote when the referendum comes and not pre-empt the democratic purpose of a referendum. It is difficult to see upon what authority, or basis of informed or special knowledge, any of these can, or should adopt the stances that they have. I notice that the Queensland Bar Association has resolved not to take a formal position on the Voice.

Naturally, I cannot speak on behalf of them, but I do know that there are some organisations that do regularly engage in the conduct of their affairs with Indigenous People and who have a process of consultation with them on that conduct. But that is something that can easily be modified as circumstances demand. A Constitutional Voice is a very different matter. As we mourn the recent passing two days ago of one of Australia's finest constitutional law advocates, David Jackson KC, we would do well to remember and repeat what he said in his submission to the Joint Select Committee on the Aboriginal and Torres Strait Islander Voice Referendum, effectively that s 129 would concrete in the Constitution a new and uncertain constitutional personality.

> One point which appears to be made in support of the proposed amendment is that it ensures that there will always be a voice. But why should there be, in perpetuity, a Voice Entrenched constitutionally? No very satisfactory answer has ever emerged.

A great deal of water has flowed under the bridge since I wrote about the Voice in December last year as we waited for the release of an opinion of the Solicitor-General of the Commonwealth. Dated the 19th of April, numbered SG10 of 2023, it finally emerged as part of a submission by the Attorney-General to the Joint Select Committee on the Aboriginal and Torres Strait Islander Voice Referendum the morning after I lodged my submission to that Committee.

I have not had time to unpack the opinion of the Solicitor-General. It seems to me, with respect, that there are some curiosities both about the questions asked of the Solicitor-General, and the answers given by him. The first question was whether the proposed s 129 was compatible with Australia's system of representative and responsible government established under the Constitution. In answer, the Solicitor-General said, with, in my view, a polemical flourish, that it was not only "compatible with the system of representative and responsible government … but

enhanced the system". Enhance in the sense employed by the Solicitor-General is not novel. It has been used by some Judges of the High Court in some relatively recent cases, especially those concerned with the constitutional implication of freedom of political discourse.[1]

I need not repeat what I have written about the absence from the s 129 of any provision for a genuine and direct choice by all of the First Peoples, of the members who are to represent them on the Voice, and to make representations supposedly on behalf of them. Direct choice by the First Peoples does not appear to be on the Constitutional agenda. The second question to which also the Solicitor-General made an affirmative answer was whether the power to legislate under s 129(iii) empowered the parliament, and if so, how executive decision-makers would be legally required to consider relevant representations of the Voice.

Sub-section iii refers expressly to "composition, functions, powers and procedures [of the Voice]". The Oxford Dictionary defines "function" as: "an activity that is natural to or the purpose of a person or thing". The Macquarie dictionary defines function similarly: "the kind of action or activity proper to a person, thing or institution". Sub-

[1] SG No. 10 of 2023, [11], [20], [21] and fn 30, 31.

section (iii) says nothing about the *reception or disposition* of the Voice. Everything in terms is concerned with how the Voice is to be made up and how it is to go about its business and affairs. That is, it does not say anything about how the parliament and the executive government are to receive, process, consider or otherwise deal with, or hear the Voice. Among other things, in reaching his conclusion on the 2nd question, the Solicitor-General refers to the Explanatory Memorandum for the Referendum Bill:

> The legislative power under s 129(iii) would … allow the Parliament to make laws about the Voice's representations, including specifying whether or not, and if so in which circumstances, an Executive Government decision-maker has a legal obligation to consider the Voice's representations.

Unlike legislation made pursuant to a Constitutional power[2], the Constitution itself cannot be interpreted by reference to an explanatory memorandum for legislation for a referendum to change it. The explanatory memorandum, like the opinion of the Solicitor-General, is no more than an opinion about the meaning and effect of s 129 as proposed. It will be the High Court who will decide

[2] *Acts Interpretation Act* 1901 (Cth), 15AB(2)(e).

what s 129 means. I interpolate here that I mention some only of the bases for the opinion of the solicitor-general. Other lawyers, and legal scholars, will no doubt give it careful consideration and write about it.

