Attorney-General

Senator Nita Green
Chair
Joint Select Committee on the Aboriginal and Torres Strait Islander Voice Referendum
Parliament House
CANBERRA ACT 2600

By email: jscvr@aph.gov.au

Dear Chair

I welcome the opportunity to make a submission to the Joint Select Committee on the Aboriginal and Torres Strait Islander Voice Referendum (the Committee).

I enclose the opinion of the Solicitor-General in relation to proposed section 129 of the Australian Constitution.

The Solicitor-General's opinion addresses the key legal issues that have arisen in the course of the public debate on the Constitution Alteration (Aboriginal and Torres Strait Islander Voice) 2023 (the Bill):

- the compatibility of proposed section 129 of the Constitution with Australia's system of representative and responsible government established under the Constitution; and
- the power of the Parliament to legislate with respect to matters relating to the Aboriginal and Torres Strait Islander Voice, including as to the legal effect of the Voice's representations on decisions by the Executive Government.

The Solicitor-General's opinion on these matters speaks for itself.

The inclusion of Executive Government in paragraph (ii) of proposed section 129

Since the Prime Minister released draft text for a possible amendment at the Garma Festival on 30 July 2022, there has been considerable public debate about the proposal to recognise the First Peoples of Australia by establishing an Aboriginal and Torres Strait Islander Voice in the Constitution. Much of that debate has focused on the ability of the Voice to make representations to the Executive Government under paragraph (ii) of the proposed constitutional amendment.

Following the release of the draft text on 30 July 2022, the potential legal implications of including a reference to Executive Government in paragraph (ii) were rigorously scrutinised and tested by members of the Constitutional Expert Group and other legal experts. As part of that process, the Government considered – and ultimately made – changes to paragraph (iii) of the Garma draft to put beyond doubt the broad scope of the Parliament's power to make laws relating to the Voice, including to "regulate the circumstances in which the Executive Government might be required to consider representations of the Voice".[1] The changes to paragraph (iii) were endorsed by the Referendum Working Group and are reflected in the Bill.

[1] SG No. 10 of 2023, paragraph 35.

It has always been the Government's position that the Voice should be able to make representations to the Executive Government. Despite assertions to the contrary from the Leader of the Opposition, this has always been my personal view.

It is self-evident that, in order to improve the laws and policies that affect Aboriginal and Torres Strait Islander peoples and improve outcomes, the Voice must be able to make representations to the Parliament and the Executive Government. It is the Executive Government that makes policies, and develops proposed laws, about Aboriginal and Torres Strait Islander peoples. When the Parliament passes laws relating to Aboriginal and Torres Strait Islander peoples, it is the Executive Government that implements them.

For those reasons, in addition to reviewing the Solicitor-General's opinion and the evidence of the other eminent constitutional experts who have appeared before the Committee, I urge the Committee to consider the importance of the Voice being able to make representations to the Executive Government.

I also urge the Committee to focus on the words of proposed section 129, and the Explanatory Memorandum, rather than on the baseless claims made by some opponents of the Voice – claims which have nothing to do with what Australians will actually be voting on at the referendum later this year.

Conclusion

As I said in my Second Reading Speech, the Voice is an important reform and it is a modest reform – one that would complement the existing structures of our democratic system and enhance the normal functioning of government.

As the Solicitor-General notes in his opinion:[2]

> *a core rationale underpinning the proposed amendment is to facilitate more effective input by Aboriginal and Torres Strait Islander peoples in public discussion and debate about governmental and political matters relating to them. Insofar as the Voice serves the objective of overcoming barriers that have historically impeded effective participation by Aboriginal and Torres Strait Islander peoples in political discussions and decisions that affect them, it seeks to rectify a distortion in the existing system. For that reason, in addition to the other reasons stated above, in my opinion* ***proposed s 129 is not just compatible with the system of representative and responsible government prescribed by the Constitution, but an enhancement of that system****.*

I trust this information assists the Committee.

Yours sincerely

[redacted]

THE HON MARK DREYFUS KC MP
21 / 04 / 2023

Encl. *Opinion of the Solicitor-General, SG No. 10 of 2023*

[2] SG No. 10 of 2023, paragraph 21 (emphasis added).

SG No. 10 of 2023

IN THE MATTER OF PROPOSED SECTION 129 OF THE CONSTITUTION

OPINION

I. INTRODUCTION

1. The Government plans to hold a referendum later this year concerning a proposed amendment to the Constitution to create an Aboriginal and Torres Strait Islander Voice (the **Voice**).

2. The concept of the Voice primarily emerged through the work of the Referendum Council appointed by the then Prime Minister and the then Leader of the Opposition in December 2015.[1] The Referendum Council conducted a series of First Nations Regional Dialogues, culminating in the National Constitutional Convention at Uluru in May 2017. Delegates at that Convention presented the *Uluru Statement from the Heart*, which called for "constitutional reforms to empower our people and take a rightful place in our own country", including "the establishment of a First Nations Voice enshrined in the Constitution".[2] The Referendum Council subsequently recommended that a referendum be held to provide in the Constitution for a representative Voice to the Commonwealth Parliament.[3]

3. In March 2018, the Parliament appointed a Joint Select Committee on Constitutional Recognition relating to Aboriginal and Torres Strait Islander Peoples (the **Joint Select Committee**) to inquire into and report on matters relating to constitutional change and to consider, among other things, the recommendations of the Referendum Council and the *Uluru Statement from the Heart*. The Joint Select Committee received submissions, held public hearings, and reported on matters relating to the structure, membership, functions and operation of the Voice, and options for establishing the Voice in the Constitution or by legislation. The Joint Select Committee recommended that the Government "initiate a process of co-design with Aboriginal and Torres Strait Islander peoples" to consider models for the design of a First Nations Voice, and that, following that process, the question of whether the First Nations Voice should be established in the Constitution be resolved.[4]

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1 An earlier proposal to establish an Indigenous Advisory Council in the Constitution was considered in the Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples, *Final Report* (June 2015) at [4.42]-[4.62].

2 See extracted in *Final Report of the Referendum Council* (30 June 2017) (**Referendum Council Report**) at i.

3 Referendum Council Report at 2.

4 Joint Select Committee on Constitutional Recognition relating to Aboriginal and Torres Strait Islander Peoples, *Final Report* (November 2018) at xvii-xviii (Recommendations 1 and 2), [2.294]-[2.314], [3.130]-[3.152].

