THE VOICE REFERENDUM

The Proposed Constitutional Amendment

The proposed constitutional amendment provides for a new Chapter IX titled 'Recognition of Aboriginal and Torres Strait Islander Peoples' to be introduced into the Australian Constitution.

Within this new Chapter, a new section 129 provides introductory words followed by three sub-sections. Each part of the proposed section 129 is crucial to the proposal and serves an important purpose in establishing a constitutionally enshrined 'Aboriginal and Torres Strait Islander Voice' (**the Voice**). The relevance of each part is explained below.

Introductory words

> 'In recognition of Aboriginal and Torres Strait Islander Peoples as the First Peoples of Australia:'

The introductory words:

- provide for express recognition of Aboriginal and Torres Strait Islander peoples as Australia's first peoples – this has symbolic value, rectifying the failure of the Constitution to provide such recognition, which has been described as 'longstanding and unfinished business for the nation'[1]; and
- orient the Voice, established in the substantive provisions which follow, as a substantive act of recognition acknowledging the unique status and rights of Aboriginal and Torres Strait Islander peoples as Australia's Indigenous Peoples.

Section 129(i)

> 'There shall be a body, to be called the Aboriginal and Torres Strait Islander Voice'

Section 129(i) provides that a 'body' shall be established and determines the title of that body: the Aboriginal and Torres Strait Islander Voice.

Section 129(iii) empowers Parliament to make laws with respect to composition, functions, powers and procedures of the Voice. This power is discussed below.

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Section 129(ii)

> 'The Aboriginal and Torres Strait Islander Voice may make representations to Parliament and the Executive Government of the Commonwealth on matters relating to Aboriginal and Torres Strait Islander peoples'

Section 129(ii) provides for the core function of the Voice.

Namely, it provides the Voice:

- with the discretionary function to **make representations** – that is, express its views through, for example, submissions or advice;
- to both:
  - **Parliament** – the law-making branch of federal government; and
  - the **Executive Government of the Commonwealth** – the branch of federal government that devises policies, initiates processes to make or reform law, expends Commonwealth moneys and exercises powers provided to it by Parliament;
- **on matters relating to Aboriginal and Torres Strait Islander peoples** – for example, to make representations in relation to matters that specifically affect Aboriginal and Torres Strait Islander peoples or that impact them in a different or unique way.

This core function is constitutionally protected. This ensures that the Voice will be a lasting and authoritative body that, because of its enduring ability to make representations to Parliament and the Executive Government of the Commonwealth, will have a substantive impact on the development and enactment of laws, policies and programs relating to Aboriginal and Torres Strait Islander peoples.

Section 129(ii)

> '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.'

Section 129(iii) empowers Parliament to make laws with respect to matters relating to the Voice itself.

This power is *discretionary* – Parliament is not required under this provision to make any specific laws relating to the Voice.

The Australian Government has committed to establish the Voice in accordance with a set of Design Principles, should the referendum be successful.

The power is *broad* – it enables Parliament to make laws relating to:

- the Voice's composition, functions, powers and procedures; *and*
- the way in which the Voice interacts with Parliament and the Executive, and those entities interact with it.

This could include, for example, whether the Executive may or must seek a representation from the Voice or is obliged to consider a representation.

Parliament may amend or add to these laws as it sees fit, subject to democratic parliamentary processes, and with the input of the Voice once it is initially established.

Published date: XX

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1 Commonwealth of Australia, Referendum Council, Final Report of the Referendum Council, (Report, 30 June 2017) <https://www.referendumcouncil.org.au/sites/default/files/report_attachments/Referendum_Council_Final_Report.pdf>, iii.