

Diversity Council Australia – Anna McPhee Memorial Oration

30 August 2023

Address by Prof Tom Calma AO

DCA Members, Nareen & fellow panelists, friends and allies,

Good afternoon and thank you Ming for the introduction and Diversity Council Australia for inviting me to deliver the Anna McPhee Memorial Oration on Diversity & Inclusion on the Voice.

I too acknowledge the Wurundjeri People of the Kulin Nation and pay respect to Elders and thank you Mandy for your generous welcoming us to Wurundjeri land. I also recognise all Aboriginal and Torres Strait Islander Peoples joining us today in person and online.

Peoples who have lived, loved, raised their families and cared for this country and waters for millennia before the arrival of the British that saw the subsequent dispossession of lands, cultures, languages and identities across the nation.

I would also like to acknowledge all youth who will be our future leaders, and the custodians of our stories, languages, histories and cultures. I emphasise youth because in the 2021 ABS census, 33.2% of the Aboriginal and Torres Strait Islander population was under 15 years of age and this Referendum on the Voice is about the future.

In January I was named Senior Australian of the Year 2023. In my acceptance speech I stated that, and I quote: “As Senior Australian of the Year and a member of the Council of Elders for Aged Care, I want to particularly address Senior Australians, because you are the demographic being targeted with myths and mis-information by pundits who are ill-informed or have malicious intent regarding the Voice.”

My concerns have since been realised as misinformation and dis-information has been exponentially exploited especially by conservative political leaders at the national level, conservative media, and “No Campaign” advocates. I encourage all Australians

to focus on the facts and not “opinions” or the extreme hypotheticals that prevail to inform yourself about the Voice Referendum.

I stand here today with a passion many of you share – to enhance the rights and quality of life of Aboriginal and Torres Strait Islander people and to progress reconciliation and social justice.

While we have many older Australian who have negative or ill-informed attitudes of Aboriginal and Torres Strait Islander Peoples because they were denied a balanced history education, I am confident this will not be the case for future generations.

It is heartening to note that 2,300 organisations with a Reconciliation Action Plan and 10,500 schools and early learning services engage with RA’s *Narragunnawali* program. The program aims to increase awareness among young people about Aboriginal and Torres Strait Islander cultures, histories, and experiences, helping to build peaceful and respectful relations between Australia’s many cultures. It also empowers teachers and educators to teach Aboriginal and Torres Strait Islander histories with curriculum and other resources, including digital content, provided by RA. This is the essence of reconciliation; strengthening relationships between non-Indigenous peoples and Aboriginal and Torres Strait Islander peoples, for the benefit of all Australians and without laying blame or shame on contemporary generations. A great example of the latter is that since the year 2000, 162 years after the massacre, annually the descendants of the victims, survivors and perpetrators of the Myall Creek massacre gather at the Myall Creek Memorial site in an act of reconciliation.

Records show about 50 massacre sites in Victoria, with at least 1,200 Aboriginal people believed to have been killed from the 1830s until the 1850s.

The majority were in the west of Victoria, near the settlements of Portland and Hamilton.

Across Australia 400 massacres of Indigenous people took place on the Australian frontier, resulting in more than 10,000 deaths.

Let me now turn to the Voice starting with the claims that the government's Voice proposal lacks details. I believe the information is readily available and I note that the current and former governments have endorsed the Calma / Langton Final Co-Design Report as guiding the potential structure and operation of the Voice. You may recall that the Voice co-design initiative commenced under the reign of the Morrison government following recommendations of a *Joint Parliamentary Committee* and was progressed by the current government. The co-design report was handed to the Morrison Government in July 2021 and has been in the public domain since December 2021.

This report alone can enlighten people on how the Voice might operate, how it might be structured and how membership might be determined.

Let me share a brief synopsis of the Co-design process and key findings.

