

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

April 21 2023

Committee Secretary
Joint Select Committee on the Aboriginal and Torres Strait Islander
Voice Referendum
PO Box 6201 Canberra
ACT 2600

Dear Committee Members,

We represent **Treaty Before Voice**, a campaign launched by grassroots First Nations communities and organisers across the country on the 26th of January 2023, where we made demands across the nation for: Treaties; Land back and land rights; the end of Aboriginal deaths in custody and the implementation of all recommendations of the Royal Commission into Aboriginal Deaths in Custody and the coronial inquests; Climate justice; ending the removal of Black children from their families and the implement the recommendations of the Bringing Them Home report; the abolishment of police and prisons; and reparations for the long-standing harms of colonisation.

We are **opposed** to the Aboriginal and Torres Strait Islander Voice to be enshrined in a new chapter of the Constitution, Chapter IX.

The current Voice proposal as it stands is insufficient to our goal of tangibly improving the lives and conditions of First Nations Peoples of these lands. A Voice body may only make **representations** which are not in line with Sovereignty and the self-determination of First Nations Peoples.

We take changes to the Constitution seriously as the history of the Australian Constitution is founded on racial discrimination, the false premise of the British legal concept *Terra nullius*, and the subsequent upholding of institutionalised racial discrimination implemented through legislation which has had devastating effects such as the White Australia Policy, forced assimilation of First Nations Peoples, and the Stolen Generations.

Historically, when the Mabo case was won this meant recognising that colonisation did not overturn First Nations sovereignty over their land. **Sovereignty** is the highest level of recognition. However, Constitutional change of an 'Aboriginal and Torres Strait Islander Voice' that is established 'in **recognition** of Aboriginal and Torres Strait Islander people as the First Peoples of Australia' undermines and dilutes this highest level of recognition. We are concerned that the Constitution Alteration (Aboriginal and Torres Strait Islander Voice) 2023 Bill (the Bill) will not bring justice to First Nations People, but will constitute a step backwards.

The Voice proposal is what followed The Uluru Statement from the Heart which was

decided upon by only 250 First Nations delegates. Regional Dialogues leading up to the Uluru Statement were carried out with less than 1,200 First Nations Delegates and took place in only 12 regional areas. This process played into the idea of pan-Aboriginality and the notion that selected delegates can represent all First Nations People. Furthermore, the statistics used in the national debate around the Referendum which purport that 88% of Aboriginal and Torres Strait Islander People 'believe it is important to formally recognise Aboriginal and Torres Strait Islander peoples and cultures in the Constitution' are based off a survey that only asked 532 First Nations People (<https://www.reconciliation.org>). The Committee should be ever mindful that the people who are most impacted by this Bill are to give prior and informed consent towards the meaning, the purpose, and the functions of Bill. It has not been demonstrated that the majority of First Nations people have given prior and informed consent to have the Bill put forth.

We are concerned that the majority of First Nations People have not had the platform to be heard, involved with nor informed of matters pertaining to the proposed Voice to Parliament. Prior to the Bill being passed, **all and only First Nations People** should be able to vote on the creation of a 'representative Voice' to avoid discriminatory outcomes.

The following issues require redress prior to the Bill being passed and a national Referendum:

1. We reject the term 'First Peoples **of Australia**' as it is a terminology of **colonial possessiveness**. First Nations People have existed on this land 60,000+ years before the state of Australia was founded. First Nations People's sovereignty is derived from the sustained and continuous systems of governance of land established over tens of thousands of years, and are still in practice as adjacent streams of governance to the current colonial systems. The identity of First Nations People is not formed by the state of Australia. Article 8 of the United Nations Declaration on the Rights of Indigenous Peoples Declaration states that Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture. A Bill that contravenes First Nations identity, cultural practices and protocols while purporting to be in the interest of First Nations Peoples is cultural genocide.
Recommendation: Constitutional reforms do not include provisions that refer to First Nations People as belonging to, or suggesting ownership by the State of Australia.
2. The term 'Aboriginal and Torres Strait Islander' appears eight times in the proposed Constitutional Amendments when the people who this Amendment refers to are members of **over 300 Nations** and language groups (Map of First Nations: <https://aiatsis.gov.au/map-indigenous-australia>). Race is a colonially-derived social construct of people by phenotype for the purposes of categorisation and hierarchy, whereas Indigenous Nationhood refers to multidimensional factors that include descent, language, cultural and spiritual practices, land custodial practices, ownership of and connection to a place/territory, and the governance that make up a Nation of people. Referring to First Nations Peoples 'as one race' under a false notion of pan-Aboriginality/Torres Strait Islander identity, erases and misrepresents the Sovereignty of the different and distinct Nations on this continent, further contributing to colonial dispossession. Article 6 of the UN Declaration on the Rights

of Indigenous Peoples states that every indigenous individual has the right to a nationality.

