
Introducing the Symposium on the Voice to Parliament

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In May 2017, around 250 Aboriginal and Torres Strait Islander people “from all points of the southern sky” gathered on the red dust of Mutitjulu to call for meaningful reform to the Australian state. The *Uluru Statement from the Heart* gives voice to Aboriginal and Torres Strait Islander peoples’ longstanding feelings of disempowerment and alienation from the processes of Australian government. It asks Australians to constitutionally enshrine a First Nations Voice and to legislate a Makarrata Commission to supervise a process of truth-telling and agreement-making. It sees this package of structural reform as necessary to remedy the “torment of our powerlessness”, and to “empower our people and take a *rightful place* in our own country”.¹

It has taken several years for an Australian government to engage genuinely with the *Uluru Statement*. In July 2022, on the lands of the Yolngu nation, Prime Minister Anthony Albanese outlined his government’s “promise to implement the Statement from the Heart at Uluru, in full”.² As part of that commitment, in March 2023, the Government introduced a bill into the Parliament to entrench an Aboriginal and Torres Strait Islander Voice in the *Australian Constitution*. The amendment proposes to insert a new Ch IX into the *Constitution*. The Chapter would consist of a single s 129:

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.³

The Bill is currently before a parliamentary committee. It is expected that it will be passed in June, and later this year, Australians will go to the polls in the first referendum since 1999. If it succeeds, the Voice will be the first amendment to the *Constitution* since 1977.

This special issue of the *Public Law Review* examines several issues surrounding the Voice and the referendum. I thank the editors of the journal, Cheryl Saunders, and Janet McLean, for their interest and encouragement in hosting this symposium, the several authors for their contributions, and the referees – both for their considered comments as well as their very prompt reviews.

The last few years has seen considerable academic and popular commentary on the Voice and a putative referendum. This will only increase over the following months. In this introductory piece, I briefly consider three issues relating to the Voice that have not received as much attention as others. I reflect on the role of legal academics in debate on the proposed constitutional amendment, the potential that the referendum may promote greater popular ownership and understanding of our *Constitution*, and the broader consequences of the Federal Opposition’s decision to campaign against the referendum. I begin, however, by introducing the articles in this symposium.

INTRODUCING THE SYMPOSIUM

The Prime Minister’s address at Garma may have been the first time many Australians had heard of the Voice, but the proposal is not new. In the first piece of the symposium, Sophie Rigney contextualises the

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¹ *Uluru Statement from the Heart*, 26 May 2017 (emphasis in original).

² Prime Minister Anthony Albanese, “Address to Garma Festival” (30 July 2022).

³ *Constitution Alteration (Aboriginal and Torres Strait Islander Voice) 2023* (Cth) Sch 1.



constitutional amendment, situating it within a decade plus long process of debate over whether and how to recognise Aboriginal and Torres Strait Islander peoples in the *Constitution* – often, as the *Kirribilli Statement* demonstrated – against initial pushback by both major political parties. More recently the wording has been refined by a 21-member Referendum Working Group co-chaired by Minister for Indigenous Australians Linda Burney and Special Envoy for Reconciliation Patrick Dodson. This has not been an easy process. Nevertheless, the Working Group eventually settled on the text in proposed s 129. Rigney considers three issues raised by this wording: the Voice’s capacity to make representations, that those representations could be made to both the Parliament and Executive Government, and Parliament’s role in designing the Voice.

These three issues centre on a single underlying theme: power.⁴ Indeed, much of the debate that has arisen about the Voice is focused on its legal power and how it might be circumscribed. Conservative critics have sought to limit the role of the Voice in certain areas. On their account, the constitutional wording should not permit the Voice to speak to the Executive, lest the High Court uncover an implication that statutory authorities and public servants must consult – and perhaps even adopt – any representations made.⁵ Similarly, they are concerned that the Voice should only be able to speak on matters that directly affect Indigenous Australians.⁶ The concerns here are that Aboriginal and Torres Strait Islander peoples may be granted an outsized say in the development and design of law and policy in Australia.⁷ Left-wing criticism also focuses on power – or rather, the apparent absence of it. Independent Senator Lidia Thorpe and others have pointed to the Voice’s advisory function as evidence it will not support the larger goal of protecting and empowering Indigenous sovereignty.⁸ Their concern is that if the Voice cannot compel Australian institutions to listen and act, history suggests Australian institutions will do neither.