The co-design process ran for 18 months, over 9,400 Indigenous and non-Indigenous responses and inputs were recorded and 115 community consultations and 120+ stakeholder meetings were held. Further, 13 webinars were delivered and over 4,000 submissions and surveys were lodged.

Consultations also confirmed the following principles that would guide the Voice;

1. The Voice will be representative of Aboriginal and Torres Strait Islander communities, it will be gender balanced and will include youth.
2. The Voice will be chosen by Aboriginal and Torres Strait Islander people based on the wishes of local communities.
3. The Voice will be empowering, community-led, inclusive, respectful and culturally informed.
4. The Voice will be accountable and transparent.
5. The Voice will work alongside existing organisations and traditional structures.
6. The Voice will not have a program delivery function, and

7. The Voice will not have a veto power.

The Voice would also be guided by an Ethics Council to ensure best practices in the interest of Aboriginal and Torres Strait Islander Peoples is practiced and maintained.

I believe it is important to recognise some of the history and initiatives that have led us to this point in our shared history and why the referendum evokes so much passionate debate from all quarters.

The call for a Voice actually started soon after the arrival of the First Fleet but I will start from 1973. Over the past 50 years there have been five major national Aboriginal and Torres Strait Islander peoples' representative bodies in Australia namely; the National Consultative Committee (established in 1973), the National Aboriginal Conference (1977–1984), the Aboriginal and Torres Strait Islander Commission (1989–2005) and the National Congress of Australia's First Peoples (2009-2019).

All have been established by one political party and abolished or starved of funding by another. This is our, and I am referring to Aboriginal and Torres Strait Islander Peoples, "Achilles heel" and this is why Constitutional enshrinement is paramount.

In February 2008 Prime Minister Rudd in his Apology speech to Parliament called for a new partnership with Indigenous peoples to underpin policy development. He states that:

"Our challenge for the future is to embrace a new partnership between Indigenous and non-Indigenous Australians. The core of this partnership for the future is closing the gap between Indigenous and non-Indigenous Australians on life expectancy, educational achievement and employment opportunities. This new partnership on closing the gap will set concrete targets for the future."

In March 2008, the Labor Government and federal Opposition signed a Statement of Intent with the Indigenous health sector for a new partnership to close the gap in life expectancy within a generation.

This statement provided bipartisan support to:

- develop a comprehensive, long-term plan of action, that is targeted to need, evidence-based and capable of addressing the existing inequities in health services, in order to achieve equality of health status and life expectancy between Aboriginal and Torres Strait Islander peoples and non - Indigenous Australians by 2030.
- ensure the full participation of Aboriginal and Torres Strait Islander peoples and their representative bodies in all aspects of addressing their health needs.
- respect and promote the rights of Aboriginal and Torres Strait Islander peoples... and
- measure, monitor, and report on our joint efforts, in accordance with benchmarks and targets, to ensure that we are progressively realising our shared ambitions.

The Hon Jenny Macklin, in the *Budget 2008-09: Ministerial Statement on Closing the gap* stated that:

- “The Australian Government's reform agenda — both in Aboriginal and Torres Strait Islander affairs and across governments — is to address the structural and systemic problems that are producing appalling outcomes for Aboriginal and Torres Strait Islander people.
- Indigenous Australians must be involved in developing and driving solutions. Actions like the National Apology are working to build the trust needed to work together on getting results.
- Our 'closing the gap' commitments require effective engagement with Aboriginal and Torres Strait Islander people at all levels. Government needs to involve Indigenous people in the design and delivery of programs locally and regionally, and share responsibility for outcomes. Solutions developed on the ground must be driven by the communities that will ultimately determine their success or failure...

- The Government went to the election with a commitment to set up a national representative body to provide an Aboriginal and Torres Strait Islander voice within government. We will soon begin formal discussions with Indigenous people about the role, status and composition of this body.”

