



Uluru Central Australia
- Is it now dividing our country?

Good morning, ladies and gentlemen.

I would like to say how pleased I am to be here this morning, and to thank Peter Hoskin and his team for the invitation to do so and for the gracious introduction about me by John Simmonds.

This is the first time I have addressed a Probus group so, we'll see how we go.

I could have spoken to you on other major issues like light rail and climate change but, given the pending referendum on the Voice and its undoubted importance, I have decided to talk about that.

After a great deal of research, analysis and writing, over the past 12 months or so, I say up-front that I shall be voting No at the referendum.

However, I have no intention of proselytising this morning, but to give a balanced, factual presentation, in recognition that there are many people who intend to vote Yes for one good reason or another.

The presentation to follow is based on a larger paper, "*Uluru Statement from the Heart – Update 2 September 2023*", now posted on my website www.alogstudycentre.com.au .

Unfortunately, but as expected and probably unavoidable, given the current political leaning across Australia, the debate on the Voice has been completely politicised from the outset. Analysis and logic are hard to find in either camp to date and cannot be expected to improve before the referendum.

INTRODUCTION

After many years of preparation by various bodies, primarily by activists within the Aborigine and Torres Strait Islander (ATSI) peoples, the Prime Minister (PM) announced, on the 30 August 2023, that the referendum for enshrinement of the Voice in the Australian Constitution, would be held on Saturday, 14 September 2023. It is the first referendum for many years and the first for many of voting age.

THE VOICE - SO, WHAT IS IT ALL ABOUT?

In July 2017, representatives of aboriginal communities throughout the country met at Uluru and, after considerable discussion, issued the "Uluru Statement from the Heart". It has since developed into a full-blown campaign by activists to have it or an enabling statement enshrined in the Australian Constitution. The Labor Party, elected on 21 May 2022 has made such enshrinement a top priority for the Federal Government.

This section briefly covers the historical and chronological development of the Voice, from the Uluru Statement in 2017, through to issue of the official Referendum Booklet by the Australian Electoral Commission (AEC) and announcement of the date by the PM. It has already been a long and laborious process.

The Uluru Statement

The Uluru Statement from the Heart is seen as the starting point and could well have the last say historically, if successful. The essential parts of the Uluru Statement are shown in **Box 1**.

Box 1 – Uluru Statement (extract)

Essential elements of the one-page Uluru Statement are:

- “We seek constitutional reforms to empower our people and take a rightful place in our own country. When we have power over our destiny our children will flourish. They will walk in two worlds and their culture will be a gift to their country.”
- We call for the establishment of a First Nations Voice enshrined in the Constitution. Makarrata is the culmination of our agenda: the coming together after a struggle. It captures our aspirations for a fair and truthful relationship with the people of Australia and a better future for our children based on justice and self-determination.”
- “We seek a Makarrata Commission to supervise a process of agreement-making between governments and First Nations and truth-telling about our history”.
- “We invite you to walk with us in a movement of the Australian peoples for better future.”

You may have noticed, over the past few weeks, that there has been quite a Media ruckus about the length of the Uluru Statement, whether a single or 26 pages. The PM maintains that the Uluru Statement is one single page. Yet several aboriginal academics have said it is much larger than that. The PM has admitted that he has not bothered to read the 26 pages, just the first page, yet has often said how he would see the Uluru Statement implemented in full - Voice, treaty and truth.

Joint Select Committee, 2018

A Joint Select Committee on Constitutional Recognition relating to ATSI peoples was appointed by Parliament in March 2018 and endorsed the proposal in principle for a Voice.

Indigenous Voice Co-design Process, 2021

This report, known as the Langton/Calma report, is some 216 pages long, including multiple tables and figures. It was constituted to flesh-out how the Uluru Statement may be implemented by legislation following enshrinement of the Voice in the Constitution. It may be seen as the blueprint for implementation.