The question of power, either too much or not enough, is a central tension in debate on the Voice. Is there a way to reframe this question to encourage more productive discussion? Sana Nakata and Daniel Bray believe so. Nakata and Bray urge us to see the Voice as a form of political rather than legal power. On this account, the Voice can serve as “connective tissue” linking diverse, pre-existing, autonomous communities and representative collectivities with institutions of the Australian State. In doing so, the Voice will “attract and focus” Indigenous representation in a manner comprehensible to Australian governance, bringing with it the potential for real change. Laurel Fox and Graeme Orr agree, inviting us to understand the Voice as an institution to channel and construct Indigenous politics. Drawing lessons from previous national Indigenous representative bodies, Orr and Fox offer several suggestions for institutional design.⁹ Heidi Norman also sees the Voice’s power as one of political “influence” rather than legal obligation. Norman examines how a constitutionally entrenched Aboriginal and Torres Strait Islander Voice could advance a national response to climate change.¹⁰ This is the promise of the *Uluru Statement from the Heart*.

⁴ This is not surprising. Constitutional recognition is an ongoing struggle to achieve “a more just basic distribution of public power” within Australia: Dylan Lino, *Constitutional Recognition: First Peoples and the Australian Settler State* (Federation Press, 2018) 88; Harry Hobbs, *Indigenous Aspirations for Structural Reform in Australia* (Hart, 2021).

⁵ See, eg, Graham Connolly, Submission No 27 to Joint Select Committee on the Aboriginal and Torres Strait Islander Voice Referendum, *Inquiry into the Aboriginal and Torres Strait Islander Voice Referendum*, 13 April 2023, 3.

⁶ See, eg, Louise Clegg, Submission No 41 to Joint Select Committee on the Aboriginal and Torres Strait Islander Voice Referendum, *Inquiry into the Aboriginal and Torres Strait Islander Voice Referendum*, 14 April 2023, 8–9.

⁷ Chris Merritt, Rule of Law Institute of Australia, Submission No 36 to Joint Select Committee on the Aboriginal and Torres Strait Islander Voice Referendum, *Inquiry into the Aboriginal and Torres Strait Islander Voice Referendum*, 12 April 2023.

⁸ Eli Green, “‘We Want Better’: Senator Lidia Thorpe’s Demand on the Voice to Parliament”, *News.com.au*, 30 January 2023 <<https://www.news.com.au/national/breaking-news/we-want-better-senator-lidia-thorpes-demand-on-the-voice-to-parliament/news-story/40b63a840e051644fda78e2bec123eb5>>. For a considered take on this issue, see Amy McQuire, “Voting on ‘The Voice’: Will It Fight Racist Violence”, *Presence*, 5 January 2023 <<https://amymcquire.substack.com/p/voting-on-the-voice-will-it-fight>>.

⁹ See further, Hobbs, n 4, 195–231.

¹⁰ See also Narelle Bedford, Tony McAvoy and Lindsey Stevenson-Graf, “First Nations Peoples, Climate Change, Human Rights and Legal Rights” (2021) 40(3) *University of Queensland Law Journal* 371.

The *Uluru Statement* is a historic declaration of Aboriginal and Torres Strait Islander peoples' aspirations for structural reform in Australia. In this, it forms part of a global landscape of Indigenous peoples' sophisticated articulations for constitutional transformation.¹¹ In their contribution, Claire Charters and Amelia Kendall outline recent developments in Aotearoa New Zealand. In doing so, they reflect on the ground-breaking work of the National Iwi Chairs Forum's Independent Constitutional Working Group, which held over 252 hui around the country between 2012 and 2015, and resulted in the He Whakaaro Here Whakaumu Mō Aotearoa: The Report of Matike Mai Aotearoa.¹² However, as Charters and Kendall note, promising initial developments have been overtaken by party political considerations. Their conclusion that incremental change fails to deliver adequate solutions should galvanise supporters of the Voice and reiterate the significance of constitutional amendment.

