By Mark Leibler AC

Ever since John Howard announced at the tail end of the 2007 federal election campaign that, if re-elected, he would work towards constitutional recognition of Aboriginal and Torres Strait Islander Australians, the aspiration has been embraced and advanced by subsequent governments of both political persuasions.

Each of these past seven governments has also understood that to pursue a referendum proposal that does not accord with the wishes of the people we seek to recognise would be inconceivable and have zero chance of success.

It was Malcolm Turnbull who best articulated this in a speech to federal parliament as Prime Minister in 2016 when he said:

"The terms of any amendment will need the endorsement of a majority of all Australians and a majority of States to successfully amend the Constitution, *but it will need the support of our First Australians to be proposed at all.*"

To that end, he and then Opposition Leader Bill Shorten appointed the Referendum Council, which I co-chaired alongside Pat Anderson. Our terms of reference required us to consult specifically with Aboriginal and Torres Strait Islander peoples with a view to reaching broad agreement on whether and, if so, how they might be recognised in the Australian Constitution.

No proposal will ever attract 100% support but the establishment of an advisory Voice to Parliament, protected by

the Constitution, was the model that flowed from the most proportionately significant consultation process that has ever been undertaken with Aboriginal and Torres Strait lslander Australians, engaging a greater ratio of the population than the constitutional convention debates of the 1800s, from which our Indigenous peoples were entirely excluded.

While other processes to advance constitutional recognition had included Indigenous people in their consultations, this was the first time it was done systematically, comprehensively and in accordance with cultural protocols.

Indeed, the 12 First Nations Regional Dialogues, which culminated in the National Constitutional Convention at Uluru in May 2017, undertaken with bipartisan awareness and support from the government and the Opposition, engaged 1200 Aboriginal and Torres Strait Islander people from a total population of around 600,000.

The dialogues were preceded by three Indigenous leadership meetings involving traditional owners, peak body representatives and individuals to fine tune and approve the consultation framework, plus a trial dialogue to iron out any residual issues.

The integrity of the deeply-considered process was validated by the findings of the Joint Select Committee, co-chaired by the Liberal's Julian Leeser and the ALP's Patrick Dodson, which determined that the Voice was the only form of constitutional recognition that would be supported by the people we seek to recognise.

Yet, five years later, we find ourselves revisiting the model of preambular recognition first raised by John Howard all those years ago – a model that was roundly rejected by First Nations representatives in the 2015 Kirribilli Statement as unacceptable to Aboriginal and Torres Strait Islander peoples.

We are revisiting misconceptions that have already been addressed and resolved.

The persistent claim, for example, that the Voice amendment would introduce race into the Constitution and assign "special treatment" to one group of Australians was contextualised in 2019 by former High Court Chief Justice Murray Gleeson when he noted that: "The division between Indigenous people and others in this land was made in 1788. It was not made by the Indigenous people. The race power in the Constitution is now used in practice to make special laws for them. The object of the (Voice) proposal is to provide a response to the consequences of that division."

Leaders in the thick of the crisis in Alice Springs have called out the hypocrisy of suggesting that giving First Nations peoples influence and responsibility over laws and policies that affect their communities would have no value on the ground.

Northern Territory MP Marion Scrymgour lamented that: "If we had been listened to, and if policies had been designed in partnership with local communities to tackle the underlying disadvantage, then perhaps many of the issues that have erupted now would not have occurred."

And then we have all those people asking for the detailed form and operation of the Voice to be laid out forthwith, although the only thing the electorate will be asked to support or reject at the referendum is the principle of its existence. The detail will be left to the parliament to determine after further consultation with Aboriginal and Torres Strait Islander communities, and a likely parliamentary committee process following a successful referendum (yet to be announced as of 1 February 2023).

If, after all that, the government uses its majority to create a body that doesn't work, the model can always be changed by the current or any future parliament.

It is telling that no constitutional lawyer that I am aware of has actually analysed the wording of the amendment and found fault with it. On the contrary, former High Court Judge Ken Hayne has concluded that none of the suggested "disruptive consequences" have any foundation in the text of the proposed amendment.

My enduring confidence in the good sense of the Australian people still tells me, as it has from the start, that the referendum will be carried. More information from the government will be forthcoming and I remain hopeful that, after careful consideration, the Liberal Party will support the Voice and earn its fair share of the credit for such a historic, deeply positive national opportunity.

While the Voice will have no veto powers over the parliament, the political and moral authority of an entity supported, not only by the parliament, but by the Australian people will transform the relationship between the nation and its First Peoples and pave the way to a better future for us all.

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