Referendum Working Group - Enshrining an ATSI Voice in the Constitution, 2022-23

The Langton/Calma report was followed by the Referendum Working Group to recommend to Government the exact wording that should be put in the referendum, as approved by an act of Parliament. The Group was co-chaired by the Hon Linda Burney MP, Minister for Indigenous Australians and Senator Patrick Dodson.

Act for enshrinement in the Constitution.

Box 2 is an extract from the act passed by the Federal Parliament in March 2023, as the formal wording for the Voice referendum, to enact the Uluru Statement and, presumably, for ensuing legislation to give practice to the Langton/Calma report.

While this wording is clear, as will be seen later, a single question on the ballot paper addresses only the first part, Section 129 (i), potentially misleading voters by omission.

Box 2 – Federal Act of Parliament, Approved March 2023

Chapter IX

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.

Parliamentary Committee, 2023

A Parliamentary Committee on the Voice, earlier this year, upheld the referendum question and words to be inserted in the Constitution, as stated in Box 2.

WHAT COULD ALL OF THIS MEAN?

The first part (i) of the wording for the referendum (Box 2) is not controversial.

There is a lot of good will by Australians on both sides for some form of recognition of indigenous peoples in the Constitution. There is also general acceptance of the plight of full-blood and near-full-blood aborigines¹ living in precarious circumstances in remote areas and the need to enhance their wellbeing. It is question of how best to do it.

The second clause (ii) *[not on the ballot paper]* is the most controversial in that it implies that the Voice could make representation on any matter to any level of government, whether affecting ATSI people only or not.

The third clause (iii) *[not on the ballot paper either]* is also controversial because it implies an extensive and costly process to set up a vast, invasive bureaucracy to support the Voice.

LATEST CHANGES

Official Yes and No case pamphlets were put on-line by the AEC in early August 2023.

The official Referendum Booklet was mailed out the week ending 25 August 2023.

On 30 August 2023, the PM announced that the referendum would be held on Saturday, 14 October 2023.

The Yes campaign is reported to heavily outweigh the No campaign with funds for promotion, perhaps 10:1.

Many in big business, with no scruples about using share-holders' money, are backing a Yes vote. One can reasonably ask why they are abusing the trust of their share-holders.

In reality, it is anybody's guess on how much influence the big money available to the Yes campaign will have, given a highly political question. Note how the reported \$116 million Clive Palmer put into the United Australia Party (UAP) for the 2022 federal election, was largely ignored and resulted in just one representative to Parliament.

Several polls show that support for the Yes case has fallen significantly from a solid figure to a point that would see the referendum fail (53% No, on 4 September by one poll). The Yes camp is now banking on its huge bankroll for an advertising and volunteer blitz, over the six weeks to recover ground and to carry the referendum. That remains to be seen.

OFFICIAL YES AND NO CASES

The summary in **Box 3** is based on the official pamphlets by proponents and opponents, as stated in the Referendum Booklet issued by the AEC.

¹ full-blood and near-full-blood aborigines are those living in remote communities, as opposed to the part-aborigines and other identifying as indigenous living in suburbia, with most fully employed and many in professional positions.

Box 3 – Official Yes and No Cases

Yes Case

According to the PM, the referendum is all about the ‘vibe’² of the proposal; being the right thing to do.

The official Yes case, as summarised in the Referendum Booklet is:

- It comes directly from the ATSI people [Uluru Statement from the Heart];
- voting Yes is about recognition, listening and better results;
- recognition of ATSI people through A Voice enshrined in the Constitution will drive practical change;
- it will ensure people would have a better life; a need to listen to the ATSI people to close the ‘gap’ on health and education in particular; and
- it would bring our country together;
- it would save money;
- the time is now;
- it would give practical advice that works;
- It would make government work better;

As a comment, the Yes case fails to:

- convince, therein or elsewhere in documentation, how the afore-mentioned claims for the Voice would actually improve the lot of ATSI people, in closing the ‘gap’, when a reported \$30 billion into the aboriginal industry each year and the National Indigenous Australians Agency (NIAA) (1,300 employees under Minister Burney) evidently are not able to do so now;
- acknowledge the 11 indigenous representatives already in Parliament;
- mention any down-side of a Voice or to counter the claims of the No case;
- support its doubtful claims, such as it would save money – a very doubtful claim indeed; or’
- mention that the Uluru Statement from the Heart implies a subsequent treaty and reparations as the fundamental starting point and motivation for the Voice.

