

Striving to Get the Country to YES

Fr Frank Brennan SJ
St Ignatius, Toowong

27 April 2023

1. 2012 The Expert Panel on Recognising Aboriginal and Torres Strait Islander Peoples in the Constitution

(including Noel Pearson, Megan Davis, Patrick Dodson, Ken Wyatt, Marcia Langton)

The Panel agreed on four principles to guide its assessment of proposals for constitutional recognition of Aboriginal and Torres Strait Islander peoples, namely that each proposal must:

- contribute to a more unified and reconciled nation;
- be of benefit to and accord with the wishes of Aboriginal and Torres Strait Islander peoples;
- be capable of being supported by an overwhelming majority of Australians from across the political and social spectrums; and
- be technically and legally sound.

Recommendation 3: ‘The referendum should only proceed when it is likely to be supported by all major political parties, and a majority of State governments.’

2. *Aboriginal and Torres Strait Islander Peoples Recognition Act 2013*

- (1) The Parliament, on behalf of the people of Australia, recognises that the continent and the islands now known as Australia were first occupied by Aboriginal and Torres Strait Islander peoples.
- (2) The Parliament, on behalf of the people of Australia, acknowledges the continuing relationship of Aboriginal and Torres Strait Islander peoples with their traditional lands and waters.
- (3) The Parliament, on behalf of the people of Australia, acknowledges and respects the continuing cultures, languages and heritage of Aboriginal and Torres Strait Islander peoples.

3. Uluru Statement from the Heart, 27 May 2017

We call for the establishment of a First Nations Voice enshrined in the Constitution.

4. Referendum Council 2017, 30 June 2017

(including Pat Anderson, Megan Davis, Noel Pearson, Patrick Dodson)

Pat Anderson and Mark Leibler, Introduction: ‘With focussed political leadership and continued multiparty support for meaningful recognition, the Voice to the Parliament proposal can succeed at a referendum.’

‘The Council adopted the (2012) Expert Panel’s four principles to guide its assessment of proposals for constitutional reform’.

Recommendation 1: That a referendum be held to provide in the Australian Constitution for a representative body that gives Aboriginal and Torres Strait Islander First Nations a Voice **to the Commonwealth Parliament**. One of the specific functions of such a body, to be set out in legislation outside the Constitution, should include the function of **monitoring the use of the heads of power in section 51 (xxvi) and section 122.*** The body will recognise the status of Aboriginal and Torres Strait Islander peoples as the first peoples of Australia.

5. My Letter to Prime Minister, 9 November 2022

As a non-Indigenous Australian with a longtime commitment to constitutional recognition, could I put two suggestions: (1) Now is the time to set up a parliamentary committee process allowing anyone and everyone to have their ‘say’ on the proposed words of amendment to place in the Constitution; (2) Now is the time to return to formal bipartisan co-operation between the Prime Minister and the Leader of the Opposition so as to maximise the prospect of Coalition support for the referendum.

6. My suggestion seeking bipartisan support (and failing), 21 February 2023

s. 127

There shall be an Aboriginal and Torres Strait Islander Voice with such structure and functions as the Parliament deems necessary to facilitate consultation prior to the making of special laws with respect to Aboriginal and Torres Strait Islander peoples, and with such other functions as the Parliament determines.

7. The proposed Referendum Question

A Proposed Law: to alter the Constitution to recognise the First Peoples of Australia by establishing an Aboriginal and Torres Strait Islander Voice.

Do you approve this proposed alteration?

8. The proposed Amendment of the Constitution, 30 March 2023**

Chapter IX Recognition of Aboriginal and Torres Strait Islander Peoples

s. 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 [for Ministers of State]** 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.”

* Section 51(26) allows the Commonwealth Parliament to make laws with respect to the people of any race for whom it is deemed necessary to make special laws. Section 122 allows the Commonwealth Parliament to make laws for the government of any territory surrendered by any State to the Commonwealth.

** The Joint Select Committee on the Aboriginal and Torres Strait Islander Voice Referendum was announced on 30 March 2023. It called for submissions on 4 April 2023 with a close-off date of 21 April. The committee must report by 15 May 2023.