Aboriginal and Torres Strait Islander Peoples were excited and hopeful in 2008 but political turmoil, bureaucratic churn and changes of government have negatively impacted progress and as widely reported, the blame for non-achievement or limited socio-economic advancement has been directed to the recipients of the services, ie Aboriginal and Torres Strait Islander Peoples, who are those least able to influence services or policy.

In August 2008 the Australian Government appointed me to lead national consultations with Indigenous peoples on the establishment of a new National Indigenous Representative Body.

Following extensive Indigenous lead consultations and a deliberative dialogue of 100 nationally selected delegates that took place in Adelaide, the National Congress of Australia’s First Peoples (NCAFP) was formed in November 2009. However, a change of government and cessation of subsequent funding forced the National Congress to go into voluntary administration in June 2019.

So, my friends you can see that there has been a checkered history of Aboriginal and Torres Strait Islander peoples’ attempts to establish a national Voice and have meaningful engagement with governments and bureaucrats on matters that affect us. We have been the passive recipients of government policies and programs that have mostly not addressed the wicked problems that confront us.

Over the past 50 years we have had successive national representative bodies. Their roles have also varied as has their impact on policies and programs and a constant has been the regular reviews of their structures, operations and funding have been at the whim of the government of the day.

We are now on the cusp of substantial and substantive change in a political and community environment that is conducive to consider and support constitutional change.

So, let's explore where we are at re The Voice.

The first public milestone was reached on 19 June 2023 when the Constitution Alteration (Aboriginal and Torres Strait Islander Voice) Bill that authorises the referendum and sets out the question *passed* the Senate 52 in favour and 19 opposed and earlier in the House of Representatives 121 in favour with 25 opposed.

If you watched or heard the proceedings of the HOR or the Senate debates or follow the daily media since then, you will observe that there are many conflicting and confusing messages in play.

So let me unpack some of the misinformation and dis-information and what is needed to get the Referendum over the line.”

The First issue: Is the Uluru Statement from the Heart and the Referendum for a Voice the same thing?

The Statement from the Heart references three key reforms; Voice, Treaty, Truth. The Statement calls for “the establishment of a First Nations Voice enshrined in the Constitution”.

The proposed Referendum will only be about amending the Australian Constitution to enable the establishment of *a Voice to Parliament and the Executive Government*.

It is about the Commonwealth Parliament, Commonwealth government departments and entities and Commonwealth legislation. The national Voice will have no influence or involvement with state and territory affairs unless invited to by the relevant authorities. The Referendum will not address Treaty or Truth telling.

Treaty and truth telling dialogues at the national level will commence after the referendum is held.

Now while the referendum is about the Commonwealth, the subsequent legislation post a successful referendum will potentially include provision to establish *regional voice arrangements* that will address community level issues that will be considered

by the three tiers of government under the leadership of state and territory governments.

What this means is that the national voice of 22-24 members will consider commonwealth legislation and programs that apply across the nation to all Aboriginal and Torres Strait Islander Peoples and the regional voices will consider regional and community priorities with respective state and territory governments in collaboration with the commonwealth and local / shire governments.

It is important to note that at the state and territory levels processes have commenced with Treaty discussions occurring in Tasmania, NSW, Qld, and SA.

Treaty Commissions have been established in the NT and Victoria and in May Queensland's Path to Treaty was set into law with the passing of landmark legislation.

Victoria is the most advanced jurisdiction through enacting the *Advancing the Treaty Process with Aboriginal Victorians Act 2018*, the *First Peoples' Assembly of Victoria* in 2019 and a truth telling mechanism called the *Yoo-rook Justice Commission* in 2021. And in SA you now have a legislated "Voice" and the ACT has effectively had an elected Voice since 2008.

Another question is "Why do we need to have this Referendum?"

The Referendum is a chance for our First Nations peoples to be recognised in the Constitution and enshrining an Aboriginal and Torres Strait Islander Voice gives strength and status to the principles of respect and partnership and the Voice can never be abolished by ever-changing governments but only through another referendum.