So far as constitutional interpretation by the High Court is concerned, I will repeat two only of the matters to which I have elsewhere referred. If the High Court can decide (by majority) that the parliament can never make a law that would enable the deportation from Australia of a person with Indigenous ancestry despite the clear and unqualified language of s 51(xix), then one would think a future High Court might hold that the parliament cannot make a law restricting in any way the consideration of a representation by the Voice to the Parliament and the Executive Government.

The past is the past. It cannot be repealed. Nor should its failures be repealed. We live in the present and hope to improve the future. Australia is not the same country as it was in 1788, or 1850, or in 1901, or April the 25th, 1915, or 19th February 1942, when Darwin was bombed, or 1946 when European refugees began to flee to Australia, or 1967 when the Constitution was amended, or 1976 when the Boat People from Vietnam were generously received here, or for that matter since then when practically Australia has provided a refuge for people from almost every

beleaguered country in the world. As L.P. Hartley said, "the past is foreign country: they do things differently there". And as the 11th-century poet and philosopher Omar Khayyam said:

> The Moving Finger writes; and, having writ,
>
> Moves on: nor all they Piety nor Wit
>
> Shall lure it back to cancel half a Line,
>
> Nor all thy Tears wash out a Word of it.[3]

Australia needs to move on as the freedom-loving and equal community that it has become. I do not see the self-flagellation of 95% of its current population at the behest of fewer than 5% of it as likely to be an enhancement of our society.

I have heard it said, often, that colonisation, whether by a European or Asian power other than Britain, would have been inevitable, and that any of these would have been harsher than Britain. That relativist proposition, whether factually right or not, is unacceptable not only to Christian, but also other, moral orders and need not play any part in

[3] Omar Khayyam, *Rubaiyat of Omar Khayyam*, tr Edward FitzGerald (1859).

this debate. The past is whatever it was, here and elsewhere, often cruel.

The legal implications of the Voice, as proposed, are literally incalculable. This can, I think, however reasonably, be predicted as a new, uncertain and explosive minefield of Administrative Law intruding into, delaying and impeding the conduct of business, local authorities, and state and federal governments. The scope for impediment is immense, as Amanda Stoker demonstrated in her paper today. The legal concept of standing is ever expanding.

I would repeat the question that a number of people have asked me: how will the Voice go about its affairs? It is difficult to believe that it will not equip itself with all the apparatus of government, with a kind of cabinet, called perhaps an Executive, media and liaison officers, staffers and a bureaucracy to serve them. What, it may be asked, will be the content of the Voice's representations, a distillation or homogenisation of dozens, perhaps hundreds of various First Peoples communities some speaking different first or second languages? Already there exists the National Indigenous Australians Agency. The Agency advertises itself as having:

> a large national footprint with approximately 1,300 passionate employees spread across offices in

> remote, regional and urban locations. This enables us to work closely and respectfully with First Nations communities, organisations, peak bodies, all levels of government and other parties to support the design and delivery of policies and programs that reflect the uniqueness of each community and their changing priorities. Our work allows us to value-add in place, including in response to emerging priorities, pandemics, and natural disasters.[4]

Will those 1300 passionate public servants be supplemented by other equally passionate public servants to respond to the Voice's many representations? As with so many other questions, we do not know the answer to this.

I will touch briefly upon a few other matters before I finish. My former Chief Justice, The Hon. Murry Gleeson, AC, may be of a different mind from me on the question of a Voice to Parliament. His voice is worth hearing on any topic. Writing in July 2019, he said this:

> A related issue that has been debated is whether any referendum should precede, or follow, the creation of the proposed

[4] National Indigenous Australians Agency, 'Graduate Careers: About' (Webpage) <https://www.niaa.gov.au/graduate-careers/about>.

> representative body. I do not wish to intrude upon the various arguments and submissions canvassed by the Joint Select Committee. However, I think it very likely that Australians, and Parliament itself, would want to see what the body looks like, and hear what the Voice sounds like, before they vote on it.[5]

Mr Gleeson needs nobody to speak for him, but it does seem to me that the Bill for the referendum and s 129 as proposed give little or no indication of what the Voice would look like, or what it would sound like after the Referendum. It may also be noted that Mr Gleeson's paper is not concerned with and says nothing about a Voice to the executive and the complications to which that might give rise.