4. Following the Joint Select Committee's recommendation, the Government established an Indigenous Voice Co-design Process, which was coordinated by the National Indigenous Australians Agency. That process involved establishing advisory groups and undertaking extensive public consultation to develop models for national, local and regional bodies to constitute an Indigenous Voice. The Final Report to the Australian Government proposed a framework for a National Voice and Local and Regional Voices, but it did not specifically consider or make recommendations in relation to the establishment of an Indigenous Voice in the Constitution because that issue was outside the scope of the co-design process.[5] Nonetheless, the Senior Advisory Group that supported the Government and the co-design groups remarked upon the high level of support for the enshrinement of an Indigenous Voice in the Constitution throughout the co-design process.[6]

5. During the Garma Festival in July 2022, the Prime Minister, the Hon Anthony Albanese MP, publicly released draft text for a possible amendment to the Constitution to establish the Voice (the **Garma draft**). At the time, the Prime Minister indicated that the draft text was subject to revision. A further process followed, which involved close consideration of the draft text by a Referendum Working Group comprising 21 representatives from First Nations communities across Australia. The Referendum Working Group received legal support from a Constitutional Expert Group, comprising some of Australia's leading constitutional experts.

6. On 30 March 2023, after receiving the recommendations of the Referendum Working Group, the Government introduced the Constitution Alteration (Aboriginal and Torres Strait Islander Voice) 2023 (Cth) (**Constitution Alteration Bill**) into the Parliament. That Bill proposes to insert a new s 129

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5 See National Indigenous Australians Agency, *Indigenous Voice Co-design Process: Final Report to the Australian Government* (July 2021) (**Co-design Report**) at 202-203, 239-245.

6 See Co-design Report at 7, 202-203, 223, noting that nearly 9 out of 10 submissions supported constitutional enshrinement of an Indigenous Voice or the *Uluru Statement from the Heart*.

into a new Chapter IX of the Constitution, headed "Recognition of Aboriginal and Torres Strait Islander Peoples", as follows:

> 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.

II. QUESTIONS AND SHORT ANSWERS

7. Since the introduction of the Constitution Alteration Bill, substantial public debate has occurred. There have been suggestions that proposed s 129 would represent a dramatic change to Australia's system of government. There has been a particular focus upon the relationship between the function of the Voice in making representations to the Executive Government of the Commonwealth under subparagraph (ii) of proposed s 129 and the power conferred upon the Parliament by subparagraph (iii).

8. Against the above background, I am asked to advise upon two questions. Those questions, and my short answers to them, are as follows:

Question (1): Is proposed s 129 of the Constitution compatible with Australia's system of representative and responsible government established under the Constitution?

Answer (1): Yes.

Question (2): Would the power to legislate "with respect to matters relating to the Aboriginal and Torres Strait Islander Voice" in proposed s 129(iii) of the Constitution empower the Parliament to specify whether, and if so, how, Executive Government decision-makers are legally required to consider relevant representations of the Voice?

Answer (2): Yes.

III. CONSIDERATION

9. The key aspects of proposed s 129 are as follows.

(a) The introductory words would recognise the historical fact that "Aboriginal and Torres Strait Islander peoples" are "the First Peoples of Australia".

(b) Subparagraph (i) would require that there must be "a body, to be called the Aboriginal and Torres Strait Islander Voice".

(c) Subparagraph (ii) would empower – but not require[7] – the Voice to make "representations" on "matters relating to Aboriginal and Torres Strait Islander peoples".

(d) Subparagraph (iii) would confer upon the Parliament a broad power to make laws "with respect to matters relating to the … Voice, including its composition, functions, powers and procedures".

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[7] Proposed s 129(ii) is expressed in permissive terms – the Voice "<u>may</u> make representations" – so as to confer a discretion on the Voice as to whether or not to make representations on any particular matter relating to Aboriginal and Torres Strait Islander peoples: see, eg, *Ward v Williams* (1995) 92 CLR 496 at 505 (the Court).

Question 1: Compatibility with representative and responsible government

10. This question asks whether proposed s 129 is compatible with the system of representative and responsible government established under the Constitution.

11. In my opinion, it is. The proposed amendment is not only compatible with the system of representative and responsible government established under the Constitution, but it enhances that system.[8]

(i) The system of representative and responsible government established under the Constitution

12. The Constitution exhaustively identifies and distributes the powers of the Commonwealth as a polity.[9] Chapters I, II and III of the Constitution respectively establish and sustain the Parliament, the Executive Government and the Judicature. Each chapter first grants the relevant governmental power – legislative, executive or judicial – "and then delimits the scope of its operation".[10] Thus, within Chapter I, s 1 vests "the legislative power of the Commonwealth" in the Federal Parliament, which that section provides is to consist of the Senate, the House of Representatives and the King.[11] Within Chapter II, s 61 vests "the executive power of the Commonwealth" in the King and makes it exercisable by the Governor-General as the King's representative.[12] In practice, "Ministers commissioned by the Governor-General and their officers and other officials exercise that power in

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8 It enhances that system for the reasons explained in paragraphs 20 and 21 below.

9 See, eg, *Williams v Commonwealth [No 2]* (2014) 252 CLR 416 at [78] (French CJ, Hayne, Kiefel, Bell and Keane JJ); *Austin v Commonwealth* (2003) 215 CLR 185 at [17] (Gleeson CJ).

10 *R v Kirby; Ex parte Boilermakers' Society of Australia* (1956) 94 CLR 254 at 273 (Dixon CJ, McTiernan, Fullagar and Kitto JJ), 312 (Williams J).

11 While the Constitution expressly refers to "the Queen", meaning Queen Victoria, covering clause 2 provides that provisions referring to the Queen extend to her heirs and successors in the sovereignty of the United Kingdom.

12 See s 2 of the Constitution, which provides for the appointment by the King of a Governor-General to be his Majesty's "representative in the Commonwealth".

the name of the Crown".[13] Within Chapter III, s 71 vests "the judicial power of the Commonwealth" in the High Court of Australia and such other courts as the Parliament creates or invests with federal jurisdiction.