The Voice will mean that Aboriginal and Torres Strait Islander Peoples will be advising the Parliament and Executive Government when, or hopefully before, decisions are made about laws and policies impacting Aboriginal and Torres Strait Islander Australians.

This is a once-in-a-generation opportunity to change our Constitution and place our Nation on a pathway to a better future. It also creates an element of redress post the 1992 High Court decision (*the Mabo Decision*) that overturned the fiction of terra

nullius by recognising Aboriginal and Torres Strait Islander Peoples in the Constitution. Up until 1967 “Aborigines” were referenced in the Constitution but Torres Strait Islanders have never been mentioned.

So what happens after the Refendum?

As it currently stands, if successful, the Government will propose a Bill (legislation) to address the Voice composition, functions, powers and procedures”. The Bill will be tabled in the House of Representative where it will be debated and typically referred to a Joint Parliamentary Committee for public consultation. It is at this stage that we will get to know the details of the Voice and if past history is an indicator, the introduced bill will be amended multiple times so what is proposed in the Bill is not necessarily what will eventuate after it passes through the Parliament - but that is the democratic process.

Some might recall that in 1988 a Senate Select Committee investigated the proposed *Aboriginal and Torres Strait Islander Bill* and considered over 40 amendments most of which were incorporated. Subsequently over 90 amendments were made to the Bill during its passage through the parliament resulting in the establishment of the Aboriginal and Torres Strait Islander Commission (ATSIC) in 1989. So you can see it is not logical to provide details pre a referendum when it will be subject to change during parliamentary deliberations and further, a referendum question is a facilitating principle rather than a prescriptive direction.

You will all remember the original claim, that is still being promoted by opponents, that the Voice will operate like a third or fourth chamber of Parliament.

The Prime Minister has repeatedly said, and it is supported by learned retired high court judges,

“the Voice would not have a veto over the decisions of Parliament. It will be an unflinching source of advice and accountability – not a third chamber nor a rolling veto.

The body will be an advisory body. It will have no ability to hinder parliamentary processes, it will not have any veto power and could not introduce legislation or change it.

The Parliament will be under no obligation to follow the Voice's advice. The House of Representatives and the Senate will continue to make laws, regulations and pass motions regardless of what the Voice may advise."

Some then say it is a toothless tiger without influence so why have it?

Well, there are a vast number of advisory bodies to the Parliament covering all sorts of issues. They include:

- the Auditor-General,
- the Australian National Audit Office,
- the Australian Law Reform Commission,
- the Australian Human Rights Commission, and
- the Commonwealth Ombudsman, whose reports are tabled in Parliament. This is just democracy at work.

And let's not forget Government department and entity heads, the security services, the chief medical officer, the chief scientist, and DFAT who provide advice to the Government and the Parliament. Notwithstanding, "The parliament will still be supreme in matters of law and policy."

Another claim is that "it would divide us by race/it would give First Nations people more rights than others".

This is not about race politics or dividing Australians. It is about uniting Australia and making our nation stronger.

The Voice is not about a special right – it is about a basic right – *self-determination*. All Australians will remain equal in the eyes of the law - the Rule of Law will still apply to all Australians. The only thing that changes is that there will be a permanent new body to provide advice on Commonwealth laws, policies and programs that affect First Nations people.

Some then say if it is not a special right why should this be only for Aboriginal and Torres Strait Islander People? Simply because Aboriginal and Torres Strait Islander People are the only Australian citizens who have laws specifically written for them. Further, the Constitution already references Race through Section 25, *and Section 51(xxvi)* that is known as *the race power*. The fact is that although section 51 (xxvi) applies to all Australians it has only ever been exercised on Aboriginal and Torres Strait Islander Peoples.

