

21 April 2023

Senator Nita Green
Chair
Joint Select Committee on the Aboriginal and Torres Strait Islander Voice Referendum
Parliament House
Canberra, ACT 2600

Dear Chair,

We are grateful for the opportunity to make a brief submission to the Joint Select Committee on the Aboriginal and Torres Strait Islander Voice Referendum ('the Committee').

The Public Interest Advocacy Centre ('PIAC') strongly supports the wording of proposed new Chapter IX, section 129 in the Constitution Alteration (Aboriginal and Torres Strait Islander Voice) 2023 ('the Bill'). The proposal is constitutionally sound, gives effect to the historic consensus of the Uluru Statement from the Heart and will practically advance the human rights of Aboriginal and Torres Strait Islander people.

About PIAC

PIAC is a leading social justice law and policy organisation. Established in 1982, we are an independent, non-profit organisation that works with people and communities who are marginalised and facing disadvantage.

PIAC has worked for over 40 years with Aboriginal and Torres Strait Islander people to achieve practical change that will improve people's daily lives. We have seen through our work the importance of partnering with First Nations people. First Nations people are the experts on issues affecting them, and we achieve the best outcomes by listening carefully to what they have to say. Having an Aboriginal and Torres Strait Islander Voice in our Constitution will make this an enduring reality.

Responding to the call of the Uluru Statement from the Heart

It is significant that the Bill faithfully responds to the call of the Uluru Statement from the Heart, an historic consensus reached following an unprecedented process of consultation and

deliberation by Aboriginal and Torres Strait Islander peoples. This is a solid and principled basis upon which to recognise First Nations peoples in the Constitution.

Advising the Executive

It is important that the Voice can advise both the Parliament and the Executive. Many key policies affecting Aboriginal and Torres Strait Islander peoples originate and crystallise within the Executive. Ensuring the Voice may make representations to Executive Government is therefore essential to giving Aboriginal and Torres Strait Islander peoples a meaningful say in the laws, policies and decisions that affect them. Excluding the Executive Government would diminish the capacity of the Voice to influence practical improvements to policy. Accordingly, we support the proposed wording of subsection (2).

Constitutional soundness

The overwhelming consensus of expert legal opinion is that the proposal for a Voice is constitutionally sound. As an organisation that is frequently engaged in litigation, including in the High Court, we regard concerns about the proposed wording resulting in protracted or disruptive litigation as being unfounded.

Numerous leading constitutional experts have made submissions to the Committee on the legal implications of s 129. Rather than repeat those arguments, we formally endorse the submissions of Professor Anne Twomey (Submission 17) and the Indigenous Law Centre (Submission 44).

Compatibility with human rights

Section 129 is consistent with Australia's human rights obligations. The Bill advances the rights of Indigenous people to self-determination and political participation and does not detract or diminish other rights: it sits alongside them.

It has been long established that Indigenous peoples have the human right to self-determination. The Voice is an institutional response to the invitation in the Uluru Statement from the Heart, and manifests self-determination by recognising the political status of Australia's First Nations, to support economic, social and cultural development.

Section 129 is consistent with Australia's human rights obligations under the United Nations Declaration on the Rights of Indigenous Peoples ('UNDRIP'). While the UNDRIP is a non-binding declaration of the UN General Assembly, the rights it affirms are contained in binding treaties, such as the ICCPR and the ICESCR, which Australia has both signed and ratified. The UNDRIP's significance has been recognised by the High Court.¹

The UNDRIP recognises a wide range of human rights that are afforded to Indigenous peoples including political participation, the right to be consulted on measures to eliminate discrimination, the right to exercise self-governance on matters that relate to their affairs and on how to improve their economic and social rights.

¹ *Love v Commonwealth of Australia* (2020) 375 ALR 597, *Thoms v Commonwealth of Australia* [2022] HCA 20.

For example, Article 18 recognises the Indigenous right to ‘participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures’. Article 19 requires Australia to consult with Indigenous representative institutions before adopting ‘legislative or administrative measures’ that affect their peoples. This is exactly what the Voice is designed to address and offers a mechanism to ensure Australia is fulfilling its role to ensure the human rights of all its people are respected and protected.

These rights do not create inequality, or discriminate, between Indigenous peoples and other Australians, but rather ensure the views and interests of Indigenous peoples are effectively heard. It is an axiom of the right to equality and non-discrimination that differential treatment is not only *permissible* but may be *required* to achieve substantive equality.²

The Committee on the Elimination of Racial Discrimination has explicitly recognised that the rights of Indigenous peoples, affirmed in the UNDRIP, are not in breach of broader equality and non-discrimination rights: rather, they recognise the collective identity of Indigenous peoples.³ Section 129 progresses, and does not detract from, Australia’s attempts to ensure substantive equality for all Australians.

We urge the Committee to recommend this Bill be passed by Parliament.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Jonathon Hunyor', written in a cursive style.

Jonathon Hunyor
Chief Executive Officer

² See, for example, UN Human Rights Committee, *CCPR General Comment No. 18: Non-discrimination* (10 November 1989) [8] and [9].

³ Committee on the Elimination of Racial Discrimination, *General Recommendation No 32: The Meaning and Scope of Special Measures in the International Convention on the Elimination of All Forms Racial Discrimination*, UN Doc CERD/C/GC/32 (24 September 2009) [26].