13. It is well established that the text and structure of the Constitution, particularly Chapters I and II, establish a system of representative and responsible government.[14]

14. The principle of representative government "signifies government by the people through their representatives" and that, in the exercise of legislative powers, "the representatives of necessity are accountable to the people for what they do and have a responsibility to take account of the views of the people on whose behalf they act".[15] It requires that the business of government and the Parliament is "examinable and the subject of scrutiny, debate and ultimate accountability at the ballot box".[16] Electoral accountability is the means of enforcing the political obligation of parliamentarians "to listen to and ascertain the views of their constituents during the life of the Parliament".[17] Representative government permeates the whole of Chapter I of the Constitution. Among other things, it requires laws to be made by both Houses of Parliament[18] and electors to engage in the "direct choice" of their representatives.[19]

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13 *Pape v Federal Commissioner of Taxation* (2009) 238 CLR 1 (***Pape***) at [114] (French CJ).

14 See, eg *Australian Capital Television Pty Ltd v Commonwealth* (1992) 177 CLR 106 (***ACTV***) at 137-138 (Mason CJ), 168 (Deane and Toohey JJ), 184-185 (Dawson J), 210 (Gaudron J), 228-230 (McHugh J); *McGinty v Western Australia* (1996) 186 CLR 140 (***McGinty***) at 168-171 (Brennan CJ), 182-183 (Dawson J), 198-202 (Toohey J), 220-221 (Gaudron J), 269-270 (Gummow J); *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520 (***Lange***) at 557-559, 566-567 (the Court); *Comcare v Banerji* (2019) 267 CLR 373 (***Banerji***) at [59]-[61] (Gageler J), [146], [148] (Gordon J).

15 *ACTV* (1992) 177 CLR 106 at 137-138 (Mason CJ).

16 *ACTV* (1992) 177 CLR 106 at 231 (McHugh J).

17 *ACTV* (1992) 177 CLR 106 at 232-233 (McHugh J).

18 See Constitution ss 53, 57, 58.

19 See Constitution ss 7 and 24.

15. The principle of responsible government signifies the "system by which the executive is responsible to the legislature and, through it, to the electorate".[20] It principally finds reflection in Chapter II of the Constitution.[21] Most significantly, s 64 requires Ministers to be, or within three months of appointment to become, senators or members of the House of Representatives, thereby providing "the machinery by which a Minister is accountable to Parliament".[22] The "essence" of the system of responsible government is, as Gageler J observed in *Banerji*,[23] "'that the actual government of the [Commonwealth] is conducted by officers who enjoy the confidence of the people'".

(ii) Proposed s 129

16. In my opinion, proposed s 129 is compatible with Australia's system of representative and responsible government for the following reasons.

17. *First*, and most significantly, the introduction of proposed s 129 into the Constitution would not alter the existing distribution of Commonwealth governmental power summarised above. Proposed s 129 does not confer legislative, executive or judicial power upon the Voice. That means that the Voice would have no power to make laws, to develop or administer policies or to decide disputes. Nor would it form part of either the Parliament or the

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20 *ACTV* (1992) 177 CLR 106 at 184-185 (Dawson J); see also 135 (Mason CJ). See also *Egan v Willis* (1998) 195 CLR 424 at [42] (Gaudron, Gummow and Hayne JJ).

21 See *Lange* (1997) 189 CLR 520 at 558-559 (the Court); *Re Patterson; Ex parte Taylor* (2001) 207 CLR 391 (***Re Patterson***) at [11]-[13] (Gleeson CJ), [64] (Gaudron J), [217], [220] (Gummow and Hayne JJ), [325] (Kirby J); *McCloy v New South Wales* (2015) 257 CLR 178 (***McCloy***) at [105]-[106] (Gageler J); *Banerji* (2019) 267 CLR 373 at [59]-[60] (Gageler J), [146], [148]-[149] (Gordon J).

22 *Re Patterson* (2001) 207 CLR 391 at [64] (Gaudron J).

23 (2019) 267 CLR 373 at [59], quoting Griffith, *Notes on Australian Federation: Its Nature and Probable Effects* (1896) at 17, in turn quoted in Quick and Garran, *The Annotated Constitution of the Australian Commonwealth* (1901) at 704.

Executive Government,[24] instead operating only as an advisory body to those two branches of government. The Voice clearly has no power of veto.

18. *Second*, the Voice's function of making representations will not fetter or impede the exercise of the existing powers of the Parliament. Specifically:

(a) Proposed s 129 would not prevent the Parliament from legislating until it receives a representation from the Voice (which might never happen with respect to many proposed laws, given that the Voice is not required to make representations on any particular matter, and that the Voice will no doubt prioritise its resources by focusing on making representations on the matters it considers are of the greatest significance to Aboriginal and Torres Strait Islander peoples). Nor would it require the Parliament to consult with the Voice before legislating. The text of proposed s 129 – which imposes no obligations of any kind upon the Voice, the Parliament or the Executive Government – is incapable of supporting any such requirements. Further, no such requirements can be implied by reference to proposed s 129(ii), because that would be inconsistent with the deliberate textual choice to empower the Voice to make "representations" rather than to "consult",[25] and with the ordinary operation of representative government (pursuant to which members of the Parliament are politically accountable for their action or inaction to the voters in their electorates).

(b) Nor would proposed s 129 impose any enforceable obligation upon the Parliament to consider representations from the Voice, let alone to follow

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24 As is emphasised both by the placement of proposed s 129 within a new Chapter IX, and by the core function of the Voice being to make representations to the Parliament and the Executive Government.

25 See, for example, the submission of Professor Anne Twomey dated 13 April 2023 to the Joint Select Committee on the Aboriginal and Torres Strait Islander Voice Referendum (Submission 17) at 5, stating that the word "consultation" was deliberately not used "as it might convey an obligation on the part of the Executive Government or the Parliament to consult the Voice prior to making decisions". Professor Twomey was a member of the Constitutional Expert Group that advised the Referendum Working Group.

such representations. That is because the courts are averse to enforcing procedural requirements relating to the internal deliberations of Parliament (even when those requirements are found in the Constitution), taking the view that these are matters for the Parliament itself to regulate.[26]

(c) In light of the above, if proposed s 129 is introduced into the Constitution, representative government will be unaffected. Members of the Parliament may give such consideration and weight to representations of the Voice as they consider appropriate, and they will be accountable to their electorates for their decisions in that regard. The influence of the Voice's representations to the Parliament will be a matter to be determined by political considerations, rather than legal considerations.