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No Case

The No case says “*If you don’t know, vote no,*” based on reasons that:

- the Voice is legally risky in allowing representation to all levels of government and challenges needing to be resolved by the High Court [which no one can possibly say how a future court would decide];
- the constitution of ATSI representatives to the Voice and how it would operate is not known;
- it would be racially divisive;
- it will not and cannot help ATSI people;
- there is no issue beyond its scope – that which affects other Australians also affect ATSI people;
- it risks government dysfunction;
- it opens the door for activists;
- it would be bureaucratic and costly;
- a Voice enshrined in the Constitution would be permanent, ie. unchangeable without a further referendum; and
- there are better ways forward.

As a comment, the No case fails to:

- prove its assertions although logically sound and in some cases virtually certain, as expressed in the media by reputable journalists and legal entities.

² The “Vibe” is the atmosphere or aura in feeling good about someone or something.

- Both the Yes and No cases comprise assertions that cannot be proved in advance of the referendum and any subsequent laws and administrative machinery.

MY TAKE ON THE YES CASE

The PM, Labor, the Greens, the aboriginal industry³ and other proponents have been pushing the Yes case very hard, unethically, undemocratically, and even arrogantly, with tonnes of money (mostly at taxpayer and company shareholder expense). The position adopted by the PM and Labor, from the outset, has been breathtaking in its unfairness.

The Government (and proponents):

- has refused to address questions posed by opponents, e.g., the 15 questions asked by the leader of the Opposition for clarification of what the Voice means;
- prefers to deny, decry and deride opponents for daring to say 'no', often by ad hominem attacks, and branding No proponents as racist;
- denies that the Voice is racially discriminatory but has not shown why it is not;
- ignores the prior failures of several aboriginal commissions (see **Box 4**);
- ignores the role or influence of existing bodies like the NIAA (see **Box 4**),

Box 4

Past Commissions

National Aboriginal Consultative Commission (NACC) (1973-77), the National Aboriginal Conference (NAC) (1977-85) and the Aboriginal and Torres Strait Islander Commission (ATSIC)" (1990-2005), the latter shut down by the Howard Government, with the concurrence of the Labor Party'

The Current ATSI Commission

The National Indigenous Australians Agency (NIAA) is a Federal Government body, established in May 2019 and responsible to the Minister for Indigenous Australians. It employs 1,300 persons and receives funding of around \$300 million a year. Its mission is to work "in genuine partnership to enable the self-determination and aspirations of First Nations communities. We lead and influence change across government to ensure Aboriginal and Torres Strait Islander peoples have a say in the decisions that affect them." Its primary functions are:

- to lead and coordinate Commonwealth policy development, program design and implementation and service delivery for Aboriginal and Torres Strait Islander peoples;
- to provide advice to the Prime Minister and the Minister for Indigenous Australians on whole-of-government priorities for Aboriginal and Torres Strait Islander peoples;
- to lead and coordinate the development and implementation of Australia's Closing the Gap targets in partnership with Indigenous Australians; and
- to lead Commonwealth activities to promote reconciliation.

Does this not read like a charter for a Voice organisation?

- ignores the role and influence of the many 'voices' already in existence, including land councils and the 11 indigenous persons already in the Federal Parliament.
- ignores the reported \$30 billion plus a year being poured annually into the 'aboriginal' industry',
- ignores that ATSI people already have title over 50 per cent of the land mass and access many mining royalties (apparently not enough);

³ Yes proponents decry the coining of the term 'aboriginal industry' yet fail to explain the reported \$30 billion of taxpayer money being paid every year to support three per cent of the population.

