

NO, NOT THIS WAY:

One Christian response to the Voice Referendum

Social Issues Committee

Introduction

In 2022 the Synod of the Anglican Diocese of Sydney resolved as follows:

33/22 First Nations Voice

Synod of the Diocese of Sydney, perceiving the opportunity for all Australians to contribute to a matter of national importance –

- (a) welcomes the conversation regarding the establishment of a First Nations Voice enshrined in the Constitution, recognising this conversation to be an essential step in reconciliation with Aboriginal and Torres Strait Islander peoples, perceiving this conversation to relate to the social, spiritual, and economic wellbeing of Aboriginal and Torres Strait Islander peoples, and believing this conversation will empower Aboriginal and Torres Strait Islander people to create a better future for their communities to flourish,
- (b) commits to learning more, and educating all Anglicans, about the Voice *‘From the Heart’*, and
- (c) encourages church members to give generous consideration to the case to vote ‘Yes’ to the referendum question of whether the Constitution should establish a First Nations Voice, once the details have been made clear.’

Paragraph (a) of this resolution:

- recognises this importance of the wellbeing of Aboriginal and Torres Strait Islander peoples, and
- seeks the empowerment and flourishing of Aboriginal and Torres Strait Islander communities.

All Sydney Anglicans can warmly unite around these goals, since we are committed to ‘neighbour love’ in the most expansive ways, even when there is uncertainty as to the best ways to reach such goals.

The resolution also welcomed the conversation about the Voice referendum proposal as it developed.

But it did not bind either individual members of Synod, or the Synod as a whole, to endorsing the establishment of an Aboriginal and Torres Strait Islander Voice in the Constitution.

It did, however, commit us to educating all Anglicans, in Sydney and perhaps beyond, about the Uluru Statement From the Heart, along with its call for such a Voice.

Clearly it envisaged educational resources that would generously engage the ‘Yes’ case. But, judging by some speeches made at Synod, many envisaged such resources ought also to consider the ‘No’ case.

This paper offers a contribution towards such education by providing reasons why some Christians may vote ‘No’ to the Referendum proposal, while sharing the universal Australian goal of seeing entrenched

disadvantage addressed for Aboriginal and Torres Strait Islander peoples, and their welfare improved wherever needed.

Appreciating the SIC “Responding Generously” paper for a ‘Yes’ vote

This paper commends “Responding Generously to a Generous Voice”, a paper from the Social Issues Committee (SIC) of the Diocese of Sydney. That paper is compassionate and judicious. It engages with the Uluru Statement From the Heart, as well as the detail of the actual Referendum proposal.

This includes interaction with evidence for and against voting ‘Yes’, provided by legal experts to the Parliament’s Joint Select Committee on the Aboriginal and Torres Strait Islander Voice Referendum.

The SIC paper is also informed by Christian thought and values. For example, it recognises that God our Creator has established different peoples in particular places; it admires grace where it is offered in human relationships – especially when it comes from those who have been disadvantaged; it appreciates the significance and power of truthful words, and of listening. All this is wrapped in a deep concern for just and improved outcomes for Indigenous peoples.

While acknowledging genuine concerns, it does not find them sufficiently persuasive and so advocates for a ‘Yes’ vote. Many may find its arguments sufficient to aid them in forming a decision to vote ‘Yes’.

Yet it also acknowledges that there exists a range of views among Christians (and others) on the proposed constitutional change and so speaks and advocates in such a way as to avoid binding consciences.

This paper appreciates that tone and seeks to make its contribution in a similar manner.

The Voice Proposal

The Federal Parliament has passed legislation to enable a referendum to be held in the latter part of 2023, to decide on the proposal to add the following section to the Australian Constitution:¹

Chapter IX—Recognition of Aboriginal and Torres Strait Islander Peoples 129 Aboriginal and Torres Strait Islander Voice

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

- (i) there shall be a body, to be called the Aboriginal and Torres Strait Islander Voice;
- (ii) the Aboriginal and Torres Strait Islander Voice may make representations to the Parliament and the Executive Government of the Commonwealth on matters relating to Aboriginal and Torres Strait Islander peoples;
- (iii) 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.

¹ Constitution Alteration (Aboriginal and Torres Strait Islander Voice) 2023: A Bill for an Act to alter the Constitution to recognise the First Peoples of Australia by establishing an Aboriginal and Torres Strait Islander Voice.

This paper argues against embedding this section into the Constitution, because it gives special access and influence to Aboriginal and Torres Strait Islander peoples over matters not directly related to them.