19. *Third*, the Voice's function of making representations will not fetter or impede the existing powers of the Executive Government. Specifically:

(a) Proposed s 129 would not impose any obligations upon the Executive Government to follow representations of the Voice,[27] or to consult with the Voice prior to developing any policy or making any decision.[28] The text of proposed s 129 imposes no such requirements. Further, no such requirements can be implied by reference to proposed s 129(ii), because that would be inconsistent with the deliberate textual choice to empower the Voice to make "representations" rather than to "consult", and with the ordinary operation of responsible government (which makes

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26 *Osborne v Commonwealth* (1911) 12 CLR 321 at 336, 339-340 (Griffith CJ); *Western Australia v Commonwealth* (1995) 183 CLR 373 at 482 (Mason CJ, Brennan, Deane, Toohey, Gaudron and McHugh JJ); *Wilkie v Commonwealth* (2017) 263 CLR 487 (***Wilkie***) at [63] (the Court).

27 See Explanatory Memorandum, Constitution Alteration (Aboriginal and Torres Strait Islander Voice) 2023 (Cth) at [15]; House of Representatives, *Hansard* (30 March 2023) at 3. Further, established administrative law principles make it plain that decision-makers, having considered any relevant matters, may generally accord those matters such weight as they see fit: see, eg, *Minister for Aboriginal Affairs v Peko-Wallsend Ltd* (1986) 162 CLR 24 (***Peko-Wallsend***) at 41 (Mason J); *Plaintiff M1/2021 v Minister for Home Affairs* (2022) 96 ALJR 497 (***Plaintiff M1***) at [23]-[24] (Kiefel CJ, Keane, Gordon and Steward JJ); *Port of Newcastle Operations Pty Ltd v Glencore Coal Assets Australia Pty Ltd* (2021) 96 ALJR 56 (***Port of Newcastle***) at [113] (the Court).

28 See Explanatory Memorandum, Constitution Alteration (Aboriginal and Torres Strait Islander Voice) 2023 (Cth) at [14]; House of Representatives, *Hansard* (30 March 2023) at 3.

the Executive Government responsible to the Parliament for its action or inaction). For those reasons, in my opinion proposed s 129 would not preclude the ordinary operations of government from continuing unless the Executive Government has first consulted with, or received representations from, the Voice.

(b) There is more room for argument in relation to whether decision-makers within the Executive Government would be required to consider representations of the Voice in certain contexts. For the reasons addressed in answering Question 2 below, in my opinion the Parliament is empowered to legislate to specify the extent to which any such consideration is required. However, even if the Parliament did not have that power, proposed s 129 would not interfere in any significant respect with the ordinary functioning of the Executive Government. That follows because, even if decision-makers do have to consider some representations of the Voice in certain contexts, all that would mean is that the decision-makers must (within the bounds of rationality and reasonableness):[29]

> have regard to what is said in the representations, bring their mind to bear upon the facts stated in them and the arguments or opinions put forward, and appreciate who is making them. From that point, the decision-maker might sift them, attributing whatever weight or persuasive quality is thought appropriate. The weight to be afforded to the representations is a matter for the decision-maker.

(c) Litigation about the validity of decisions made by the Executive Government (whether by Ministers or public servants) has been common at least since the 1970s, including litigation in which it is alleged that decision-makers failed to consider mandatory relevant considerations. The suggestion that a consequence of empowering the Voice to make

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[29] *Plaintiff M1* (2022) 96 ALJR 497 at [24] (Kiefel CJ, Keane, Gordon and Steward JJ) (citations omitted). See also *Peko-Wallsend* (1986) 162 CLR 24 at 41 (Mason J); *Port of Newcastle* (2021) 96 ALJR 56 at [113] (the Court).

representations to the Executive Government will be to clog up the courts, or to cause government to grind to a halt, ignores the reality that litigation concerning the validity of decisions of the Executive Government is already very common, and that it does not have either of those consequences. Accordingly, even if proposed s 129(iii) did not empower the Parliament to legislate to specify the legal effect of representations of the Voice (which in my view it clearly does), proposed s 129 would not pose any threat to Australia's system of representative and responsible government.

20. *Fourth*, and finally, the question whether proposed s 129 is compatible with the system of representative and responsible government mandated by the Constitution closely resembles the second question that is required to be asked under the structured analysis that has come to be accepted by the High Court when assessing whether a law infringes the implied freedom of political communication.[30] In that context, the High Court has held that some laws pursue purposes that are not just compatible with the system of representative and responsible government, but may be seen to enhance it.[31] Laws regulating political donations or expenditure have been held to involve enhancements of that kind, insofar as they remove distortions to the system that might otherwise allow the wealthy to drown out the voices of others.[32]

21. In my opinion, a similar analysis can be applied to proposed s 129. That follows because a core rationale underpinning the proposed amendment is to facilitate more effective input by Aboriginal and Torres Strait Islander peoples in public

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30 See, eg, *Brown v Tasmania* (2017) 261 CLR 328 at [104] (Kiefel CJ, Bell and Keane JJ), [156] (Gageler J), [277] (Nettle J), [381] (Gordon J); *Clubb v Edwards* (2019) 267 CLR 171 at [5] (Kiefel CJ, Bell and Keane JJ).

31 See, eg, *McCloy* (2015) 257 CLR 178 at [47] (French CJ, Kiefel, Bell and Keane JJ); *Ruddick v Commonwealth* (2022) 96 ALJR 367 at [165]-[166] (Gordon, Edelman and Gleeson JJ), [174] (Steward J); *Banerji* (2019) 93 ALJR 900 at [100] (Gageler J), [153] (Gordon J); *Unions NSW v New South Wales* (2019) 264 CLR 595 at [31]-[32] (Kiefel CJ, Bell and Keane JJ).

32 *McCloy* (2015) 257 CLR 178 at [44]-[47], [93] (French CJ, Kiefel, Bell and Keane JJ). See also *Unions NSW v New South Wales* (2019) 264 CLR 595 at [5], [31] (Kiefel CJ, Bell and Keane JJ), [83] (Gageler J).

discussion and debate about governmental and political matters relating to them. Insofar as the Voice serves the objective of overcoming barriers that have historically impeded effective participation by Aboriginal and Torres Strait Islander peoples in political discussions and decisions that affect them, it seeks to rectify a distortion in the existing system. For that reason, in addition to the other reasons stated above, in my opinion proposed s 129 is not just compatible with the system of representative and responsible government prescribed by the Constitution, but an enhancement of that system.