So too should Narelle Bedford's contribution. Bedford tackles a speculative but challenging question: what happens if the referendum does not succeed? Her public law analysis presents sobering reading. Not only would the Constitution continue to ignore First Nations peoples, but the administrative failures that contributed to events like the destruction of Juukan Gorge would not be remedied.¹³ As Bedford explains, a "sustained and damaging absence of expert cultural advice in government decision-making" would persist.¹⁴ Nevertheless, fear of failure should not govern our decision-making. Among many other concerns, it would break faith with the very many Aboriginal and Torres Strait Islander peoples who have worked so long and so hard to get to this point. As Marcia Langton explained on the day the wording of the constitutional amendment and question was announced: "We're here to draw a line in the sand and say this has to change."¹⁵

THE ROLE OF LEGAL ACADEMICS

The *Uluru Statement from the Heart* is an invitation to non-Indigenous Australians to "walk with" Aboriginal and Torres Strait Islander peoples "in a movement of the Australian people for a better future".¹⁶ But it is more than an invitation. The Statement challenges all Australians to think seriously about how this country and its institutions engage with Aboriginal and Torres Strait Islander peoples. As a public lawyer, I am interested in the role legal academics play in debate on constitutional reform.¹⁷ Legal academics can inform and educate Australians. We can explain what a referendum is and how it works, we can situate the proposed constitutional amendment in its context and consider what legal effect it might have. We can offer informed opinion on technical and mechanical refinements of the text. In whatever capacity we engage, however, it is important that we remain true to our profession and faithful to our expertise. As Tarunabh Khaitan has recently noted, "a scholar's engagement ... must be, well, scholarly".¹⁸

Legal academics have played a prominent role in the debate thus far. At the time of writing, a parliamentary committee is inquiring into the form of words recommended by the Referendum Working Group.¹⁹ This

¹¹ See also Sheryl Lightfoot, *Global Indigenous Politics: A Subtle Revolution* (Routledge, 2016).

¹² He Whakaaro Here Whakaumu Mō Aotearoa, *The Report of Matike Mai Aotearoa: The Independent Working Group on Constitutional Transformation* (January 2016).

¹³ Joint Standing Committee on Northern Australia, Parliament of Australia, *A Way Forward: Final Report into the Destruction of Indigenous Heritage Sites at Juukan Gorge* (October 2021).

¹⁴ Narelle Bedford, "The Aftermath: What if the Voice Referendum Does Not Succeed?" (2023) 34(2) PLR 156.

¹⁵ Lorena Allam, "'I'm Here to Change the Country': Albanese Launches and Uncompromising Indigenous Voice Plan", *Guardian Australia*, 23 March 2023 <<https://www.theguardian.com/australia-news/2023/mar/23/anthony-albanese-launches-indigenous-voice-to-parliament-referendum-question>>.

¹⁶ *Uluru Statement from the Heart*, n 1.

¹⁷ For a discussion of movement lawyering and Indigenous law reform see Lilian Burgess, Giulia Marrama and Suvradip Maitra, "Movement Lawyering: An Old Ethos and New Theory for First Nations' Sovereignty" (2022) 96 ALJ 510.

¹⁸ Tarunabh Khaitan, "On Scholactivism in Constitutional Studies: Skeptical Thoughts" (2022) 20(2) *International Journal of Constitutional Law* 547, 549; Liora Lazarus, "Constitutional Scholars as Constitutional Actors" (2020) 48(4) *Federal Law Review* 483.

¹⁹ Joint Select Committee on the Aboriginal and Torres Strait Islander Voice Referendum, Parliament of Australia, *Inquiry into the Aboriginal and Torres Strait Islander Voice Referendum* (2023).

form of words has been developed and refined over many years and has been stress-tested in conversation and consultation with academics and legal practitioners across the country.²⁰ More formal processes have also been established. In October 2022, for example, the government appointed a Constitutional Expert Group to provide advice to the Referendum Working Group on the wording of the amendment. In delivering clear and frank advice, the Expert Group reflected on the need for accurate information to be provided to support Australians make their decision. In its initial tranche of advice provided in December 2022, the Group concluded by noting the importance of responding to “plainly incorrect assertions in a manner that is simple, direct and factual”.²¹ This is a call for informed and accurate public engagement built on relevant legal expertise. It is a call to counter inaccurate and misleading statements.