Mohammad Ali Jinnah, a highly intelligent, brilliant barrister, statesman and governor-general of Pakistan immediately after Partition, a man who was so clever that one of his colleagues said "he could see around corners",[6] was wary for many years of the partitioning of the sub-continent because he feared that India and Pakistan would

[5] Murray Gleeson, 'Recognition in keeping with the Constitution: a worthwhile project' (Speech, Uphold and Recognise, 18 July 2019) 9.

[6] Stanley Wolpert, 'Jinnah of Pakistan' (Oxford University Press, 1984) 19.

identify and define themselves as being separate. Ultimately, he was forced by political and other pressures to bow to the partition, which did occur. The history of every nation, including Australia, is unique, but there is wisdom in an aversion to division or segmentation.

The other matter relates to the constitutional obligations of the Voice itself. In default of fairness of the process by the Voice in dealing with representations to it by various First Peoples groups to it regarding the representations that they would wish to have made, the members of the Voice as officers of the Commonwealth may well be challenged in the High Court by way of prerogative or Constitutional writ and other claims (declaration and injunction) under s 75(v) of the Constitution. There is a basis, I think a reasonably arguable one, that the fact that the Voice might not have a final say, an interim one only,[7] on matters affecting the rights of First Peoples or groups of them, does not mean that the Voice does not have an obligation enforceable at law to hear and have regard the many and perhaps differing voices of First Peoples.

I referred earlier to the presumption of those purporting to demand a Yes vote of others. I do not myself presume to

[7] *Australian Broadcasting Tribunal v Bond* (1990) 170 CLR 321, 336-337 (Mason CJ); *Ainsworth v Criminal Justice Commission* (1992) 175 CLR 564, 578.

do that. I have an opinion on the likely and possible legal repercussions of the Voice. My opinion on the social, economic, political, symbolic and cultural implications of the Voice is no better and no worse than any other Australian. As WE Gladstone said, we should not "mistake the strength of [our] feelings for the strength of [our] argument".[8]

Finally, I would draw attention to the commentary by Quick and Garran to the referendum section, s 128, of the Constitution, of which the learned authors said: "[the] safeguards have been provided, not in order to prevent or indefinitely resist change in any direction, but in order to prevent change being made in haste or by stealth, to encourage public discussion and to delay change until there is strong evidence that it is desirable, irresistible and inevitable".[9]

[8] WE Gladstone, 'The might of right; from the writings of William Ewart Gladstone' (D. Lothrop & co., 1880) 299.
[9] John Quick and Robert Randolph Garran, 'Annotated Constitution of the Australian Commonwealth' (Angus & Robertson, 1901) 988.

Examining the Case for the 'Voice': An Argument Against

The Honourable Ian Callinan, AC, KC

I often agreed with my eminent former High Court colleague, the honourable Kenneth Hayne. Our judicial disagreements, when they occurred, were, as I intend this to be, cordial and respectful.

Disagreement now between us arises out of a recent report in The Australian of a speech he made regarding the proposed Indigenous voice to parliament. In the public interest I feel I am obliged to put an argument, not dogmatically, against the case he confidently put for the voice.

He asserts that the lack of any legal argument against the voice provides a justification for the voice. He seems to be saying that the fears of those who oppose the voice are unfounded because, even though he doubts if anyone will have standing to challenge representations made by the voice, if some unlikely person were to do so, the public can have full confidence in the High Court in the "maintenance and enforcement of the boundaries within which the governmental powers (in respect of the voice) might be exercised".

My former colleague states that "anyone can start litigation, including constitutional litigation, so long as their claim is not frivolous or vexatious". He sees a problem, however, in the sort

of order the court might make if some unimaginable party were to try to mount a constitutional challenge in respect of the voice. Indeed, he seeks to employ the metaphor that a fear of any credible legal challenge is merely to see a "column of smoke with no substance".

It should be recognised that some judges have a monocle that enables them to see substance where to others there is a mere wisp of smoke.

Stretching my imagination only a little, I would foresee a decade or more of constitutional and administrative law litigation arising out of a voice whether constitutionally entrenched or not. Every state and territory is likely to have an interest in any representations and in the interactions between the voice and the constitutionally entrenched houses of parliament and executive government.