Question 2: Power to legislate with respect to the Executive Government's consideration of representations made by the Voice

22. This question raises two distinct legal issues.

(a) The *first* issue is one of characterisation: would a law specifying whether, and if so, how, Executive Government decision-makers are legally required to consider relevant representations of the Voice answer the description of a law "with respect to matters relating to the … Voice"?

(b) If so, the *second* issue is whether the fact that proposed s 129(iii) is expressed to be "subject to" the Constitution would render such a law invalid on the ground that it infringes an express or implied constitutional limitation, including any limitation implied from proposed s 129(ii).

23. I consider those issues in turn.

(i) Characterisation

24. The general principles governing characterisation are well established.[33] The character of a law is determined by reference to the rights, powers, liabilities, duties and privileges which it creates, abolishes or regulates.[34] In determining whether a law can be characterised as a law "with respect to" matters "relating to the … Voice", the question is whether the law, in its legal or practical operation, has a "sufficient connection" with the subject matter of the power.[35] In this context, a "sufficient connection" means a connection that is more than "insubstantial, tenuous or distant".[36] Provided such a connection exists, "the justice and wisdom of the law, and the degree to which the means it adopts are necessary or desirable, are matters of legislative choice".[37]

25. The Parliament's power under proposed s 129(iii) to make laws "with respect to matters relating to the … Voice" will be construed with "all the generality which the words used admit".[38] It plainly empowers the Parliament to make laws with respect to the four topics mentioned after the word "including", being the "composition, functions, powers and procedures" of the Voice. However,

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33 See, eg, *Spence v Queensland* (2019) 268 CLR 355 (***Spence***) at [57] (Kiefel CJ, Bell, Gageler and Keane JJ).

34 *Grain Pool of Western Australia v Commonwealth* (2000) 202 CLR 479 (***Grain Pool***) at [16] (Gleeson CJ, Gaudron, McHugh, Gummow, Hayne and Callinan JJ); *Spence* (2019) 268 CLR 355 at [57] (Kiefel CJ, Bell, Gageler and Keane JJ), [198] (Gordon J); *Bank of NSW v Commonwealth* (1948) 76 CLR 1 at 187 (Latham CJ).

35 *Grain Pool* (2000) 202 CLR 479 at [16] (Gleeson CJ, Gaudron, McHugh, Gummow, Hayne and Callinan JJ); *Spence* (2019) 268 CLR 355 at [57] (Kiefel CJ, Bell, Gageler and Keane JJ), [197]-[198] (Gordon J).

36 *Spence* (2019) 268 CLR 355 at [57] (Kiefel CJ, Bell, Gageler and Keane JJ), [197] (Gordon J), [299], [350] (Edelman J); see also [132] (Nettle J); *Melbourne Corporation v Commonwealth* (1947) 74 CLR 31 at 79 (Dixon J).

37 *Grain Pool* (2000) 202 CLR 479 at [16] (Gleeson CJ, Gaudron, McHugh, Gummow, Hayne and Callinan JJ), quoted with approval in *New South Wales v Commonwealth* (2006) 229 CLR 1 at [142] (Gleeson CJ, Gummow, Hayne, Heydon and Crennan JJ) and *Spence* (2019) 268 CLR 355 at [57] (Kiefel CJ, Bell, Gageler and Keane JJ).

38 *R v Public Vehicles Licensing Appeal Tribunal (Tas); Ex parte Australian National Airways Pty Ltd* (1964) 113 CLR 207 at 225 (the Court), quoted with approval in *Grain Pool* (2000) 202 CLR 479 at [16] (Gleeson CJ, Gaudron, McHugh, Gummow, Hayne and Callinan JJ) and *New South Wales v Commonwealth* (2006) 229 CLR 1 at [142] (Gleeson CJ, Gummow, Hayne, Heydon and Crennan JJ).

unlike the Garma draft,[39] the power conferred by proposed s 129(iii) extends well beyond those four topics. The double use of wide connecting language – to enact any law with respect to matters relating to[40] the Voice – textually produces a legislative power of great width, because the subject-matter of the power is not "the Voice", but the wider "matters relating to the Voice". The result is that the Parliament may enact any law that has more than an insubstantial, tenuous or distant connection either to the Voice itself or to any subject relating to the Voice.

26. Even if proposed s 129(iii) had been expressed solely as a power to make laws "with respect to the … Voice", some indication of its width is provided, by analogy, by the interpretation that the High Court has given to s 51(xx) of the Constitution. That provision empowers the Parliament to make laws "with respect to … foreign corporations, and trading or financial corporations" (which, like proposed s 129(iii), is a power to make laws with respect to a specified kind of artificial legal entity[41]). The analogy with s 51(xx) suggests that the power conferred by proposed s 129(iii) extends at least to:[42]

(a) "the regulation of the activities, functions [and] relationships" of the Voice;

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39 Paragraph (iii) of the Garma draft would have conferred legislative power on the Parliament "with respect to the composition, functions, powers and procedures of the … Voice". That would have empowered the Parliament to make laws only with respect to the four identified topics, and matters incidental thereto: see *Grannall v Marrickville Margarine Pty Ltd* (1955) 93 CLR 55 at 77 (Dixon CJ, McTiernan, Webb and Kitto JJ).

40 The words "relating to" connote a nexus between the subject-matter of a law and the Voice, "equivalent to the nexus" required by the words "with respect to" in s 51 of the Constitution: see *Spence* (2019) 268 CLR 355 at [70] (Kiefel CJ, Bell, Gageler and Keane JJ), citing *Mulholland v Australian Electoral Commission* (2004) 220 CLR 181 (***Mulholland***) at [211] (Kirby J). See also *Spence* (2019) 268 CLR 355 at [132] (Nettle J).

41 See *New South Wales v Commonwealth* (2006) 229 CLR 1 at [144] (Gleeson CJ, Gummow, Hayne, Heydon and Crennan JJ); *Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia v Queensland Rail* (2015) 256 CLR 171 at [23] (French CJ, Hayne, Kiefel, Bell, Keane and Nettle JJ), [65]-[66] (Gageler J).