Public lawyers and legal academics are well suited to perform this responsibility. We also have an obligation to do so. Noel Pearson has warned that over the coming months public debate will hit “extreme lows”.²² Already concerns have been raised that prominent political figures have engaged in commentary that may “reinforce racist stereotypes and inflict harm”,²³ while some politicians, journalists and media commentators appear content to mischaracterise the proposed amendment in order to inflame anxiety and alarm within the Australian population.²⁴ We know that negative and incendiary statements have a deleterious effect on many Aboriginal and Torres Strait Islander peoples’ health and wellbeing.²⁵ A national poll on the status and place of Indigenous Australians will focus and intensify this harm. Indeed, studies on the 2017 Australian Marriage Law Postal Survey found that increased exposure to negative and homophobic messages was related to increased levels of depression and anxiety among LGBTIQ Australians.²⁶

This is not to say that there is no room for disagreement among public lawyers on the merits of the Voice or of the proposed constitutional amendment. It is to say that disagreement should be scholarly – it should be based on accurate information, clear reasoning and be motivated by the desire to illuminate rather than obfuscate. In practice, this means that when engaging in public commentary we must be conscious of our obligations. For example, given the Voice is an advisory body and will not be able to introduce bills into Parliament or vote on legislation, there is no basis for the suggestion that the Voice will turn into “a de facto third legislative body”.²⁷ Statements like these are plainly incorrect. They are political statements made in the guise of legal argument.²⁸ They may confuse and misinform Australians.

²⁰ Gabrielle Appleby, Sean Brennan and Megan Davis, “A First Nations Voice and the Exercise of Constitutional Drafting” (2023) 34(1) PLR 3.

²¹ Constitutional Expert Group: Aboriginal and Torres Strait Islander Voice, *Communique for the Referendum Working Group – December 2022: Attachment – Advice from the Constitutional Expert Group* (13 December 2022) <<https://voice.niaa.gov.au/news/communique-referendum-working-group-december-2022>>.

²² ABC Radio National, “‘A Judas Betrayal’: Noel Pearson Criticises Liberal Opposition to Voice”, *RN Breakfast*, 6 April 2023 <<https://www.abc.net.au/radionational/programs/breakfast/noel-pearson-liberals-no-voice-great-betrayal/102194758>>.

²³ Sarah Collard, Josh Butler and Lorena Allam, “Indigenous Voice: No Campaign Event Reinforced ‘Racist Stereotypes’, Watchdog Says”, *Guardian Australia*, 5 April 2023 <<https://www.theguardian.com/australia-news/2023/apr/05/indigenous-voice-no-campaign-event-reinforced-racist-stereotypes-watchdog-says>>.

²⁴ See, eg, Janet Albrechtsen, “Indigenous Voice to Parliament Will Create Co-government and Cause Policy Chaos”, *The Australian*, 8 April 2023 <<https://www.theaustralian.com.au/inquirer/indigenous-voice-to-parliament-will-create-cogovernment-and-cause-policy-chaos/news-story/c9bba90e726a77514fd463a561fc69ea>>.

²⁵ Naomi Priest et al, “Racism as a Determinant of Social and Emotional Wellbeing for Aboriginal Australian Youth” (2011) 194(10) *Medical Journal of Australia* 546.

²⁶ Stefano Verrelli et al, “Minority Stress, Social Support, and the Mental Health of Lesbian, Gay, and Bisexual Australians during the Australian Marriage Law Postal Survey” (2019) 54(4) *Australian Psychologist* 336.

²⁷ James Allan, “This Is a Terrible Way to Change Australia’s Constitution”, *Australian Financial Review*, 29 January 2023 <<https://www.afr.com/politics/federal/this-is-a-terrible-way-to-change-australia-s-constitution-20230129-p5cg9j>>.

²⁸ On misleading political claims articulated in legal discourse, see, Harry Hobbs, “The New Right and Aboriginal Rights in the High Court of Australia” (2023) 51(1) *Federal Law Review* 129.

