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24 April 2023

Senate Finance and Public Administration Committees
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To whom it may concern,

Submission on the administration of the referendum into an Aboriginal and Torres Strait Islander Voice

GetUp welcomes the opportunity to make a submission on the administration of the referendum to recognise Aboriginal and Torres Strait Islander peoples in the Constitution through an Aboriginal and Torres Strait Islander Voice (the *Referendum*).

All First Nations work at GetUp is led by a team of campaigners and organisers from the Widjabul Wia-bul, Gooreng Gooreng, Warlpiri, Luritja-Pitjantjatjara, Wiradjuri, Noongar, Wakka Wakka, Gubbi Gubbi, Lardil, Woppaburra, Yanyuwa and Garrwa, and Butchulla Nations.

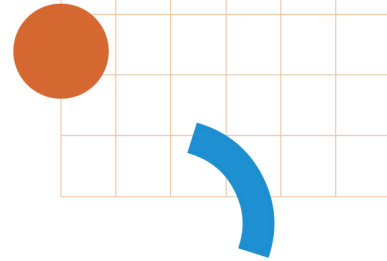
GetUp campaigners have spent over six years working to organise and enrol First Nations communities ahead of elections, including but not limited to the 2022 federal election and the 2020 Northern Territory election. GetUp is therefore well-positioned to be able to speak to the needs of the community in the upcoming Referendum, and identify the deficiencies in the system that urgently need to be redressed before a vote on First Nations rights can occur.

We refer to our previous submissions to the Joint Standing Committee on Electoral Matters Inquiry into the 2022 federal election (dated 7 October 2022) and on the *Referendum (Machinery Provisions) Amendment Bill 2022* (dated 15 December 2022).

If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

Chido Dunn
GetUp Campaign Director



Submission

Political participation is a human right and is fundamental to our democracy. The right to vote, without discrimination, is set out in the International Covenant on Civil and Political Rights and the International Covenant on the Elimination of Racial Discrimination,² both of which Australia is a signatory to, and thus bound by. The right to vote is also set out in the Universal Declaration on Human Rights.³ However, without being enrolled to vote and having that vote counted, these rights cannot be realised. Right now, there are real, practical barriers to voting faced by our First Nations communities, putting Australia at risk of violating its human rights obligations and undermining Australia's democracy.

Enrolment and turnout rates of First Nations communities should be at levels that match the broader population. While we acknowledge that First Nations enrolment levels have improved since the Albanese Government was elected in May 2022 (with the rate increasing from 79.3% in June 2022⁴ to 84.5% in February 2023⁵), the rate of First Nations enrolment is still significantly below the total population rate (which sat at 97.1% in December 2022).⁶

The reasons for this are complex, but in large part are due to deliberate decisions made by previous Coalition governments to strip the relevant electoral commissions of resources and the disproportionate purging of First Nations voters from the electoral roll.⁷ Prime Minister Anthony Albanese himself has called the steps taken by the Coalition to restrict the voting rights of First Nations communities "voter suppression", and has vowed to address it.⁸

Along with a growing chorus across the community and civil society, GetUp has been calling for the urgent remedy of these disenfranchisement issues before the Referendum is held. Specifically, GetUp - along with the Australian Electoral Commission (AEC), the Northern Territory Electoral Commission (NTEC), Land Councils, and others⁹ - are calling for the introduction of 'provisional voting' (also known as 'on the day' enrolment and voting) in time for the Referendum, meaning that voters who are entitled to enrol, but who are not yet on the electoral roll, will be able to enrol and vote at voting centres, and their vote will count for the Referendum so long as their identity can be confirmed during the scrutiny process. The Advisory Report on the *Referendum*

¹ Article 25, *International Covenant on Civil and Political Rights*, dated 16 December 1966.

² Article 5(c), *International Convention on the Elimination of All Forms of Racial Discrimination*, dated 21 December 1965.

³ Article 21, *Universal Declaration on Human Rights*, dated 10 December 1948.

⁴ AEC, [Indigenous enrolment rate](#), dated 6 February 2023.

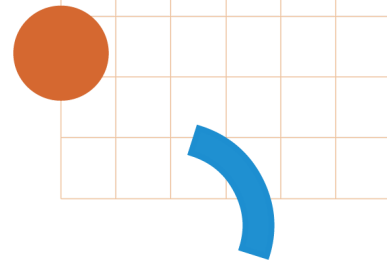
⁵ AEC, [Record increase in estimated Indigenous enrolment ahead of Referendum](#), dated 6 February 2023.

⁶ AEC, [Enrolment statistics](#), dated 31 December 2022. It is likely even higher as at today's date, but the AEC has not yet published that data.

⁷ See further detail in our submissions to the Joint Standing Committee on Electoral Matters Inquiry into the 2022 federal election dated 7 October 2022 and on the *Referendum (Machinery Provisions) Amendment Bill 2022* (dated 15 December 2022).

⁸ National Indigenous Times, [Albanese accuses former government of voter suppression in the Northern Territory](#), dated 8 June 2022.

⁹ The list of actors calling for on-the-day enrolment ahead of the Referendum includes but is not limited to the AEC, the Central Land Council, the Northern Territory Electoral Commission (see submissions on the APH website to the [Joint Standing Committee on Electoral Matters Inquiry into the 2022 federal election](#) and on the [Referendum \(Machinery Provisions\) Amendment Bill 2022](#)).



