By Gareth Evans*

Too many Indigenous Australians continue to suffer, as they have since the first days of white settlement, from prejudice, discrimination, mistreatment, neglect – and well-intentioned but misguided government policy choices. The 1967 referendum, the 1975 Racial Discrimination Act, Paul Keating's 1992 Redfern address, his government's 1993 Mabo Native Title Legislation, Kevin Rudd's 2008 Apology to the Stolen Generation – all these were landmark acts of recognition and commitment. None of them, by themselves, solved all the age-old problems confronting our First Australians. But each of them made a difference. And so, too, potentially on a scale greater than any of them, will the creation of a constitutionally embedded Aboriginal and Torres Strait Islander Voice.

Establishment of the Voice will mean Indigenous Australians being recognised, for the first time, not just as the subjects, for better or worse, of government policy choices, but as *agents* of policy change, contributing actively to legislative and executive decision-making.

None of the three major concerns or objections that have been raised against the Voice – sometimes sincerely, more often confected – withstand serious scrutiny. The most common is that the proposal lacks sufficient detail, that electors are being asked to vote blind, to buy a pig in a poke. That charge has some credibility when one looks only at the draft question to which voters will respond 'Yes' or 'No': *Do you support an alteration to the Constitution that establishes an Aboriginal and Torres Strait Islander Voice?* But not when

looks also at the actual draft constitutional text that will accompany it on the ballot paper:

1. *There shall be a body, to be called the Aboriginal and Torres Strait Islander Voice.*

2. *The Aboriginal and Torres Strait Islander Voice may make representations to Parliament and the Executive Government on matters relating to Aboriginal and Torres Strait Islander peoples.*

3. *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.*

Stating that 'Parliament shall have power to make laws with respect to' a subject matter – here, the precise institutional shape the Voice will take – is standard constitutional practice. Clear Australian precedents exist for leaving it up to elected parliamentarians to fill in the detail and amend it as necessary over time; for example, the 1946 amendment giving parliament power to provide social security benefits. And the 1967 referendum itself, giving parliament the power to legislate for 'the people of any race for whom it is deemed necessary to make special laws'.

The second familiar objection is that embedding the Voice in the Constitution will give it the *de facto* status of a third legislative chamber, or a body able not just to influence but override executive decision-making, unconscionable in an institution with at best a very limited democratic mandate, sectional rather than broadly national. But this ignores the plain text of the proposed amendment – which enables the Voice only to 'make representations to Parliament and the Executive Government', not to make or amend legislation or override anyone. It also ignores everything we know about every Australian parliament's and government's attentiveness to maintaining its own prerogatives, and the strong

Australian tradition of judicial restraint in constitutional interpretation and deference to democratic process. Avoiding the Voice being marginalised will be a bigger challenge than curbing its power.

The third concern may seem at first sight to have more legs: that any provision, particularly one embedded in the Constitution that gives a particular racial or ethnic group a distinct and special status in the nation's affairs, is inconsistent with our proud (albeit recent) tradition as a genuinely multicultural, totally colour-blind nation. But one can accept that general principle while acknowledging that there *is* something very special and distinct about Aboriginal and Torres Strait Islander Australians, the sole occupiers and owners of our land for 60,000 years before any of the rest of us arrived. We do need to respond – in a way that has no relevance to any other identifiable group in the community – to our past failings of recognition and commitment. And to do so with the kind of sensitivity so trenchantly articulated by Paul Keating in his Redfern address, which even Tony Abbott acknowledged 'movingly evoked … the stain on our soul':

> Recognition that it was we who did the dispossessing. We took the traditional lands and smashed the traditional way of life. We brought the diseases. The alcohol. We committed the murders. We took the children from their mothers. We practised discrimination and exclusion. It was our ignorance and our prejudice. And our failure to imagine these things being done to us.

None of this means abandoning our critical faculties. None of it means sacrificing reason to sentiment. None of it means giving rewards and benefits to individuals irrespective of their needs and deserts. But what it does mean is non-Indigenous Australians listening, as we have never seriously listened before, to what our Indigenous brothers and sisters have long been trying to tell us. That we do owe a very special debt to

the First Australians. And we can do much better than we ever have before in discharging that debt. By listening – really listening – to their Voice.

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