

24 April 2023

Constitutional amendment to provide for the Voice is just and legally sound

The Law Council of Australia has advised that the Constitution Alteration (Aboriginal and Torres Strait Islander Voice) 2023 to amend the Constitution to provide for the Aboriginal and Torres Strait Islander Voice to Parliament and the Executive Government is just and legally sound and should be passed in its current form.

“We continue to support a constitutionally enshrined Voice and believe the proposed amendment responds to the invitation to the Australian public for constitutional reform in the Uluru Statement from the Heart,” Law Council of Australia President, Mr Luke Murphy said.

“The Voice will be an advisory body which is empowered to make representations on matters relating to Aboriginal and Torres Strait Islander peoples.

“The Voice will deliver a substantive mechanism for change. Providing Aboriginal and Torres Strait Islander peoples with a voice to represent their views about how policies, programs and laws would affect them, should lead to more informed decision-making. It will help address the power imbalances embedded since (and beyond) the establishment of the Constitution, which have enabled entrenched dispossession and disadvantage.”

“Our submission to the Joint Select Committee on the Aboriginal and Torres Strait Islander Referendum has addressed many of the questions raised publicly about the impact of the Constitutional amendment to enshrine the Voice.

“The proposed amendment will not give the Voice a veto or law-making power nor the power to issue commands to Parliament. The power provided to the Voice is to make representations. It is not framed as a duty on the Executive, or Parliament, to consult the Voice. Parliament can decide whether and when a representation by the Voice must be considered by the Executive.

“We note similar advice has been provided by the Solicitor-General.

“The majority of instances in which the Voice may make representations – such as regarding the development of policies, programs and bills – will not be justiciable.

“Fundamentally, the role of the courts in declaring and enforcing the legal limits to the exercise of Executive power is not to be feared. Judicial review of administrative action is the application of the rule of law.

“Australia has unfinished Constitutional business, and we now have the opportunity to ensure Australia’s supreme law substantially recognises Aboriginal and Torres Strait Islander peoples as the original custodians of the land.”

Contact: Kristen Connell, P. 0400 054 227, E. kristen@talkforcemedia.com.au

The Law Council of Australia is the national voice of the legal profession, promoting justice and the rule of law.