CONSTITUTIONAL LITERACY

Misleading comments are more likely to find fertile soil in circumstances where Australians have little awareness of key features of and concepts underlying the Constitution. This is a longstanding issue. Surveys in the early 1990s found “notoriously low levels of public knowledge” about the Constitution and our system of government.²⁹ The situation does not appear to have improved. A 2021 parliamentary inquiry lamented the “apparent low levels of understanding of the Constitution”.³⁰ A similar pattern exists on the proposed amendment. While polling indicates a majority of Australians support putting an Aboriginal and Torres Strait Islander Voice in the *Constitution*,³¹ surveys also suggest that many Australians do not know much about the Voice.³²

The government has acknowledged a community education campaign must precede the referendum. In September 2022, it established a 60-member Referendum Engagement Group comprised of a cross-section of experienced First Nations leaders representing communities and organisations across Australia to consider how to build community understanding, awareness, and support for the referendum. In March 2023, the Parliament passed amendments to the *Referendum (Machinery Provisions) Act 1984* (Cth) to allow the Commonwealth to fund an impartial educational campaign “to promote voter’s understanding of referendums and the referendum proposal”.³³ It is not yet clear how this campaign will be run, but lessons from previous education programs can be considered. For instance, between 1991 and 2000 the Constitutional Centenary Foundation developed methods to inform Australians about their *Constitution* and systems of government. In their 2000 report they reflected on a decade of experience. They found that:

- Information must be comprehensive and targeted to audience, current issues, and contemporary themes.
- Information must be interesting and accessible in design and content.
- Information must be accurate and impartial.
- Information must reach and involve as wide a range of different people as possible.
- People must be able to be actively involved if they wish.³⁴

The Australian Electoral Commission (AEC) is doing its part. It has launched its own education campaign to inform voters about the Constitution and the role of a referendum. It includes videos, graphics, fact sheets and an online Disinformation Register that responds to “prominent pieces of disinformation” regarding the referendum,³⁵ such as suggestions that voters need to enrol separately to vote in a referendum, and that the process will be “rigged” in some manner. This is positive. Unfortunately, the official pamphlet is unlikely to meet the same standard. In advance of the referendum, the AEC will mail a pamphlet containing arguments for and against the Voice, authorised by parliamentarians, to each household.³⁶ A proposal to require an independent panel assess the veracity of these arguments was not

²⁹ Constitutional Centenary Foundation, *Report on a Decade of Experience* (2000) 5.

³⁰ House of Representatives Standing Committee on Social Policy and Legal Affairs, Parliament of Australia, *Inquiry into Constitutional Reform and Referendums* (December 2021) 23 [2.72].

³¹ Francis Markham and Will Sanders, “Support for Constitutionally Enshrined First Nations Voice to Parliament: Evidence from Opinion Research since 2017” (Centre for Aboriginal Economic Policy Research, Working Paper No 138, 2020) 20. For more recent data see Simon Benson and Sarah Ison, “Indigenous Voice Earns Support of Quiet Majority: Newpoll”, *The Australian*, 6 February 2023 <<https://www.theaustralian.com.au/nation/politics/indigenous-voice-earns-support-of-quiet-majority-newspoll/news-story/112730f98673caf6b106ac3b52da70a2>>.

³² See, eg, David Crowe, “Support for Voice Slips as Voters Await More Detail”, *The Sydney Morning Herald*, 24 January 2023 <<https://www.smh.com.au/politics/federal/support-for-voice-slips-as-voters-await-more-detail-20230123-p5cenw.html>>.

³³ Explanatory Memorandum, *Referendum (Machinery Provisions) Amendment Bill 2022* (Cth) 3; *Referendum (Machinery Provisions) Amendment Act 2023* (Cth) Sch 3A.

³⁴ Constitutional Centenary Foundation, n 29.

³⁵ Australian Electoral Commission, *Disinformation Register – Referendum Process* <<https://www.aec.gov.au/media/disinformation-register-ref.htm>>.