42 See *New South Wales v Commonwealth* (2006) 229 CLR 1 at [178] (Gleeson CJ, Gummow, Hayne, Heydon and Crennan JJ), endorsing *Re Pacific Coal Pty Ltd; Ex parte Construction, Forestry, Mining and Energy Union* (2000) 203 CLR 346 at [83] (Gaudron J).

(b) "the creation of rights, and privileges belonging to" the Voice;

(c) "the imposition of obligations on" the Voice;

(d) "the regulation of the conduct of those through whom [the Voice] acts, its employees and [members]"; and

(e) "the regulation of those whose conduct is or is capable of affecting [the Voice's] activities, functions [and] relationships".

27. In addition to the above matters, and having regard to the added breadth derived from the subject-matter of the power being "matters relating to the … Voice", proposed s 129(iii) would also support laws specifying the rights and obligations of those who receive representations from the Voice. Specifically, it would empower the Parliament to legislate to address the two topics upon which I am now asked to advise, being:

(a) *first*, to specify whether or not particular decision-makers are legally required to consider representations of the Voice – that is, whether or not representations of the Voice are mandatory relevant considerations in an administrative law sense either generally, or in relation to identified categories of representations or decisions; and

(b) *second*, if the Parliament decides to specify that some decision-makers are legally required to consider representations of the Voice, to specify how they are to consider those representations, which could include direction as to the weight decision-makers should give to particular kinds of representations when making particular kinds of decisions.[43]

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[43] Parliament commonly specifies that decision-makers should give particular weight to matters of various kinds: see, eg, *Australian Security Intelligence Organisation Act 1979* (Cth) s 34BB(2); *Fuel Tax Act 2006* (Cth) s 95-5(3); *Telecommunications Act 1997* (Cth) ss 315B(6), 317WA(7)(b); *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (Cth) s 63(7).

28. A law addressing the above topics would regulate the legal obligations of the Executive Government when dealing with representations made by the Voice. That is, it would regulate the legal effect of the exercise by the Voice of its constitutionally enshrined function. Such a law would have more than an insubstantial, tenuous or distant connection to matters relating to the Voice, because the very subject-matter of the law would be the legal effect of the Voice having exercised its representation-making function. I have no doubt that a law of that kind would properly be characterised as a law "with respect to matters relating to the … Voice" within proposed s 129(iii). Indeed, I am unable to identify any reasonable argument to the contrary. Accordingly, such a law will be valid unless it would infringe an express or implied constitutional limitation.

(ii) Constitutional limitations

29. No express or implied constitutional limitation that has so far been identified[44] by the High Court would invalidate a law specifying the legal effect of representations of the Voice. The validity of such a law will therefore depend upon whether any express or implied limitation drawn from proposed s 129(ii) confines the power that would otherwise have been conferred by proposed s 129(iii).

30. As to express limitations,[45] the Parliament could not validly pass a law that would contradict the express words of proposed s 129(ii), such as by providing that the Voice may not make representations on some "matters relating to Aboriginal or Torres Strait Islander peoples". Nor could it validly prohibit the Voice from making representations either to the Parliament or the Executive Government. While laws of both those kinds would undoubtedly be laws "with

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44 See, eg, the list of implied constitutional limitations in Herzfeld and Prince, *Interpretation* (2nd ed, 2020) at [17.250].

45 As Herzfeld and Prince have noted, "[i]n some cases, whether a proposition is an implication or simply an interpretation of the express terms may be debatable": see Herzfeld and Prince, *Interpretation* (2nd ed, 2020) at [17.220]. In my opinion, the better view is that the limitations identified in this paragraph are express limitations that arise from proposed s 129(ii).

respect to matters relating to the … Voice", they would purport to take away from the Voice a function that proposed s 129(ii) of the Constitution would have conferred upon it. Proposed s 129(iii) being "subject to this Constitution", such laws would be invalid.

31. Nothing in proposed s 129(ii) expressly addresses the obligations of the Executive Government once it receives a representation from the Voice. For that reason, a law that purports to regulate the legal effect of such representations would not be contrary to any express constitutional requirement.

32. The critical question is therefore whether proposed s 129(ii) governs the legal effect of representations to the Executive Government by implication, thereby taking that subject beyond the reach of laws passed pursuant to proposed s 129(iii). In my opinion, it is clear that it does not. I hold that opinion for three reasons.

33. *First*, the High Court has frequently emphasised that constitutional implications are not drawn lightly, and must be "securely based".[46] That means that a constitutional implication can be drawn "only so far as is necessary" to give effect to the text or structure of the Constitution,[47] and that it must be "logically or practically necessary" to give effect to the text or "for the preservation of the integrity of [the constitutional] structure".[48] Those criteria mean that it is not enough that an implication is one of a number of possible "desirable" or "reasonable" interpretations.[49] Instead, as the High Court unanimously

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46 See, eg, *ACTV* (1992) 177 CLR 106 at 134 (Mason CJ). See also *McGinty* (1996) 186 CLR 140 at 168-169 (Brennan J).

47 *Lange* (1997) 189 CLR 520 at 567 (the Court). See also *Gerner v Victoria* (2020) 270 CLR 412 at [29] (the Court); Herzfeld and Prince, *Interpretation* (2nd ed, 2020) at [17.300].

48 *Burns v Corbett* (2018) 265 CLR 304 at [94] (Gageler J), [175] (Gordon J), both quoting *ACTV* (1992) 177 CLR 106 at 135 (Mason CJ).