Recommendation: The Bill should not set a Referendum that asks Australian voters whether or not to enshrine First Nations People into the Constitution as a race, as this terminology is reflective of outdated attitudes towards race and culture and is in conflict with First Nations Sovereign identities. This is harmful to First Nations People, and misleading to all Australians.

3. First Nations Peoples have thousands of years of cultural protocols and ways of governance including the fundamental principle to only speak for your own Country. Speaking for others' Country is not culturally appropriate or in line with First Nations law. The Bill seeks to create a Voice to Parliament that **dishonours First Nations Law** when it may make representations on matters relating to all First Nations People universally across Australia. Article 5 of the UN Declaration on the Rights of Indigenous Peoples sets out that First Nations people have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State. Examples of distinct declarations from First Nations Embassies include the Deanbilla Goompi Declaration and the Goenpul Jandiawal statement.

(Deanbilla Goompi Declaration

<https://drive.google.com/file/d/102Fbej1wgRFiOug1ibCPw4970nmBoQcD/view>)

(Goenpul Jandiawal Statement

<https://drive.google.com/file/d/10J00EegOY4DrcKBqh0IViYXoYJH1dPi8/view>)

Recommendation: There should not be a Bill put to Parliament that asks Australians to vote in a referendum on a proposal that dishonours First Nations Law for speaking for your own Country only.

4. It is a critical concern that **the Bill does not mandate for the Voice to Parliament to be elected by First Nations Peoples**. This allows for cherry-picked and tokenised First Nations members of a Voice body to represent all First Nations Peoples. The failure to ensure a Voice would be freely elected by and representative of First Nations People contravenes Articles 3, 18 and 19 of United Nations Declarations on the Rights of Indigenous Peoples.

Recommendation: The Bill should not be passed in order to avoid a situation of representation without proper and fair election and contravention of Australia's obligations at international law.

5. It is prejudicial and discriminatory that the Bill proposes a Referendum in which 17,371,123 people will vote to decide on the fate of 800,000 First Nations People. There are 560,840 First Nations People who are eligible to vote but only 473,851 First Nations People who are enrolled to vote

https://www.aec.gov.au/Enrolling_indigenous-enrolment-rate.)

The premise of **the Bill is discriminatory** in that non-indigenous people have the voting power to override the votes of First Nations People in a national Referendum by sheer numbers. Again, the very purpose of this Bill is in contravention of the rights to self-determination as set out in Articles 18 and 19 of United Nations Declarations on the Rights of Indigenous Peoples. Furthermore, no other group of people in the

country will have a non-elected body enshrined in the Constitution that is purported to be representative of them all. The Bill is prejudicial and amounts to discrimination.

Recommendation: The Bill should not be passed.

6. The phrasing in Section 129 of the Bill seeks to grant Parliament power to legislate on “matters relating to” is deceitful. **All matters of law relate to First Nations People**; First Nations People are not exempt from any Australian laws. Any determination that a matter does not relate to First Nations People is a misjudgment. The wording of this part of the Bill sets out that First Nations People are completely removed from the impacts of Australian laws unless the laws specifically relate to First Nations People. This contributes to the double standard in the legal system where Indigenous people are already disproportionately impacted by colonial law, experiencing higher rates of policing, incarceration, child removal, and many other pieces of legislation that erode human rights.

Recommendation: The Bill should not be passed.

7. Due to the ongoing impacts of generational trauma and discriminatory legal and policing practices, First Nations adults are 10 times more likely to be incarcerated than non-indigenous adults in Australia and First Nations children are incarcerated at rates of 26 times higher than non-indigenous children and are incarcerated from the ages of 10 years old. This pipeline of First Nations children, youth and adults into a prison industrial complex is in conflict with presenting a fair and equitable Voice when the *Referendum (Machinery Provisions) Act 1984 (Cth)* **prohibits incarcerated people from voting in the Referendum.**

These systemic injustices have generational impact, considering enshrining the Voice into the Constitution formalises further systematic exclusion of First Nations People due to the prohibition and the systems of racialized and gendered imprisonment.

Furthermore, First Nations People who are eligible to vote **have a lower enrollment rate** than non-First Nations People of voting age

(<https://www.aec.gov.au/Enrolmentstats.htm>).

