



Inquiry into the Aboriginal and Torres Strait Islander Voice Referendum

Submission to Joint Select Committee on the Aboriginal and Torres Strait Islander Voice Referendum

21 April 2023

This submission to the Constitution Alteration (Aboriginal and Torres Strait Islander Voice) 2023 Inquiry (the Inquiry) is made by Save the Children and 54 reasons.

Save the Children is a leading global non-government organisation focused on children's rights which has been active in Australia for over 100 years. 54 reasons delivers Save the Children's services in Australia, working alongside children and their families and communities in accordance with the 54 articles in the United Nations Convention on the Rights of the Child (CRC).

We make this submission in a spirit of humility and respect for the leadership, knowledge and authority of Aboriginal and Torres Strait Islander peoples in all matters relating to them and their children, and based on our perspective as Australia's leading child rights organisation.

Save the Children's view on the Uluru Statement from the Heart

Save the Children has consistently supported the combined objectives of the Uluru Statement from the Heart (the Uluru Statement) and its full implementation.¹ That is, firstly, the need for constitutional change through enshrining a First Nations Voice in the Constitution that would empower Aboriginal and Torres Strait Islander peoples. Secondly, legislative change that involves the establishment of a Makarrata Commission. The Makarrata Commission would supervise a process of agreement-making with Australian governments. Thirdly, the Makarrata Commission would also oversee a process of truth-telling about Australia's history and colonisation.

Save the Children is also a member of the Allies for Uluru Coalition, which includes over 200 member organisations and corporations which support the full implementation of the Uluru Statement.²

Constitution Alteration (Aboriginal and Torres Strait Islander Voice) 2023

We strongly support the *Constitution Alteration (Aboriginal and Torres Strait Islander Voice) 2023*. It is legitimate, appropriate and timely that the Voice be enshrined in the Constitution as the Bill proposes.

¹ See, eg, Save the Children, 2021, *Indigenous Voice*, Submission to National Indigenous Australians Agency, <https://www.savethechildren.org.au/getmedia/3575ed12-5b56-4b89-8e3d-510f78087093/indigenous-voice.pdf.aspx>. Save the Children, 2022, *Application of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) in Australia*, Submission to Senate Legal and Constitutional Affairs Committee, [https://www.savethechildren.org.au/getmedia/8a789277-4829-4cd9-a4aa-72631aca6b92/2022-06-01-save-the-children-submission-application-of-the-un-declaration-on-the-rights-of-indigenous-peoples-in-australia-\(1\).pdf.aspx](https://www.savethechildren.org.au/getmedia/8a789277-4829-4cd9-a4aa-72631aca6b92/2022-06-01-save-the-children-submission-application-of-the-un-declaration-on-the-rights-of-indigenous-peoples-in-australia-(1).pdf.aspx).

² For further information, see: <https://alliesforuluru.antar.org.au/>.



Self-determination is a fundamental collective right of Aboriginal and Torres Strait Islander peoples.³ As the Explanatory Memorandum to the Bill recognises, enshrining the Voice in the Constitution is the form of recognition sought in the Uluru Statement.

The Uluru Statement is a gracious and clear statement of what is invited and sought by Aboriginal and Torres Strait Islander peoples, and an example of self-determination in practice. It is at once inspiring and foundational. Passing this Bill is an important step towards meeting its invitation.

Enshrining the Voice in the Constitution is the right thing to do. It will benefit us all. The Voice will ensure that policy and legislation is better informed by the expertise of those who truly understand the issues and have the authority – of all kinds – to advise about them. This will in turn support more effective implementation of policy, law and services, and ultimately enable better outcomes for individuals, communities and across systems.

It is time our Constitution was updated to recognise the heritage of 65,000 years of continuous Indigenous culture and the peoples who were here first. This change is backed by extensive legal expertise and public support.

A constitutionally enshrined Voice has a particular significance for children.

The CRC sets out the global consensus about the rights that all children have.⁴ These are the conditions and standards that all children should have so that they can develop and thrive to their fullest potential. They include the right to not be discriminated against for any reason, the right for their best interests to be a primary consideration in all decisions affecting them, the right to life, survival and development, and the right to participate in matters relating to them, along with other fundamental rights such as access to education, health, safety, family and culture.

The Australian Government has a moral and a legal obligation to ensure that all children can access these rights, and to ensure the conditions needed to enable this. For Aboriginal and Torres Strait Islander children, this includes recognising and addressing the historical and present-day impacts of dispossession, intergenerational trauma, racism and resultant disempowerment that shape their lives. A constitutionally enshrined Voice is a necessary step towards a more equitable and fairer society, in which all children can truly access their rights with equal opportunity.

Save the Children in particular supports the importance and value of the wording of the Bill providing for “representations” to be made to the “Parliament and the Executive”. It is critical that the Voice be able to make representations to the Executive as well as the Parliament, to ensure that it gives more fulsome effect to international human rights law. If the Voice was only provided with the ability to make representations on proposed laws or policies once developed, the input would often be available far too late in the process to have substantive influence. In doing so, it would undermine, among others, the rights of children to have their views heard and considered under Article 12 of the CRC, and their rights to take part in public affairs under Article 25 of the International Covenant on Civil and Political Rights.

At its heart, the Voice is about self-determination, participation and fairness. This is a simple proposal whose time has come. It is incumbent on us all to take it up.

³ International Covenant on Civil and Political Rights, Art 1; United Nations Declaration on the Rights of Indigenous Peoples.

⁴ The Convention defines a child as a person up to the age of 18.



Constitutional validity of Constitution Alteration (Aboriginal and Torres Strait Islander Voice) 2023

Save the Children acknowledges the widespread support from a broad cross section of the legal profession to the wording contained in the Bill and support for constitutional enshrinement of the Voice. That includes esteemed academics, former judges, lawyers and legal professional bodies. In particular, we note the submissions to the inquiry from Professor George Williams AO, Professor Anne Twomey, Professor Sarah Joseph, Dr Elisa Arcioni and Dr Andrew Edgar, as well as public contributions from Former High Court judge Kenneth Hayne⁵ and the Law Council of Australia,⁶ among many others.

Further information

Our perspective in this submission is based on child rights principles, as informed by our long-term experience working directly with children and their families and communities in every State and in the Northern Territory, and advocating for policy reform and system change, to uphold children's rights. Our positions are strongly informed by what has been generously shared with us by those with whom we work in partnership, and by the view of Aboriginal and Torres Strait Islander members of our own organisation.

To discuss anything in this submission or for more information, please contact:

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⁵ Radio National, Indigenous Voice: Justice Kenneth Hayne speaks to the Law Report, 28 March, <https://www.abc.net.au/radionational/programs/lawreport/kenneth-hayne-indigenous-voice/102098920>.

⁶ Law Council of Australia, Law Council unwaveringly supports Constitutional recognition of First Nations peoples, 23 March 2023, <https://www.lawcouncil.asn.au/media/media-releases/law-council-unwaveringly-supports-constitutional-recognition-of-first-nations-peoples>.