49 *APLA Ltd v Legal Services Commissioner* (NSW) (2005) 224 CLR 322 at [32]-[33] (Gleeson CJ and Heydon J), [389] (Hayne J), [469]-[470] (Callinan J). See also *Attorney-General (Cth); Ex rel McKinlay v Commonwealth* (1975) 135 CLR 1 at 44 (Gibbs J).

observed in *Gerner v Victoria*, "what the Constitution implies depends on 'what … the terms and structure of the Constitution prohibit, authorise or require'".[50]

34. Focusing on what the text of proposed s 129 relevantly "authorises or requires", it authorises the Voice to make representations to the Executive Government, but it does not impose any reciprocal requirement upon the Executive Government to consider or otherwise address those representations. In place of such a requirement, proposed s 129(iii) gives the Parliament a wide power to legislate with respect to matters relating to the Voice. When interpreting proposed s 129, it must be read as a whole. When it is read in that way, it is apparent that the design of proposed s 129, in common with many other parts of the Constitution, is that it specifies only the "bare foundations",[51] while leaving most matters concerning the Voice for determination by the Parliament. The width of the power conferred upon the Parliament by proposed s 129(iii) is therefore a structural feature that points strongly against it being "logically or practically necessary" to interpret proposed s 129(ii) as controlling by implication the legal effect of representations of the Voice, when other matters of significance are left to the Parliament.[52] Furthermore, while it would plainly be desirable for the Executive Government to consider any representations that the Voice makes to it, and there may be significant political expectations in that regard, it is not necessary to give effect to the text conferring the Voice's representation-making function that the Executive Government be subject to an implied constitutional requirement to do so, when the alternative is that the Parliament could specify the extent to which such consideration is required. For those reasons, the test for drawing a constitutional implication is not satisfied.

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50 (2020) 270 CLR 412 at [14], quoting *Lange* (1997) 189 CLR 520 at 567 (the Court). See also *Re Gallagher* (2018) 263 CLR 460 at [24] (Kiefel CJ, Bell, Keane, Nettle and Gordon JJ), [68] (Edelman J).

51 Compare, regarding the electoral system: *Ruddick v Commonwealth* (2022) 96 ALJR 367 at [149] (Gordon, Edelman and Gleeson JJ); see also [16] (Kiefel CJ and Keane J); *McGinty* (1996) 186 CLR 140 at 283-284 (Gummow J); *Mulholland* (2004) 220 CLR 181 at [64]-[65] (McHugh J).

52 Compare the High Court's reasoning for rejecting the alleged constitutional implication in *MZXOT*, which relied in large part on the power conferred upon the Parliament by s 77 of the Constitution: *MZXOT v Minister for Immigration and Citizenship* (2008) 233 CLR 601 at [41] (Gleeson CJ, Gummow and Hayne JJ), [198] (Heydon, Crennan and Kiefel JJ).

35. *Second,* while "it is the constitutional text which must always be controlling",[53] the text must be read in light of its context, including any relevant drafting history.[54] The drafting history of proposed s 129(iii) points strongly against drawing a constitutional implication that would prevent the Parliament from legislating as to the legal effect of representations of the Voice. In that regard, it is noteworthy that a proposed amendment to the Garma draft contemplated adding the words "and the legal effect of its representations" to the end of paragraph (iii) in order to place it beyond doubt that the Parliament would have power to regulate the circumstances in which the Executive Government might be required to consider representations of the Voice.[55] That proposed amendment was overtaken by the current wording of proposed s 129(iii), which necessarily includes (although it extends beyond) the power to legislate with respect to the legal effect of the Voice's representations. That follows because a law of that kind must – by definition – "relate to" the Voice.

36. The conclusion that the power conferred by proposed s 129(iii) extends to laws specifying the legal effect of representations by the Voice is specifically confirmed by the Explanatory Memorandum to the Constitution Alteration Bill, which states that "[i]t is a matter for the Parliament to determine, in the exercise of its power under s 129(iii), whether the Executive Government is under any

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53 *Kartinyeri v Commonwealth* (1998) 195 CLR 337 at [90] (Gummow and Hayne JJ), in rejected an alleged implication that would have limited the power under s 51(xxvi), following the 1967 referendum amendment, to laws for the benefit of Aboriginal persons. Their Honours stated (at [94]) that the omission of any such requirement in the amended s 51(xxvi) was "consistent with a wish of the Parliament to avoid later definitional argument in the legislature and the courts as to the scope of its legislative power. That is the effect of what was achieved".

54 See, eg, *Re Canavan* (2017) 263 CLR 284 at [27]-[36] (the Court); *Re Day [No 2]* (2017) 263 CLR 201 at [247] (Nettle and Gordon JJ); *Fortescue Metals Group Ltd v Commonwealth* (2013) 250 CLR 548 at [16] (French CJ), [163] (Crennan J); *Re Residential Tenancies Tribunal (NSW); Ex parte Defence Housing Authority* (1997) 190 CLR 410 at 435 (Dawson, Toohey and Gaudron JJ).

55 Such that paragraph (iii) would have read: "The Parliament shall, subject to this Constitution, have power to make laws with respect to the composition, functions, powers and procedures of the Aboriginal and Torres Strait Islander Voice, and the legal effect of its representations" (emphasis added).

obligation in relation to representations made by the Voice".[56] The Explanatory Memorandum also relevantly states:[57]

> The legislative power under s 129(iii) would … allow the Parliament to make laws about the Voice's representations, including specifying whether or not, and if so in which circumstances, an Executive Government decision-maker has a legal obligation to consider the Voice's representations.

37. To materially the same effect, in the Second Reading Speech for the Constitution Alteration Bill the Attorney-General observed that "[i]t will be a matter for the Parliament to determine whether the Executive Government is under any obligation in relation to representations made by the Voice".[58]

38. The High Court has given weight to equivalent explanatory materials when interpreting previous constitutional amendments.[59] Accordingly, the Court can be expected to have regard to the statements just quoted from the Explanatory Memorandum and Second Reading Speech if it is ever called upon to decide whether proposed s 129(ii) impliedly prevents the Parliament from making laws specifying the legal effect of representations made by the Voice to the Executive Government. It would be "a distinctly unsound approach to the interpretation of the constitutional text"[60] to attribute to the proposed amendment an implied meaning that is not only unsupported by its text, but that is irreconcilable with the evident intention of the drafters as reflected in explanatory materials brought into existence before the Australian people voted on the proposed constitutional amendment.

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56 Explanatory Memorandum, Constitution Alteration (Aboriginal and Torres Strait Islander Voice) 2023 (Cth) at [21] (emphasis added).

57 Explanatory Memorandum, Constitution Alteration (Aboriginal and Torres Strait Islander Voice) 2023 (Cth) at [28].

58 House of Representatives, *Hansard* (30 March 2023) at 3.

59 See, eg, *Wong v Commonwealth* (2009) 236 CLR 573 at [23], [48]-[50], [52], [54] (French CJ and Gummow J), [176]-[180], [185] (Hayne, Crennan and Kiefel JJ); see also [96], [102] (Kirby J); *Williams v Commonwealth* (2012) 248 CLR 156 at [411], [418], [420] (Heydon J), [570] (Kiefel J).