Another piece of dis-information relates to the reported \$33bil expenditure on Aboriginal and Torres Strait Islander Peoples that infers that it is disproportionate to expenditure on non-Indigenous Australians. The facts are that \$33bil represents about 6% of the \$522.7bil spent on non-Indigenous Australians in the 2015-16 budget (the latest reported figure). Yes, that is a big number that gets many in the community asserting *the money is being wasted* so why should “they” get more? It is therefore important to check the facts to unpack what the \$33bil comprises.

According to the *Australian Parliament House* official website in 2015 – 16, the Australian Government directly spent \$14.7 billion on Indigenous people, of which 77 per cent (\$11.3 billion) was through mainstream programs such as Medicare, social security payments, childcare benefits and support for university places accessed by Indigenous people. State and territory government spending makes up the balance of the \$33B. The vast majority of the \$33B is simply the Indigenous share of "mainstream expenditure" — that is, expenditure "provided for all Australians", including spending on schools, hospitals, welfare, defence and "public order and safety".

Only \$6 billion or so was spent on "services and programs provided to the Aboriginal and Torres Strait Islander community specifically".

In other words, Indigenous - specific expenditure accounted for 1.1 per cent of total direct expenditure on all Australians for 3.8% of the population with roughly 45% from the commonwealth and 55% from States and Territories.

The final piece of dis-information I would like to address relates to claims by two Indigenous politicians, Social media and some Indigenous commentators that Not all Indigenous people support the Voice and that the Voice *will be dominated by the*

Canberra elites. Not sure how the latter will be the case when *only 2 of 22-24 Voice members will be from the Canberra region* as proposed in the co-designed report. Further, the Aboriginal and Torres Strait Islander community will elect one female and one male to be on the national Voice; they will not be appointed by the government of the day or the Parliament.

It is however true that there are a wide range of views among First Nations people. Just like any group of Australians, Aboriginal and Torres Strait Islander Australians are diverse and don't all think the same way.

However, the Voice proposal is the result of successive processes of consultation and engagement – involving thousands of individuals and engaging with communities' right across the country and First Nations leaders have been calling for this reform for decades.

I am confident there is overwhelming support within First Nations communities, which will only continue to grow. All of the land councils in the NT and the NSW and Kimberley Aboriginal Land Councils and the Diluk Customary Law Council at Garma have declared their full support for the Voice. They join the vast majority of Aboriginal and Torres Strait Islander Peoples nationally who support the voice because we want and need to see change and better outcomes.

While Aboriginal and Torres Strait Islander Peoples' support is important, the reality is that it is you, the 96% of the non-Indigenous voting population who will determine the outcome of the referendum. This is why allies play a crucial role in having conversation with families, friends, colleagues and through writing to politicians and newspapers challenging dis-information and explaining why they should support change for a better future. Regional and remote Australia is where allies can play an important role in addressing dis-information. We need your leadership, compassion, support and belief in a reconciled Australia and a better future for all.

There is much more that I could say but my time is up. I have endeavoured to demonstrate that Aboriginal and Torres Strait Islander peoples have for over 50 years attempted to have a Voice that could guide government and the parliament on how to

effectively design and implement policies and programs that will have a positive impact to achieve equality for all First Nations Australians.

I have also endeavoured to shine a light on the way forward and how all of the voting population needs to become informed of the facts and not be swayed by the mis and disinformation that are being promoted by pundits who are ill-informed or have malicious intent.

Aboriginal and Torres Strait Islander people have had relationships with non-Indigenous people throughout *our contemporary history* including the Macassans from Indonesia, Papua New Guineans, Australian South Sea Islanders, Chinese people in the gold fields, Japanese and Filipino pearl divers and of course the Afghan cameleers and many other ethnic groups from Great Britain and Europe. We have done so harmoniously, respectfully and with honour.

Now is the time for Non-Indigenous and Indigenous brothers and sisters, irrespective of our backgrounds, to walk together for reconciliation and for those who will come after us, for a better and more just future for all.

Start the journey and Vote Yes. Thank you.