- denies that the Voice has any legal consequences of constitutional enshrinement – that “there’s nothing to see here;” ie. denying that legal recourse to the courts (especially the High Court) would not occur; that the Voice is not ‘justiciable’; that ‘lawfare⁴’ would not be resorted to by denial of representation by the Voice;
- ignores the fact that prominent aborigines like Senator Price and Mr Warren Mundine, as well as grass-roots aboriginal organisations oppose the Voice;
- relies almost entirely on emotional appeal to voters that “it is the right thing to do”;
- plays the ‘guilt’ card, that voters are guilty for the sins of their forebears for negative treatment of ATSI peoples;
- claims that Australia would be condemned by the world as racist if the Voice fails;
- claims the Voice would be only ‘advisory’ when it seeks representation;
- yet has not made any substantial, even significant case on how the Voice would in fact ‘close the gap’ and better the lot of those aborigines living in misery on eternal welfare in remote communities.

This author has diligently read the published material and opinions of legal minds and other commentators promoting the Voice. Their case always comes down to saying that there is “nothing to worry about” and that fears that the Voice would by justiciable (subject to lawfare) are completely unfounded. Although professional, these legal opinions are just that – opinions - offered without proof, not that any such proof could be given, with no one knowing what a future High Court may decide.

In more recent weeks, the Yes campaign has changed tactics. It has managed to gag radical activists like Thomas Mayo, who has spoken about ATSI people achieving a treaty and rental reparations to be demanded from the 97 per cent of non-ATSI Australians. It has persuaded at least one academic to recant on earlier public statements clearly on record saying that the Uluru Statement was indeed more like 18 pages). In reality, Yes proponents cannot afford to talk publicly about the ramifications of the second and third parts of the referendum question, ie. how it would be enacted in law and the ramifications thereof. Consequently, it is pushing only the ATSI recognition part of the referendum question and hoping (with some credibility) that John Citizen voters will think they are voting only for recognition.

Then there are the irrelevancies often used by the Yes camp. For example, the fact that ATSI people have been here for 60,000 years is irrelevant to the future of this now highly developed country. The ‘dreamtime’ intimate connection with the land may well be important to ATSI people but irrelevant to the argument for a Voice. The claim that Australia’s international reputation would be damaged by a No win is also nonsensical scare.

The Yes case is 100 per cent emotion; zero percent logic.

Waning poll results for the Voice have led to vehement, vitriolic and downright shameless, personal attacks on opponents, even on the aboriginal Senator Price herself, by prominent people such as the aboriginal leader, Mr Noel Pearson. Such ad-hominem attacks are a sure sign that the Yes case has no real substance that can be put forth and defended successfully in debate.

The Yes case simply asserts on one hand and denies, decries and derides the opposition, without proof, on the other hand.

The cartoon shown in **Box 5** says it all.

⁴ Lawfare is a porte-manteau of law and warfare; i.e., using the law courts to frustrate proposed or enacted law.

Box 5 An absolutely brilliant cartoon by Johannes Leak in the Australian, 11Aug22, exposing the absolute hypocrisy of the woke folk.



MY TAKE ON THE NO CASE

Both the Liberal and National Parties have formally opposed the Voice, as it is currently worded for the referendum. They agree with current wording of the proposed Section 129 (i) of the three parts (see Box 4) but oppose the current wording of both clauses two (ii) and three (iii).

I could elaborate on the points made in the official No case (Box 3), but time does not permit. Such elaboration can be read in the source paper. However, some comments need to be made.

As said in the proposed Section 129 three (iii) (Box 2), given that the Government would need to legislate on how a Voice would operate, there is no logical reason why the same could not be legislated without a Voce enshrined in the Constitution.