It could be acceptable for Indigenous people to have a right to special input before Parliament makes special laws that primarily or solely affect them. This principle is recognised throughout the UN Declaration on the Rights of Indigenous Peoples.² The rights asserted in the UN Declaration focus on matters internal and local to Indigenous peoples (Article 4) and relate particularly to whatever political, legal, economic, social and cultural institutions are distinct to them (Article 5). Flowing on from this, Article 18 states:

Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

However, the Voice proposal goes far beyond this, by entrenching a system of advantage of access that grants one category of citizens an extra entitlement to influence all areas of public policy, law making and public administration that touch Indigenous people in any way, not just for particular Indigenous affairs.

The advantage of access is meant to be wide and powerful in application. According to Professor Megan Davis, Chair of the Referendum Working Group, “the scope of the voice is its strength... it is not limited to matters specifically or directly related to Aboriginal and Torres Strait Islander peoples.” Rather,

*The Voice will be able to speak to all parts of the government, including the cabinet, ministers, public servants, and independent statutory offices and agencies - such as the Reserve Bank, as well as a wide array of other agencies including, to name a few, Centrelink, the Great Barrier Marine Park Authority and the Ombudsman - on matters relating to Aboriginal and Torres Strait Islander people.*³

There are disagreements among constitutional law experts about whether the High Court might infer that Parliament or Government have a positive duty to consult the Voice before acting and the extent to which they are obliged to give consideration to the representations from the Voice.

Nevertheless, its architects clearly consider that the Voice ought to have enormous moral authority.

As Prime Minister Anthony Albanese said on ABC TV from the 2022 Garma Festival in Arnhem Land, “It would be a very brave government” that defied the advice of the Voice.⁴

More recently, in his 2023 Lowitja O’Donoghue Oration, Mr Albanese indicated the referendum was intended as a powerful opportunity for Australia to redefine itself as a nation:

So let us not content ourselves with modest change. Let us not fill our hearts with the empty warmth of the merely symbolic.

² Available here: <https://humanrights.gov.au/our-work/un-declaration-rights-indigenous-peoples-1>, accessed 25/7/2023.

³ Megan Davis and Gabrielle Appleby, “Voice only works if it’s free to choose what to talk about”, *The Australian*, 1 April 2023.

⁴ “David Speers interviews Prime Minister Anthony Albanese”, *Insiders*, ABC TV, 31 July 2022, <https://www.abc.net.au/news/2022-07-31/prime-minister-anthony-albanese/13996854>, accessed 1/7/2023. Note that this comment was made in the context of a question as to how a government would respond to the Voice advising Northern Territory ‘grog bans’ should be retained; something the NT Government was then removing.

Let us write the beginning of a better chapter, a chapter in which we turn hope into reality. A reality driven by the removal, as the Uluru Statement says, of the "torment of powerlessness".⁵

A key 'in principle concern

The Voice proposal seeks to provide certain rights to a group of citizens solely because they are Indigenous or First Nations peoples.

This appears to walk away from the principle of equal treatment of all citizens before the nation's law.

Ideals of equality, and associated human rights, which are deeply valued throughout much of the world, including Australia, can be traced in their development, in very large measure, to the Judaeo-Christian worldview that all humans are made in the image of God (Genesis 1:27).

Moreover, with the coming of Christ, Colossians 3:11 says:

Here there is no Gentile or Jew, circumcised or uncircumcised, barbarian, Scythian, slave or free, but Christ is all, and is in all. [NIV]

This text notes that in Christ's church, there are many identifiable people groups: Jews and Gentiles. The large category of 'Gentile' included Greek speakers within the Roman empire, but also barbarian and Scythian – non-Greek speakers – often marginalised. Some of the believers from these different people groups were slaves; others were free. To this list, Galatians 3:28 adds "male and female".

The Christian gospel does not mean that all distinctions of ethnicity, language, education, gender, or economic situation are somehow erased. Some of these differences have continuing cultural or even legal significance on earth; others perhaps even deserve a particular respect this side of the new creation.

However, the Christian gospel certainly said, without equivocation, that **no particular group had an advantage of access** to salvation or to membership in Christ's church. God's amazing grace was equally available to all, simply through faith in Christ Jesus, as Lord and Saviour.

The church is certainly not equivalent to the state. Neither are God's people any longer gathered as a socio-political people of God.

