

Good afternoon, everyone.

When I began to consider this presentation, It was immediately obvious to me that this is - as we have seen in a national context recently - potentially a very divisive topic. This first paragraph therefore is something of a disclaimer. I want to be clear that the intent and content of the presentation is by design very much opinion neutral.

## **Why South Australia?**

The relationship between the original indigenous inhabitants and European settlers in the State of South Australia has been to sum it up simply, very complicated. However, despite the undeniably terrible treatment coupled with wilful neglect that Aboriginal people have suffered at the hands of non-Aboriginal South Australians, the State has been first among all Australian jurisdictions on more than a few occasions in the formal recognition of the rights of the first inhabitants.

That relationship and the conflicted status of Aboriginal people in this State was in fact considered as early as the documents that formalised the province under the British Crown.

*The South Australia Act 1834* (UK) which established the province, contains a 'Terra Nullius' view of the status of the lands of the new colony as demonstrated by the use of the then legal term 'waste and unoccupied lands' in its description. Perhaps surprisingly however, and as something of a pre-cursor to the complicated relationship that was to follow, only two years later in 1836, the Letters Patent issued by King William IV which served as regulations for the administration of the province softened this original description by acknowledging the existence of the original inhabitants. This acknowledgement was a result of intense negotiation between those wishing to establish a colony and liberals wanting to acknowledge original ownership in the British Parliament<sup>1</sup>:

*'Provided Always that nothing in those our Letters Patent contained shall affect or be construed to affect the rights of any Aboriginal Natives of the said Province to the actual occupation or enjoyment in their own Persons or in the Persons of their Descendants of any Lands therein now actually occupied or enjoyed by such Natives.'*

History records however that although a noble ideal on paper, in reality the rights given by the document to the indigenous inhabitants were almost completely ignored, indeed on the contrary, the land was systematically divided up for sale by the authorities for the exclusive benefit of new settlers.

The ongoing contrast between the formal status of Aboriginal South Australians under the law and the reality of their position in provincial society is demonstrated again by the *Constitution Act 1856* (SA) in which all eligible male British subjects (and therefore

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<sup>1</sup> [South Australia's history of voting rights for Aboriginal Australians - ABC News](https://www.abc.net.au/news/2017-05-30/south-aust-history-of-aboriginal-australians-voting-rights/8572140)  
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all Aboriginal males) of the province were granted franchise to vote in the House of Assembly, making it at the time the most representative lower house of all the Australian colonies. Despite this, and again to emphasis the point, the Flinders history of South Australia states (and I quote directly, hence the dated language, 'that no full-blooded Aborigine is known to have sought a right to vote in the period.'<sup>2</sup>

Perhaps South Australia's most famous first was the passing of the *Constitution Amendment Act (1894)* (SA) by which all eligible female British subjects of the province (this included Aboriginal woman), received franchise. Think about this, at the 1896 election, South Australian men and women regardless of their racial origins could "theoretically" for the first-time vote and stand for election in the House of Assembly. Finally, some Aboriginal people did indeed vote. In their 1993 scholarly article *Black fellow citizens: Aborigines and the Commonwealth Franchise*, Pat Stretton and Christine Finnimore identify that at the Point McLeay Booth in the Seat of Albert of the 102 identified Aboriginal electors who enrolled, 81 voted.

Consider that our nearest neighbour Victoria, who granted, were the last in line when handing out votes for women at a state level only allowed non-indigenous women the right to vote after the passage of legislation in 1908 with the first votes finally being cast in 1911! Indigenous women were less fortunate and had to wait until 1962 for the same privilege.<sup>3</sup>

This string of firsts has continued. more recently, the *Aboriginal Lands Trust Act 1966* (SA) conferred the first major recognition of Aboriginal land rights by any Australian government. The Anangu Pitjantjatjara Yankunytjatjara Land Rights Act 1981 provided Aboriginal people the right to claim their ancestral lands and to protect their cultural heritage and then that legislation was ultimately followed by the Maralinga Tjarutja Land Rights Act in 1984.