³⁶ *Referendum (Machinery Provisions) Act 1984* (Cth) s 11.

adopted.³⁷ It is likely that, as in previous referendums, these arguments will contain “exaggerated or misleading claims that seem designed to confuse or frighten voters”.³⁸ This only puts more pressure on the government run information campaign, as well as legal academics writing for popular media.

In the meantime, proponents of the Voice have launched their own public education and awareness campaigns. Replicating the *Uluru Statement from the Heart’s* origins in community deliberations, supporters are consciously building their programs from the ground up. For example, the Victorian Women’s Trust “Together Yes” campaign is centred on “kitchen table” conversations. Supporters are encouraged to host their own event with 10 friends, using resources provided by the organisation, From the Heart, “with hopes participants will in turn convince 10 more people to take part”.³⁹ This model appears to borrow from the community-run and coordinated “Treaty Circles” that formed part of the early stages of the Victorian treaty process.⁴⁰ Several law schools have also entered the field. The Castan Centre for Human Rights Law at Monash University has launched a legal clinic for students to educate and inform Australians about the *Constitution*, the Voice, and the referendum process.⁴¹

The referendum necessarily centres attention on our *Constitution*. Informed public education campaigns supported by accurate public commentary should promote awareness and understanding of the instrument and our system of government. It may also encourage Australians to get involved in legal and political debate on other potential areas of constitutional reform. In my own teaching, I find students express considerable surprise over several parts of our Constitution, and of what our *Constitution* does not contain. I encourage them to appreciate the historical context that led to the introduction of these sections or dismissal of other proposals and to discuss their thoughts with family and friends. The Voice debate not only indicates that there is need for greater civics education; it presents a good opportunity for government to invest in community education and constitutional literacy programs now and into the future. If successful, one of the underappreciated consequences of the Voice may be a more informed public.

THE VOICE AS A POLITICAL CONTEST

The *Uluru Statement* is addressed to the Australian people. This is deliberate. Aboriginal and Torres Strait Islander peoples did not want to see their aspirations for structural reform derailed by politicians “paralysed by ... party politics”.⁴² It is the Australian people who have the authority to “unlock” the potential for genuine reconciliation in this country.⁴³ In the immediate years following the delivery of the *Uluru Statement*, however, party politics prevented progress. The Coalition government remained implacably opposed to constitutional amendment and to holding a referendum. While the 2022 federal election provided the opportunity for a reset, Opposition Leader Peter Dutton’s confirmation that the federal Liberal party will join the National party in opposing the referendum,⁴⁴ reveals politics will remain at the heart of the struggle.

³⁷ *Referendum (Machinery Provisions) Amendment Bill 2022* (Cth), Amendment Sheet 1816 (Proposed by Independent Senator David Pocock).

³⁸ Paul Kildea, “Yes or No?: The Government’s Proposed Changes to Australia’s Referendum Laws”, *Australian Public Law* (3 February 2023) <<https://www.auspublaw.org/blog/2023/2/yes-or-no-the-governments-proposed-changes-to-australias-referendum-laws>>.

³⁹ Josh Butler, “Indigenous Voice to Parliament: Groups to Launch Grassroots Referendum Campaigns”, *Guardian Australia*, 4 January 2023 <<https://www.theguardian.com/australia-news/2023/jan/04/indigenous-voice-to-parliament-groups-to-launch-grassroots-referendum-campaigns>>.

⁴⁰ Aboriginal Treaty Interim Working Group, *Treaty Circle Facilitators Handbook: Building a Pathway to Treaty* (2017) 27.

⁴¹ Monash University Castan Centre for Human Rights Law, *Voice to Parliament Clinic* <<https://www.monash.edu/law/research/centres/castancentre/for-students/castan-centre-human-rights-clinic/voice-to-parliament-clinic>>.

⁴² Megan Davis, “The Long Road to Uluru – Walking Together: Truth Before Justice” (2018) 60 *Griffith Review: First Things First* 13, 15.

⁴³ Davis, n 42, 45.

⁴⁴ AAP, “Peter Dutton Digs in Behind No Campaign for Indigenous Voice to Parliament”, *SBS News*, 8 April 2023 <<https://www.sbs.com.au/news/article/peter-dutton-digs-in-behind-no-campaign-for-indigenous-voice-to-parliament/62izdsthm>>.