It is one thing to say the voice can make representations only, but in the real world of public affairs, as the Prime Minister candidly acknowledged, it would be a brave parliament that failed to give effect to representations of the voice.

Just as there is a real world of public affairs, there is a real world of judicial ones. In modern times, it is an open question whether the US constitutionalist Alexander Hamilton's assertion that the courts are the least dangerous branch of government holds true.

The march of administrative law is almost inexorable. In 1995, in Teoh v the Minister for Immigration, the High Court decided that the process by which the minister reached a decision to remove from Australia, on character grounds, a convicted non-national drug importer was flawed because the importer's infant children had a "legitimate expectation" under the international Convention on the Rights of the Child that their interests should have been, but were not, taken into account by the minister. The High Court so decided even though the convention had not been enacted into Australian law.

It is an elementary principle of constitutional law that an international treaty cannot bind Australia and its peoples unless and until the treaty is enacted and assented into law by the parliament and the governor-general. It took eight years for a differently constituted High Court, of which Kenneth and I were members, to correct the heresy of legitimate expectation in the court's *Ex Parte Lam*. Who knows what a future High Court might do as it seeks to juggle the respective rights, obligations and "expectations" to which the voice would give rise?

I can imagine any number of people and legal personalities in addition to the states who might plausibly argue that they have standing. Standing is a highly contestable matter. It is an opaque and plastic concept. Whether a person has standing or not is itself a justiciable question of the kind regularly heard

and determined by the courts, expansively so in recent times. One has only to glance at the litigation that environmental concerns have generated as to standing to see that this is so.

Justiciability or not is a recurrent and important question. Whether, for example, the chief justice at the time, Sir Garfield Barwick, was right in his advice to the governor-general, that the governor-general could lawfully dismiss a prime minister, is not to the point here. What is to the point however is that one of Sir Garfield's justifications for giving the advice was that the issue could never be justiciable, is, with respect, wrong because justiciability itself is justiciable.

Kenneth would put all trust in the High Court. He says, "(a)ll that the court would be doing is its job".

It is always better to hear all of the arguments before deciding a case. In the recent past, at least, government has funded both an argument for and an argument against the case in a referendum for a change in the Constitution. That is apparently not to happen here. Rather, there is to be a "public education program" on the issue. The expression "public education" has an ominous, Orwellian sound to me. As much as I respect my predecessors, contemporaries and successors on the High Court, neither on my appointment nor subsequently have I experienced a Damascene conversion to an unquestioning faith in an all-seeing and infallible court. It has been said that final

courts are not final because they are infallible, they are infallible because they are final.

I have no doubt that, already, courageous and ingenious legal minds both are conceiving bases upon which to litigate the many legal and cultural implications of the voice. The voice, or a member of it, is almost certain to argue in the courts that a member of the executive government, in executing a parliamentary enactment of a representation of the voice, took into account an irrelevant consideration, or failed to take into account a relevant one, or made a decision that no reasonable person could make, shifting indicia relied upon in almost every challenge brought to the actions of government. One example might suffice.

Take the live cattle ban case. Whether the 2011 ban effected by then agriculture minister Joe Ludwig was a good or a bad decision is a highly debatable as a political affair. It was, in my view, peculiarly a matter for governmental decision requiring the balancing of many important political, diplomatic, and social considerations, including animal welfare, international relations, the Australian economy, the economy of other nations, the reliability of Australian supply chains and assured access to protein by our important neighbour Indonesia.

In holding that the ban was unlawful and actionable (misfeasance in public office), the Federal Court

microscopically examined the events, activities and legal advice sought or not sought in the minister's office.

In the real world, that case can be seen as a transfer of executive decision-making of a high and sensitive kind to unelected judges. Never underestimate the reach of administrative law, its progeny and its cousins.

A voice in any form, in my view, will give rise to many arguments and division, legal and otherwise.