### **What is the State Voice?**

Fast forward to the present, and against this background of firsts, it isn't really surprising that the legislation that has successfully made its way through the Parliament to become the 'State Voice' is also a national first. The Legislation was introduced by the current Labor Government during this term of office, but for political balance, it is worth noting that the defeated proceeding Liberal government had proposed legislation for a similar purpose during its term in power. Former Premier Steven Marshall, who also held the portfolio of Aboriginal Affairs and Reconciliation introduced the *Aboriginal Representative Body Bill (2021)* (SA) to the House of Assembly on 13 October 2021. The Bill however lapsed on prorogation, the numbers in the house having changed against the government in the interim and the bill not having reached the stage of the question for the second reading being put. following the election defeat an 'almost identical bill'<sup>4</sup> was again introduced to the House of Assembly in the new Parliament as a Private Members Bill by the Shadow Attorney-General on 6 July 2022 this bill sat concurrently on the notice paper with the Government bill until it was withdrawn and discharged following assent to the Government Bill.

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<sup>2</sup> The Flinders History of South Australia, Jaensch et. al. P. 118, Wakefield Press 1986

<sup>3</sup> <https://new.parliament.vic.gov.au/about/history-and-heritage/people-who-shaped-parliament/women>

<sup>4</sup> Second Reading Speech, Josh Teague MP, Member for Heysen, Hansard 6 July 2022

For the purposes of this brief overview, I hope it is enough to explain that the main differences between the models proposed by the two bills was in the constitution of the 'voice' and its access to Parliament. the Liberal Party bill legislated for a combination of 5 elected representatives and 7 selected representatives appointed by the Governor from specific Aboriginal cultural groups as well as others nominated by the responsible Minister on the recommendation of a panel convened by the Aboriginal Representative Body (ARB), itself a new body created by the proposed legislation. Premier Marshall, in his second reading speech explained:

*'The ARB's voice to parliament will be established through a new parliamentary standing committee. The Aboriginal Lands Parliamentary Standing Committee Act 2003 will be repealed and replaced by the new Aboriginal Affairs and Representation Standing Committee established by an amendment to the Parliamentary Committees Act 1991. The new standing committee will retain the functions of the previous committee but will also have the new function of inquiring into matters referred to it by the ARB.'*<sup>5</sup>

In contrast, the Labor Party legislation provides for the representation to be entirely popularly elected and drawn from six electoral divisions (5 regional areas and metro Adelaide) to be known as 'Local First Nations Voices'. the number of elected representatives for the local voices is to be decided by regulation and may differ from electorate to electorate to ensure population and other contributing demographic factors are considered. These elections, as with the elected portion of the liberal model will be overseen and administered by the State Electoral Commission. The six electorates would then elect two members each to be Joint presiding Members who must be of different gender, this group then forms the body that will interact directly with Parliament, the Executive and the Public Service.

The biggest difference between the two proposed models is the way in which they interact with the Parliament. This model is direct, and the type and regularity of interactions are set out in part four of the bill and include joint sittings and access to address the House directly. And unlike the other model this bill would also see the repeal not reinvention of the Aboriginal Lands Standing Committee.

### **The Parliament now has work to do.**

Both Houses of the Parliament now need to work out the logistical and procedural questions that Part 4 of the bill 'addresses to parliament' poses in terms of the Houses interaction with the Voice.

On 9 February 2023 the Minister for Aboriginal Affairs and Attorney-General, the Hon. Kyam Maher MLC moved the introduction of this *First Nations Voice Bill* into the Legislative Council and the Bill passed the Legislative Council following the completion of consideration in committee of the whole and upon the bill being read a third time on 23 February and was transmitted to the House of Assembly where it was debated and considered in committee on most sitting days during March. A little unusually, having come out of the committee stage on 23 March the Third Reading of the bill was moved, and the motion debated before being adjourned by the Premier with the following closing remarks:

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<sup>5</sup> Second Reading Speech, Hon. Steven Marshall MP, Premier, Hansard 13 October 2021

*'The passage of this bill will mark an exceptionally historic moment for Indigenous affairs in South Australia and, indeed, in the nation. It will mark a historic and significant moment for our democracy too. Arguably, this is probably the most substantial change we have seen to the operation of our parliament in our democracy in decades, so it is important that we get it right and we acknowledge the significance of this event in an appropriate way. On that basis, I seek leave to continue my remarks.'*

The house had earlier in the day agreed to at its rising adjourn until Sunday 26 March 2023 at 11.05am. A very unusual Sunday sitting for the purpose of marking this significant event.