Concerned lawyers believe that enshrinement of the Voice would bestow upon it certain extremely powerful rights,⁵ eg. to demand advance notice of every and any potential policy or action by any level of government on any aspect possibly affecting ATSI people.

The Voice can easily be seen as an attempt by the part-aboriginal, suburban elite to gain power, as clearly evidenced in its flat rejection of essential changes to the wording intended for the Constitution, requested by the Labor Government itself, while using the plight of the full-bloods and others in remote communities as an excuse.

The cat is really out of the bag on the Voice ("*Politicians won't shut the Voice up*", The Australian, 1-2Apr23) and Noel Pearson being quoted therein as having said "*If we remove it (bureaucracy) we basically remove the guts of the whole proposal*". How clear is that in the intention of the Uluru statement from the heart? It has now been clearly stated by the Referendum Working Group that the goal all along for the Voice has been to make representation to both parliament and the executive on any matter affecting ATSI Peoples and not just on matters affecting only them. As pointed out by highly respected journalists and commentators, the potential for governmental and judicial bedlam and paralysis is enormous.

The fact of the Referendum working group flatly rejecting the Attorney-General's request to limit representation to parliament only, shows a real, belligerent intent of the Uluru Statement from the heart.

In The Australian, 6 September 2023, Minister Linda Burney's wrote an article urging people to vote Yes on the Voice. However, her article can be read as a perfect advertisement for the No campaign. She laments the lack of progress in 'closing the gap' and claims that a Voice in the Constitution would fix that. Yet, Ms Burney already has the means already to 'close the gap', in the NIAA and its 1,300 staff under her control, with a charter that reads exactly like what that of a Voice would look like. She just needs to do her job. She does not even have to have new legislation to do it and to corral effective advice from the myriad, existing ATSI organisations.

⁵ Article by Janet Albrechtsen, The Australian, 22-23 April 2023.

SUMMARY

The Voice referendum is arguably the most important of any since Federation and has the clear potential to permanently split the nation instead of bringing it together, whichever the result. In fact, one must question the motives behind having this referendum at all, given the detrimental effect either way. *Sleeping dogs should have been left to lie.*

Its gestation has been since and based on the Uluru Statement from the Heart in 2017. However, the Uluru Statement is not an innocuous document. It harbours a future of exactly what its advocates and activists say it does – the Voice, treaty, truth – which, as he has often said, the PM would implement in full, given a successful referendum.

So far, the Yes case being made by the PM, the Labor government, the representatives of the ATSI peoples and other major proponent bodies have been based 100 percent on emotional appeal, as the ‘right thing to do’, on the ‘vibe’ of it all, rather than to advance concrete examples of how an enshrined Voice would make any significant improvement to the lives of aborigines living in poverty and distress in remote communities. Note that there is a reported \$30 billion a year going into the ATSI communities somewhere, including a 1,300-person government organisation (the NIAA) under the Minister for Indigenous Australians, apparently with little effect on closing the so-called ‘gap’ in ATSI well-being. So why is a Voice in the Constitution needed when several already exist – at great expense? It does not make sense!

On the other hand, the No case addresses the many, most probable, serious ramifications of the Voice should it succeed, as currently worded for the referendum. In particular, it addresses the two crucial points at the centre of the debate that must be thoroughly aired in the weeks ahead:

First, that a successful referendum would give the Voice the right to make representation to all levels of executive government (from the Governor-General down), as well as to all components of Parliament (including the Cabinet); and,

Second, that representation could be on any matter before Government, or even after legislation, and not just on those matters affecting only ATSI persons.

The potential for governmental and judicial bedlam and frustration is enormous as well as the massive cost of a bureaucracy and attendant infrastructure that would be needed to support the Voice with its representations. A third major concern of the Voice succeeding could well be initial actions by the Voice to appoint sympathetic people to critical government and judicial positions.