This is not the place to speculate on the political consequences of the federal Opposition's decision. It is clear, however, that the decision to oppose will have at least two impacts on the Voice referendum. First, it will negatively affect the chance of the referendum succeeding. The most significant study of Australian referendums has concluded that bipartisan support "has proven essential to referendum success".⁴⁵ Proponents of the Voice and the Albanese government have therefore worked hard in a bid to secure support across party lines. The decision to oppose means bipartisanship will not be forthcoming.

Some have suggested that bipartisanship may not be as significant as it once was. Paul Kildea has argued that lessons from referendum history "are a bit stale", given that the last successful referendum was held in 1977 and the last time the country voted on a proposal was in 1999.⁴⁶ Further complicating easy analysis is the position of the State and Territory Liberal and National parties. Tasmanian Liberal Premier Jeremy Rockliff has declared he will "vigorously" campaign for the Yes vote.⁴⁷ Others have not yet made their position clear.

The more significant consequence is deeper. The decision to formally oppose the referendum will have the unfortunate effect of turning – at least in the minds of many Australians – Aboriginal and Torres Strait Islander peoples' simple request to be seen in the *Constitution* and heard in the processes of governance, into a proxy war between the Prime Minister and Peter Dutton. Supporters of the Voice may gain succour from polls that suggest Australians prefer Albanese to Dutton,⁴⁸ but the *Uluru Statement from the Heart* deserves so much more than to be seen through the prism of ordinary political contest.

The Voice is a sophisticated and considered proposal that seeks to ensure Aboriginal and Torres Strait Islander peoples can participate "in the democratic life of the state",⁴⁹ and does so in a manner consistent with our constitutional system.⁵⁰ In providing an opportunity for Indigenous peoples to have their voices heard in the design and delivery of law and policy that affects them, the Voice will contribute to better outcomes. At the same time, as Robert French, the former Chief Justice of the High Court of Australia notes, the Voice is "a once in a lifetime opportunity for Australia to fill a gaping hole in our *Constitution*",⁵¹ the fact that it says nothing about the peoples – who are still here today – and whose ancestors have cared for this continent for more than 60,000 years. The referendum then, is an opportunity for Australians to accept the invitation offered in the *Uluru Statement from the Heart* and "walk with" Aboriginal and Torres Strait Islander peoples, to build a better Australia.⁵²

⁴⁵ George Williams and David Hume, *People Power: The History and Future of the Referendum in Australia* (UNSW Press, 2010) 244.

⁴⁶ Paul Kildea, "NAIDOC Week 2021: 1967 to 2021: What Will a Successful Referendum Look Like in 2021/2022?", *Indigenous Constitutional Law Blog* (7 July 2021) <<https://www.indigconlaw.org/home/naidoc-week-2021-1967-to-2021-what-will-a-successful-referendum-look-like-in-2021/2022>>.

⁴⁷ Lydia Lynch and Matthew Denholm, "Liberal Leaders Refuse to Join Dutton's 'No' Campaign on Voice", *The Australian*, 6 April 2023 <<https://www.theaustralian.com.au/nation/politics/liberal-leaders-refuse-to-join-duttons-no-campaign-on-voice/news-story/65982231d1ba4e4049ab9da3be2f64cc>>.

⁴⁸ David Crowe, "Albanese Still Well Ahead of Dutton as Preferred Prime Minister: Resolve Poll", *The Sydney Morning Herald*, 24 January 2023 <<https://www.smh.com.au/politics/federal/albanese-still-well-ahead-of-dutton-as-preferred-prime-minister-resolve-poll-20230124-p5ceyd.html>>.

⁴⁹ Megan Davis, "Correspondence: Moment of Truth" (2018) 70 *Quarterly Essay* 147, 158.

⁵⁰ Shireen Morris, *A First Nations Voice in the Australian Constitution* (Hart, 2020).

⁵¹ Robert French, "The Voice – A Step Forward for Australian Nationhood" (Paper presented at the Exchanging Ideas Symposium, Sydney, 4 February 2023) 15.

⁵² *Uluru Statement from the Heart*, n 1.