If the body is to be an elected body, how is the franchise for it to be determined, regionally (as so far suggested), linguistically perhaps, or some other way? Will voter registration be compulsory? Will voting itself be compulsory? Will an expended Electoral Commission oversee elections to the voice? Will the High Court or some other court be a Court of Disputed Returns? Will the voice need not only its own extensive premises in Canberra and in many other places but also its own executive and other staff to assist it? Will it have a cabinet? Is there not a real chance that it will be infiltrated by the established political parties and become more an instrument of a predominant political party in the same way as Sir Alfred Deakin predicted the progression of the Senate as a "state house" to a battleground for centralised political parties with scant regard for the states the senators nominally represent?

What is proposed seems, whether constitutionally entrenched or not, is in substance a kind of a separate parliament.

The hallmark of a parliament is its capacity to raise taxes and, one hopes, to expend them wisely. If the parliament does not do that, then the paying public gets its opportunity to express its disapproval at the next election.

There is no suggestion that the voice will be self-funding. It will have no direct accountability to its financiers, the taxpayers. The voice can be seen as powerful, costly, and ultimately unaccountable to its financiers.

It is, I think, arguable that the members of the voice, and all those who may be employed in carrying out its functions, of which I think there will be many, funded as they will be by the commonwealth, may be "officers" of the commonwealth within the meaning of s 75(v) of the Constitution. That section enables certain aggrieved peoples to apply to the High Court for constitutional writs against such "officers".

There is little clarity about what is proposed. Sir Isaac Isaacs and other justices in the majority in the Engineers Case in 1920 said the High Court thenceforth should interpret commonwealth legislation in such a way as to give it plenitude, an irresistible endowment to the commonwealth to go high, wide and far, as it will be pressured by the voice to do.

For the avoidance of any doubt, I restate my great respect and earnest hopes for the First Peoples' welfare, improvement in life and full and undiscriminating involvement in Australian society in every respect. I write not only as an Australian, a former judge and a former patron of a charity for the support of troubled First Peoples' youth, but also as a person who has had occasion to see in situ some sad circumstances of some First Peoples' communities in or near Darwin, Ranger, Mornington Island, Thursday Island, Lockhart River, Alice Springs, and Cherbourg.

Like Senator Jacinta Nampijinpa Price and many other Australians, including many, many lawyers of goodwill, I do not think the voice is the way.

Ian Callinan was a justice of the High Court of Australia from 1998 to 2007.

Contributors

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The Honourable Ian Callinan, AC, KC was a Justice of the High Court of Australia from 1998 to 2007. He was admitted in 1965 and took silk in 1978. Prior to his appointment, Mr Callinan served as President of both the Queensland Bar Association and the Australian Bar Association. In 2010, he was awarded a Doctor of Laws (*honoris causa*) by his alma mater the University of Queensland. He was awarded the Centenary Medal in 2001 and made a Companion of the Order of Australia in 2003.

The Honourable Dr Gary Johns was the Member for Petrie in the Commonwealth Parliament from 1987 until 1996. He also served as Special Minister of State and Vice-President of the Executive Council in the Keating Government. Dr Johns was appointed Commissioner of the Australian Charities and Not-for-Profits in 2017. In 2022, he became the Secretary of the Voice 'No' Case Committee and a leading member of the *Recognise a Better Way* campaign.

The Honourable Amanda Stoker was a Senator for Queensland from 2018 to 2022, serving as Assistant Minister to the Attorney-General in the Morrison Government. Prior to entering Parliament, she was an associate to The Hon. Ian Callinan and The Hon. Philip McMurdo, a barrister, and a Crown Prosecutor. She now hosts *Sunday with Stoker* on *Sky News Australia* and serves on a variety of non-profit boards.

About The Samuel Griffith Society

The Samuel Griffith Society was founded in 1992 and is named in honour of the primary author of the Commonwealth Constitution and inaugural Chief Justice of Australia.

The Society aims to promote greater public awareness and understanding of the Commonwealth Constitution and Australia's federal system of government. To this end, the Society holds an annual conference and publishes the papers that are presented at these conferences in a volume entitled *Upholding the Australian Constitution*.

In addition to its annual conference, on Wednesday 17 May 2023 the Society hosted a special symposium on the Albanese Government's proposal to amend the Constitution to establish a new Aboriginal and Torres Strait Islander 'Voice' to Parliament and the Executive Government.

Speakers addressed various aspects of the 'Voice' proposal, and their papers are published in this booklet for the benefit and information of the general public.

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