A reported crowd of approximately 5000 people gathered on that damp morning, many seated on the government supplied rows of plastic chairs directly on the bitumen of the closed to traffic North Terrace to view the live broadcast of proceedings inside the building via large screens framing the main marble stairs of the building. The large crowd was kept entertained with speeches and live music. There were a small number of protesters located just away from the main gathering who had promised to drown out the ceremony with megaphones but that did not eventuate.

The Sitting day set down for Sunday 26 March was as foreshadowed by the Premier, intended by the government to be a celebration and contained a great deal of symbolism and ceremony. There was some parliamentary procedure, but from the ringing of the bells calling members at 11:00am to the completion of the Premier's third reading speech and return of the Bill to the Legislative Council via message the total time was approximately ten minutes.

Upon the receipt of the Message the sitting of the Legislative Council was adjourned. the President of the Legislative Council was then joined by elders of the South Australian Aboriginal Community in the Chamber. The President placed the Royal Arms copy of the bill – the large and heavy press used to emboss the blue coloured paper with the imprint of the Royal Arms was moved temporarily from Government House to the Parliamentary precinct specifically for this purpose - into a ceremonial Coolamon which was presented to him by Commissioner for Aboriginal engagement, Mr Dale Agius who had accompanied the elders and the group walked together from inside the building and out onto the main steps which face North Terrace. at a table on the main steps, facing the gathered crowd, her Excellency and members of the Executive Council then received the Bill from the President and on behalf of his majesty the King the Governor assented to the Bill.

As far as I am aware, this is the first fully public meeting of the Governor and Executive Council.

### **Differences and confusion with the proposed national voice.**

Unlike the proposition for the federal voice to parliament which proposes two outcomes (constitutional recognition of first peoples and as part of that the creation of an Aboriginal and Torres Strait Islander Voice) wrapped in a single question, the South Australian Parliament had already formally recognised prior Aboriginal occupation and

## custodianship South Australia in the Constitution (Recognition of Aboriginal Peoples) Amendment Act 2013

The State Voice and constitutional recognition of indigenous South Australians is the product of legislation that can be amended or repealed by amending legislation that receives a majority of votes in both Houses of the South Australian Parliament at any time in the future. The federal constitution cannot be amended without referendum. While the federal government could have brought a version of the voice into being without a successful referendum it could also be repealed by a future government with relative ease.

The matter of recognition of indigenous Australians in the federal constitution can only come about by a successful referendum. And interestingly the leader of the opposition Mr Dutton appears to have suggested that should this referendum fail to receive the support of the majority of voters in a majority of states he would be prepared to hold another on this single question.<sup>6</sup>

Unfortunately, for those of you who like a neat ending to presentations like this I am unable to provide you with an outcome on the success or otherwise of the election process or the first Aboriginal voice address to the Parliament. On the 29 June 2023, The State Attorney-General released a press release in which he advised that the date for the elections for representatives to the voice body would be moved from 9 September 2023 to 16 March 2024. In giving reasons for the delay, he stated:

*'The clear advice I've received from both the Electoral Commissioner and the Commissioner for First Nations Voice is that the work being done in South Australia is being overshadowed by the debate occurring at a national level around both the 'Yes' and the 'No' referendum campaigns.*

and:

*'By allowing for more time, we're giving Aboriginal and Torres Strait Islander people living in South Australia the opportunity to fully understand how they can get involved and take the time to campaign, with distance from the discussion about the national Voice.'*

The Opposition has seized upon this delay, by pointing out that with the repeal of the Aboriginal Lands Standing Committee as required by the Act on 1 July 2023, there now was no appropriate body of the Parliament to investigate the concerns of Aboriginal people in South Australia until the voice to parliament is elected next year.

The politics will as always continue to play out, and I look forward to perhaps being able to update you on the operation of this important legislation at a later date.

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<sup>6</sup> <https://www.abc.net.au/news/2023-09-03/peter-dutton-pledges-second-referendum-if-voice-fails/102808598>