However, the non-believing secular liberal Larry Siedentop astutely observes it is Christianity that has taught us more broadly to "wager on the moral equality" of humanity:

So in Paul's writings we see the emergence of a new sense of justice, founded on the assumption of moral equality rather than on natural inequality. Justice now speaks to an upright will, rather than describing a situation where everything is in its 'proper' or fated place. Paul's conception of the Christ exalts the freedom and power of human agency, when rightly directed. In his vision of Jesus, Paul discovered a moral reality which enabled him to lay the foundation for a new, universal social role.⁶

⁵ Anthony Albanese MP, "A Moment to Unite – Lowitja O'Donoghue Oration", 29 May 2023, <https://www.pm.gov.au/media/moment-unite-lowitja-odonoghue-oration>, accessed 1/7/2023.

⁶ Larry Siedentop, *Inventing the Individual: The Origins of Western Liberalism* (Cambridge MA., Belknap 2014), p74.

This Christian understanding of human equality led to reforms such as the abolition of the slave trade and the extension of voter suffrage to women and to Indigenous persons. Further, it was Christian texts that challenged believers who were slow to realise the social implications of their doctrine for such reform proposals.

Australians should hesitate before abandoning the ideal that that all Australian citizens should be equal not just before the law, but before those who make the law and those who apply the law.

Objection to the Objection

However, it might be argued that the differential treatment that the Voice gives to Aboriginal and Torres Strait Islander peoples is warranted in order to ameliorate persistent, deep disadvantage. For example, the Attorney-General, Mr Mark Dreyfus MP, in his second reading speech to Parliament noted:

The dispossession of their lands, languages and cultures, and top-down government policies have inflicted deep and continuing wounds on generations of Aboriginal and Torres Strait Islander peoples and their cultures. Many suffer intergenerational trauma as a result of this history.

Our nation as a whole has been diminished...

However, despite the best intentions of successive governments, efforts to date have been insufficient. New Closing the Gap data highlights that significant work needs to be done. Eleven of the 15 Closing the Gap targets are not on track. We are failing.

Aboriginal and Torres Strait Islander peoples still face significant gaps in life expectancy and educational attainment. Despite commitments to reduce the representation of Aboriginal and Torres Strait Islander peoples in the criminal justice system, they are still proportionally the most incarcerated peoples on the planet.⁷

Addressing such disadvantage is a compassionate desire that all Christians can support. But some of us may prefer different means to the same end.

Since 1967, the Commonwealth Government already has power under Section 51(xxvi) of the Constitution to pass “special laws” for the benefit of Aboriginal and Torres Strait peoples. The Voice to Parliament could have been legislated under this head of power, and to give Aboriginal and Torres Strait peoples a special advantage of access, for as long as the disadvantages remain substantial.

In this regard, this paper also notes comments of the submission to the parliamentary inquiry into the Voice referendum by the late Honourable David Jackson AM KC, esteemed by many as Australia’s pre-eminent constitutional lawyer, frequent in appearance before the High Court:

⁷ Hansard, 30 March 2023 “Minister’s Second Reading Speech: Constitution Alteration (Aboriginal and Torres Strait Islander Voice) 2023 Bill”, [5](https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansardr%2F26436%2F0005%2; accessed 4 July 2023.</p></div><div data-bbox=)

20. *I also accept that much does need to be [sic] improve the lot of many, though not all, of the Aboriginal and Torres Strait Islander people in Australia. It can be done already through the use of the legislative powers referred to above, and by suitable government action.*

21. *One point which appear to be made in support of the proposed amendment is that it ensures that there will always be a Voice. But why should there be, in perpetuity, a voice entrenched constitutionally? No very satisfactory answer has ever emerged.*⁸

The Uluru Statement From the Heart did testify to “the structural nature of our problem” and the “torment of our powerlessness” experienced by Aboriginal and Torres Strait Islander people.⁹

Certainly, the impact of human sinfulness on others can be devastating, and its effect felt inter-generationally. But a permanently entrenched Voice implies a *permanent* lack of potential for transformation on the part of Aboriginal and Torres Strait Islander peoples, which does not appear to be compatible with Christian theology that grants all people human responsibility.

In other words, if the main practical aim of a morally powerful and wide-ranging Voice is to rectify disadvantage, it should be temporary, since we assume the gap will be eventually closed.

Laws passed by Parliament can later also be amended or repealed if the parliamentary majority discerns that they are not meeting intended needs or are no longer suitable. But constitutional amendments cannot be repealed, and can only be changed via another referendum process. Thus, the Voice proposal will introduce permanent differential treatment for one category of Australia’s citizens into the Constitution.