(*Machinery Provisions*) *Amendment Bill 2022* has urged the Albanese Government to “give serious consideration” to these proposals.⁰

As we detail more thoroughly in our submission on the *Referendum (Machinery Provisions) Amendment Bill 2022* (dated 15 December 2022), similar changes have been proven to be effective in the past: the 2020 NT general election occurred when COVID-19 was in full force, and special measures were taken to ensure that First Nations voters (who were most at risk) would still be able to participate. An amendment to the *Electoral Act 2004* (NT) allowed voters who were entitled to enrol, but who were not on the electoral roll at the close of roll, to still enrol and vote at voting centres. These voters cast a provisional vote which was only counted once a person’s identity and their eligibility to enrol was confirmed. These changes were highly effective,² with thousands of voters being added to the roll and having their vote counted, especially in remote communities.³

As part of our work on the Referendum, GetUp has already begun outreach and organising efforts in First Nations communities. We know from our work there that a successful campaign that secures provisional voting at a national scale will be an effective way to engage remote communities in the Referendum, and demonstrate to them (and to the rest of Australia) how the Referendum will lead to practical, tangible and beneficial change for First Nations communities.

While we acknowledge that the Albanese Government to date has so far resisted these calls in the spirit of attempting to secure bipartisan support for the Referendum, circumstances have changed drastically in recent weeks. On 5 April 2023, Opposition Leader Peter Dutton confirmed that the Liberal Party would be opposing the Referendum and actively campaigning against it.⁴ It is therefore clear that the Coalition’s attacks on the democratic rights of First Nations communities will continue unabated for the foreseeable future.

Furthermore, we know from past experience that the Coalition will seek to use spurious threats of voter fraud in an attempt to erode the democratic rights of First Nations people. In 2021, the Morrison Government proposed punitive voter ID laws that aimed to see First Nations people turned away from voting booths on election day for being unable to produce certain forms of identification.⁵ Alongside others, GetUp successfully fought-back against the new laws, with the Morrison Government retracting the Bill after the AEC gave evidence that voter fraud is a “vanishingly small” issue in Australia.⁶

Any similar arguments that the Coalition or others might make against the introduction of provisional voting in time for the Referendum are wholly baseless. Every person in Australia who is

⁰ Joint Standing Committee on Electoral Matters, [Advisory report on the Referendum \(Machinery Provisions\) Amendment Bill 2022](#), dated January 2023.

¹ See the [Northern Territory’s Electoral Legislation Further Amendment Bill 2019](#).

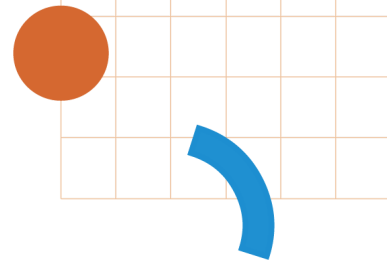
² Northern Territory Electoral Commission 2021, [2020 Territory Election Report](#), p. 40.

³ [Northern Land Council submission to the JSCEM inquiry into the 2022 federal election](#), dated October 2022.

⁴ The Guardian, [Peter Dutton confirms Liberals will oppose Indigenous voice to parliament](#), dated 5 April 2023.

⁵ The Guardian, [Proposed voter ID laws ‘real threat’ to rights of Indigenous Australians and people without homes](#), dated 27 October 2021.

⁶ SBS News, [Government drops push to pass controversial voter ID bill ahead of next election](#), dated 1 December 2021.



entitled to vote in the Referendum should be able to vote – it is their democratic right. This is even more so the case for First Nations communities and the Referendum – any significant decisions on the rights of First Nations people cannot legitimately be taken by this or any other government until we ensure that the communities that are most affected can engage fully and freely in the Referendum. The introduction of Australia-wide provisional voting will help undo some of the decade of voter suppression perpetrated upon First Nations communities by successive Coalition governments.

The Albanese Government still has time to legislate this change before the Referendum is held at the end of 2023.

In summary:

- It is well-accepted that voters in First Nations communities have been suppressed.
- The introduction of provisional voting in time for the Referendum is the most practical and effective way to combat that voter suppression, and it enjoys broad support from authoritative and apolitical actors like the AEC.
- It will not demand a large amount of additional resources to deliver, as the AEC will need to conduct identity checks for declaration votes in the Referendum in any event – the only difference is whether the vote will then be counted for the Referendum.
- We know from past elections that provisional voting works, and leads to much higher rates of First Nations participation.
- The delivery of provisional voting in time for the Referendum will help to engage First Nations communities, and demonstrate to all of Australia the positive change that the Referendum can deliver.
- The Coalition will seek to be divisive on the Referendum no matter what course of action the Albanese Government takes, and any arguments made by the Coalition or others concerning voter fraud are cynical and baseless.
- The Albanese Government still has time to legislate for this change before the Referendum is held at the end of 2023.

For these reasons, there is no excuse to continue to resist the calls for the introduction of Australia-wide provisional voting in time for the Referendum. Any significant decisions on the rights of First Nations people cannot legitimately be taken by this or any other government until we ensure that the communities that they affect can engage fully and freely in our democratic processes.

Recommendation: The *Commonwealth Electoral Act 1918* must be amended to allow voters who are entitled to enrol, but who are not on the electoral roll at the close of roll, to still enrol and vote at voting centres, so long as their identity can be confirmed during the scrutiny process. This change must enter into force before the Referendum is held at the end of 2023, to ensure that the highest possible number of First Nations voters are able to participate in the Referendum.