Recommendation: Any change to the Constitution necessitates serious redress of the inequalities in distribution of voting rights and access that exists currently between First Nations People and other Australians.

The process by which the Voice to Parliament has been unrolled has been discriminatory, exclusionary, and misleading - and this has resulted in a Bill that is insufficient to a Treaty process, and undermines First Nations Sovereignty.

Please consider that any Referendum process involving Australians necessitates:

- Recognition of black fella law
- Confronting the prejudice that 16 million non-indigenous people can decide the fate of 800,000 - which in itself is a racial privilege being abused.
- Conversations about constitutional change that include the recognition of Aboriginal and Torres Strait Islander sovereignty that had been recognised by the High Court in *Mabo* in 1992.
- The addressing of blatant banning and exclusion of First Nations Leaders from the Voice processes. On the 9th of November, 2022, Meagan Davis spoke at a National

Press Club Conference about the Voice to Parliament Bill, and stated that, “We also banned significant leaders from the movement because of their cynicism about Government and the country changing, and that wasn’t great for a law reform proposal. So we wouldn’t allow many of them to speak.” This is a demonstration of how the Voice campaign has silenced and excluded critical dissent from well known and active First Nations Leaders and organisers if they did not directly serve and were in favour of the Voice.

- Equitable representation at international levels. The Indigenous representative, Cathy Eatock, attended the UN Permanent Forum on Indigenous Issues held in New York on the 17th-18th April 2023, paid for by Government Departments to advise the UN that First Nations groups support the Voice Notion. This was not made aware by many First Nations Peoples and was not elected by First Nations communities. https://social.desa.un.org/sites/default/files/Side%20events%20at%20UNHQ%20calendar_18Apr2023_0.pdf
- Addressing the appointment of the First Nations Ambassador, Mr Justin Mohamed. We totally oppose this Ambassador for First Nations People. It is another clear example of the government acting without authorisation, cherry picking the First Nations People that are singing the same songs and reflecting what they want to hear. <https://www.dfat.gov.au/international-relations/themes/indigenous-peoples/ambassador-first-nations-people>
- **Treaty.** Both the treaty and truth telling were dropped from the Referendum question.
- Equity in the dissemination of information relating to the Referendum. The Government has given \$9.5 million towards the development of a website that promotes either the ‘Yes’ or ‘neutral’ position on the Voice to Parliament. As yet, **no funding** has been given to support a **‘No’ or ‘unsure’ campaign.**
- The prevention of adverse action towards First Nations People who oppose the Voice. The campaign has denied and avoided responsibility that the Voice processes is creating a toxic environment of fear and favour - one that means that people in government jobs and institutions are fearful for their jobs if they speak out against the Voice, and that government organisations that are heavily funded by the Commonwealth are choosing to back the Voice so that they can maintain good favour and secure continual government funding.
- Clear transparency and accountability of funds and sponsors from businesses and corporations contributing towards campaigns on Constitutional change that impact First Nations People. The corporations that favour the Voice include companies such as the Commonwealth Bank, ANZ, Wesfarmers, Woolworths and Coles, BHP, Rio Tinto, Santos, and other mining companies who have a direct interest in acquiring Aboriginal and Torres Strait Islander Land. These big companies align with the Albanese Government in supporting the Voice, in return for favour and access to First Nations lands, resources, waterways and oceans. This interest is a pecuniary interest. The corporations are not acting out of a desire for justice, they are acting out of an economic interest and advantage in supporting the Voice. These pecuniary interests have not been declared publicly.
- Prioritisation of the rights of Indigenous people as established by international law. Genocide is still played out by discriminatory legislation on this continent, and we need a treaty in line with the Mabo decision in 1992 in recognition of Sovereignty. We demand the Commonwealth enter into an agreement with the Sovereignty of each Nation, and it should be done as soon as possible to alleviate concerns over

coexistence on this continent. Since 1992, this nation has been in limbo about the coexistence of First Nations Sovereignty and sovereignty of the Commonwealth. The only way that this can be addressed is by way of Treaty enshrined into the Constitution. We have very real concerns that we would never see Treaty on the table, as both the Treaty and truth telling were both dropped from the referendum question in favour of only a Voice body.

- Transparent and equitable processes. The people that are affected by this Bill must give prior and informed consent before the Bill is passed. Unless this has been properly demonstrated the Bill should not and cannot go ahead.

This submission outlines issues raised by the Bill, and we can supplement further detail and evidence in a later submission and at a public hearing if requested by the Committee. We will be available to appear at any time if you will request us.

Regards,
Treaty Before Voice

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