Other Significant Practical Concerns

Concerns have been expressed over the potential for government to become unworkable through the Voice amendment which as proposed includes representations to the Executive as well as Parliament, especially if the High Court perceives a duty to consult in advance or to consider the Voice’s representations. A majority of legal experts assessed the risk as low. But it has been noted that in such cases, the High Court has not always ruled in a manner experts considered predictable in advance.¹⁰

Other significant concerns expressed, including by some of Aboriginal or Torres Strait Islander descent, include questions over what practical difference the Voice will make, and how the many, often diverse voices of Aboriginal peoples and persons will be represented and respected.

The author accepts that current polling suggests that a majority of Indigenous persons support the Voice proposal. He has heard Indigenous Christian leaders strongly in support of the proposal. But he has also heard testimony from Aboriginal Christian leaders, in Sydney and beyond, Anglican and otherwise, that variously:

⁸ para. 20-21, emphasis original, Submission 31, Inquiry into the Aboriginal and Torres Strait Islander Voice Referendum, <https://www.aph.gov.au/DocumentStore.ashx?id=4f0c29fe-a9f2-4893-b55b-b392ffc27c4b&subId=740087>; accessed 4 July 2023.

⁹ <https://ulurustatement.org/the-statement/view-the-statement/>

¹⁰ Liberal Members’ Dissenting Report, p58, Joint Select Committee on the Aboriginal and Torres Strait Islander Voice Referendum, *Advisory Report on the Constitution Alteration (Aboriginal and Torres Strait Islander Voice) 2023* [https://parlinfo.aph.gov.au/parlInfo/download/committees/reportjnt/RB000125/toc_pdf/AdvisoryReportontheConstitutionAlteration\(AboriginalandTorresStraitIslanderVoice\)2023.pdf](https://parlinfo.aph.gov.au/parlInfo/download/committees/reportjnt/RB000125/toc_pdf/AdvisoryReportontheConstitutionAlteration(AboriginalandTorresStraitIslanderVoice)2023.pdf); viewed 4 July 2023.

- notes there are many different views for and against among Indigenous people,
- expresses neutrality towards the outcome of the referendum, with major hopes for change and reconciliation being vested elsewhere, and
- currently expresses strong or moderate opposition.

For convenience, and as a sample, this paper simply shares the published view of Nyunggai Warren Mundine, a member of the Bundjalung people, without endorsing every concern he expresses:

It's the responsibility of the Australian parliament to legislate and of public servants to develop and implement policy at relevant ministers' direction. And within that existing framework, we've had a huge increase in Indigenous participation over recent decades. Indigenous Australians are now a significant minority in the federal parliament, above parity.

Indigenous communities, organisations and individuals enjoy a close relationship with local members and a formal, integrated role in advising relevant ministers. Importantly, governments remain the largest employers of Indigenous people and these Indigenous public servants are right now administering the very policies and programs that impact Indigenous communities.

Indigenous people already have a voice, many voices. The report¹¹ ignores the real gains made in incorporating Indigenous people into the democratic political process that serves all Australians well...

How many different Indigenous voices will be heard on any particular legislation, decision or policy? There will be conflicting voices within "the voice" and competing agendas. Will Bills have to be drafted and re-drafted in response to the concerns of the voice? Will Ministerial decisions and policies need a voice sign off. And what if there is a dissenting or minority position within the voice?

Blackfellas aren't all the same. We can't speak for each other's countries. And even within our own country, we don't always see eye-to-eye. No one expects this of non-Aboriginal people. Australia's system of government has a process for reaching decisions in a large, diverse society, built on nearly a thousand years of precedent and tradition in the Westminster system. There's no proposed process for decision-making in the report.¹²

Other Options for Recognition and Voice

All Christians share the desire to act justly and to love our neighbours well and extensively, including an obligation to be good listeners. Therefore, many Christians may well wish to support other options to recognise the First Nations peoples of Australia, and to hear the voices of those descended from them.

Such possibilities include the following:

¹¹ He is referring to the 2021 *Indigenous Voice Co-design Process Report to the Australian Government* by Professors Tom Calma AO and Marcia Langton AM.

¹² Warren Mundine, "Voice to parliament report exposes plenty of flaws, but no real solutions", *The Australian*, 12 April 2023, <https://www.theaustralian.com.au/commentary/voice-report-shows-plenty-of-flaws-but-no-real-solutions/news-story/c740b04af68cf96252680dae44951180>; viewed 4 July 2023.