60 Compare *Gerner v Victoria* (2020) 270 CLR 412 at [34] (the Court). See also *Kartinyeri v Commonwealth* (1998) 195 CLR 337 at [142]-[147] (Kirby J, in dissent).

39. *Third*, and finally, the argument that proposed s 129(ii) implicitly requires the recipient of a representation to consider that representation is plainly not correct in that absolute form, because proposed s 129(ii) concerns representations both to the Parliament and to the Executive Government. An allegation that the Parliament had failed to consider representations made by the Voice clearly would not have justiciable consequences.[61] Further, even with respect to representations to the Executive Government, many such representations will concern matters that could never result in a decision that could be challenged in a court, because "[t]he duty and jurisdiction of the court to review administrative action do not go beyond the declaration and enforcing of the law which determines the limits and governs the exercise of the repository's power".[62] If, for example, the Executive Government did not consider representations by the Voice urging it to adopt a law reform proposal, or to change a policy that applies in remote communities, that decision would affect people only as "member[s] of the public or a class of the public". A decision of that kind "is truly a 'policy' or 'political' decision and is not subject to judicial review".[63] As Gleeson CJ explained in *Graham Barclay Oysters Pty Ltd v Ryan*, speaking

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61 *Wilkie* (2017) 263 CLR 487 at [63] (the Court), quoting *Northern Suburbs General Cemetery Reserve Trust v Commonwealth* (1993) 176 CLR 555 at 578 (Mason CJ, Deane, Toohey and Gaudron JJ). See also *Permanent Trustee Australia Ltd v Commissioner of State Revenue (Vic)* (2004) 220 CLR 388 at [41]-[42] (Gleeson CJ, Gummow, Hayne, Callinan and Heydon JJ); *Pape* (2009) 238 CLR 1 at [165] (Gummow, Crennan and Bell JJ).

62 *Attorney General (NSW) v Quin* (1990) 170 CLR 1 at 35-36; see also 26, 31, 34-38 (Brennan J). See also *Hot Holdings Pty Ltd v Creasy* (1996) 185 CLR 149 at 159, 161, 165 (Brennan CJ, Gaudron and Gummow JJ), 178 (Dawson and Toohey JJ); *Davis v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2023] HCA 10 at [61]-[62] (Kiefel CJ, Gageler and Gleeson JJ), [143]-[144] (Edelman J), [288]-[289] (Jagot J); cf [240]-[242], [245] (Steward J, in dissent).

63 *Salemi v MacKellar [No 2]* (1977) 137 CLR 396 at 452 (Jacobs J), quoted with approval in *Kioa v West* (1985) 159 CLR 550 at 584 (Mason J). See also Aronson, Groves and Weeks, *Judicial Review of Administrative Action and Government Liability* (7th ed, 2021) at [8.110]-[8.130]; *Salemi v MacKellar [No 2]* (1977) 137 CLR 396 at 403, 406-407 (Barwick CJ), 416 (Gibbs J), 459 (Aickin J); *Victoria v Construction, Forestry, Mining and Energy Union* (2013) 218 FCR 172 at [21] (Kenny J), [153] (Buchanan and Griffiths JJ, stating that "[a]ssessment of the policies and purposes to be pursued by the Executive Government of a State involves political judgments and considerations of broad matters of public policy. Unless some breach of the law is involved, that is not within the province of the Courts").

in the context of negligence claims against governments but in terms that are also pertinent to judicial review:[64]

> Decisions as to raising revenue, and setting priorities in the allocation of public funds between competing claims on scarce resources, are essentially political. So are decisions about the extent of government regulation of private and commercial behaviour that is proper. … When courts are invited to pass judgment on the reasonableness of governmental action or inaction, they may be confronted by issues that are inappropriate for judicial resolution, and that, in a representative democracy, are ordinarily decided through the political process. Especially is this so when criticism is addressed to legislative action or inaction. Many citizens may believe that, in various matters, there should be more extensive government regulation. Others may be of a different view, for any one of a number of reasons, perhaps including cost. Courts have long recognised the inappropriateness of judicial resolution of complaints about the reasonableness of governmental conduct where such complaints are political in nature.

40. The fact that many representations made by the Voice – whether to the Parliament or to the Executive Government – will concern matters that are not reviewable in a court means that proposed s 129(ii) cannot sensibly be read as impliedly imposing a legal requirement that all representations by the Voice must be considered. The argument would therefore have to be that there should be drawn from proposed s 129(ii) an implied requirement that the Executive Government must consider some subset of representations by the Voice. However, both the subject-matter and temporal boundaries of that subset would be unclear.[65] That lack of clarity would point strongly against the suggested implication,[66] particularly because, reading proposed s 129 as a whole and in

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64 (2002) 211 CLR 540 at [6]. See also *Minister for the Environment v Sharma* (2022) 291 FCR 311 at [246]-[251] (Allsop CJ, concluding that "[t]he authorities … make clear that so-called core policy, or at least the making of it, is not, or is unlikely to be, the province of the Judiciary in its role of quelling private controversies or controversies between individuals and government").

65 For example, it is unclear whether such an implied requirement would apply only to representations concerning specific pending administrative decisions, or whether it would require general representations to be considered. If the latter, it is unclear when, if ever, a general representation would have been made long enough ago that it no longer needs to be considered. A constitutional implication would provide no ready answer to those questions.

66 An implication may not be drawn if the criterion for its operation would be "vague" and unduly "evaluative": see *Re Day [No 2]* (2017) 263 CLR 201 at [98], [100] (Gageler J), [156] (Keane J), [263] (Nettle and Gordon JJ). See also *Re Canavan* (2017) 263 CLR 284 at [48], [55], [57] (the Court).

light of the two matters discussed above, proposed s 129(iii) was evidently intended to confer power to legislate to address that very problem.

41. I am grateful to my counsel assisting, Arlette Regan, for her assistance in the preparation of this opinion.

42. I advise accordingly.

Dated: 19 April 2023

[redacted]

STEPHEN DONAGHUE KC

Solicitor-General

IN THE MATTER OF PROPOSED

SECTION 129 OF THE

CONSTITUTION

OPINION

Attention:
The Attorney-General

SG No. 10 of 2023