Yet critics of the No campaign continually accuse it of running a ‘scare’ campaign. *Pot calling the kettle black?*

Much water has passed under the bridge over the past 12 months or so concerning the Voice, i.e., the embodiment of the Uluru statement from the Heart. The debate has already turned nasty and divisive.

The Labor Government, headed by an ambitious PM, has been most unethical and quite undemocratic in its promotion of the referendum, in discriminating against the No vote, in any way that it can, and counting on the un-questioning support and continuing good will of the populace for the new Labor Government, in:

- initially not permitting tax deductions made to the No campaign, refusing to issue Yes and No pamphlets and refusing to release the Solicitor-General’s opinion on the Voice– but relenting under public and media pressure;
- contrary to previous practice, refusing to equally fund the Yes and No cases – leaving it to grossly lopsided public donations;
- contrary to previous practice, ruling out a constitutional convention to debate the wording of the referendum question, in leaving it to various hand-picked groups to advise;
- by endorsing the Australian Electoral Commission’s (AEC) decision to permit ticks as valid votes by Yes voters but making invalid the use of crosses by No voters, but not a word about ticks and crosses in the Referendum Booklet or the ballot paper; and

- to top it off, asking a single referendum question that implies that the referendum is only about recognition of ATSI peoples in the Constitution, quite contrary to the second and third parts of the proposed wording for the Constitution, dealing with implementation of a Voice.

This is exemplified by the single 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?”

No other information will be provided on the ballot paper. The question is misleading by deliberate omission. Note well that this question reflects only Section 129 (i) of the three parts of the proposed Constitutional amendment. Unfortunately (but counted on by the Yes proponents), a great many voters will simply read this as *“Do you agree with recognition of aborigines in the Constitution”*, in complete ignorance of the ramifications.

Irrespective of political proclivities, the PM’s approach does not or should not pass the ‘pub test’. As has been said *“The standard you walk past is the standard you accept!”*

Regardless, the PM is pushing ahead on the ‘vibe,’ aided and abetted by the left-wing media, by many big business organisations and sporting bodies. *Except, on 7 September 2023, the AFL withdrew its support and became neutral.* The Yes campaign continues to promote its emotional campaign of “the right thing to do’ and simply ignores continual criticism for not disclosing how the Voice would operate. It simply dismisses the arguments of the No case in saying that there is *“nothing to worry about, nothing to see here”* and that fears that the Voice would by justiciable (subject to lawfare) are completely unfounded.

It is telling also that the PM ignores opposition to the Voice by some ATSI groups and their spokespersons, for example, the Minister for Indigenous Australians, Linda Burney, and the PM refusing to meet with a full-blooded representative group from the Northern Territory.

In short, the PM and Yes proponents are asking voters to ‘buy a pig in a poke’ – to trust this government.

One may correctly ask what right big business, sporting bodies and Government-funded organisations have to use share-holder, members and taxpayer funds to push the Yes barrow. One must ask, what is in it for them – certainly not to help the disadvantaged ATSI peoples.?

The Opposition parties and the No proponents have attempted to lay bare the serious ramifications of a successful referendum. The No case pamphlet concludes by saying *“If you don’t know, vote No.”*

The acid test

The acid test is whether an enshrined Voice would make any difference to ‘closing the gap’. The answer is a clear no, given that the means already exist in the NIAA and its 1,300 staff under Minister Burney’s control, with a charter that reads exactly like what that of a Voice would look like.

In simple terms, the need for a Voice entrenched in the Constitution is not needed and, at best, is highly questionable.

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Thank you, ladies and gentlemen.

I trust I have not upset too many of you with this presentation, given the huge drive by the Yes campaign.

Should you wish to receive a copy of this presentation and/or the source paper, please give details in the sheets I have provided. Note that these documents have been posted on my website

www.alogstudycentre.com.au

I will now try to answer your questions

M.R. Flint, Canberra, 11 September 2023