- A statement of recognition of Aboriginal and Torres Strait Islander peoples as the First Peoples of Australia could be inserted into the preamble to the Constitution. The last effort to do so failed in 1999 largely because of entanglement with the divisive republican referendum. There appears to be a large amount of good will for such a step, including from many on the conservative side of politics. It may be wise to take such a readily available gain that respectfully speak the truth by such recognition. Such a step also still leaves potential for more reform further down the track.
- A narrower constitutional change for a Voice could focus on providing advice on laws that relate principally to Aboriginal and/or Torres Strait Islander peoples. The Uluru Statement From the Heart asked for a Voice to be embedded in the Constitution. But it did not commit us to the particular form of the Voice that is now proposed. By contrast, many more have expressed support for a Voice that specifically addresses just the issues in which Aborigines and Torres Strait Islander peoples have the most direct and natural interest.
- A legislated Voice could provide advice on laws that relate to Aborigines and Torres Strait Islander peoples. South Australia's First Nations Voice Bill, passed by its parliament in March 2023, established an advisory body, with a right to address parliament on legislation being considered, as it concerns Aboriginal people. This legislation explicitly acknowledges the non-binding nature of the feedback from Voice delegates, and it involved no change to that state's Constitution. This means it can be removed by any future parliament if found to be an impediment to the good working of parliament or ineffective in assisting Aboriginal people. Despite the fact that the SA Voice is not entrenched constitutionally, this step has been widely hailed as a step of progress. Why not legislate in a similar matter federally?
- Some Christians may be inclined to consider forms of agreement-making as urged by the Uluru Statement From the Heart. Certainly, there are potentially vexed questions over both theory (e.g., about multiple sovereignties co-existing) and practice in this area (e.g., treaties with which Aboriginal and Torres Islander nations, represented by which groups, with membership determined by what means?). Nevertheless, the Bible often testifies to the fact that God is an agreement-making God. And so some Christians might be open to the possibility of productive discussions in this area of agreement making, and the truth-telling that would also need to accompany it.

Concluding Concerns about the Voice Debate

Along with others, this paper expresses concern about the divisiveness caused by some rhetoric both from some of those for and some against the Voice referendum proposal.

Accusations of racism, and straightforward name-calling are out of place in the debate. As a Jewish MP, the Honourable Julian Leeser, has said about the tone of the voice debate:

We need to find common ground in our country – and not only on this issue. We all have to walk a mile in each other’s shoes. All of us have to be bigger people and see the best in each other.

If you are a leader or advocate of the ‘Yes’ case, then you have a responsibility to listen to the legitimate questions of those who doubt. And if you are a leader or advocate for the ‘No’ case, then you have a responsibility to listen to the aspirations of Indigenous Australians who see value in a voice.¹³

Catastrophist predictions of disaster made by some should the referendum succeed, and by others if it fails, are also overblown.

Sadly, statements of how much outstanding good could be achieved by the Voice if the referendum passes, or indeed by continued reliance on other existing means, should be tempered by a realistic understanding of how resistant to improvement has been the welfare of some Aboriginal and Torres Strait Islander peoples.

Yet Australia’s history suggests there is a great stability to our governance that will not be undone by one advance or failure, represented by a single referendum.

And we do not want to send a message to young Indigenous people that their hopes rest on this matter alone. Whether or not the referendum succeeds or fails, many Aboriginal and Islander Australians, young and old, will still face many struggles.

We need to encourage a resilience and perseverance that is deeper than a preferred referendum outcome. And we must work for a recognition, empathy, justice and compassion that is far broader.

In conclusion, the author of this paper fully understands that many thoughtful Christians consider there are sufficient good reasons to vote “Yes”, and respects that choice.

Most of us are deeply sorry for the historical mistreatment of Aboriginal and Torres Strait Islander Australians, even more so when singled out as a group. More broadly, we were glad to see an end to discrimination on the basis of race.

While acknowledging the special place of Aboriginal and Torres Strait Islander persons as the Indigenous peoples of this land, we believe in a fundamental equality of all citizens of Australia. Whether or not we acknowledge it, this fundamental belief in equality rests on a profoundly Christian worldview.

The Voice undercuts this, because gives permanent special access and influence to Aboriginal and Torres Strait Islander people over all areas of public policy, law making and public administration that touch Indigenous people in any way at all, and not just for Indigenous affairs.

For this reason, many Christians may decide to say, “No, not this way” to the current referendum proposal for Aboriginal and Torres Strait Islander Recognition and Voice.

¹³ “Nasty tone of Indigenous voice to parliament debate may benefit ‘no’ campaign”, *The Australian*, 20 May 2023, <https://www.theaustralian.com.au/nation/fears-nasty-tone-of-indigenous-voice-debate-may-benefit-no-campaign/news-story/75e6aa9400f6aaa5d5acba5621f41718>; viewed 4 July 2023.