

Who is an Aborigine?

The single most important question about the Voice

Peter O'Brien



Getty Images

Writing recently in the *Australian*, Chris Kenny, notable for being the only genuine conservative voice in support of the Voice, notes,

Peter O'Brien

9:00 AM

‘A narrow victory would reveal a nation divided and ambivalent about how to advance reconciliation. But over time it might be broadly embraced. A narrow defeat, on the other hand, would leave us with division, bitterness and the repudiation of Indigenous aspiration. There would not be a prospective road forward and reconciliation would be off the rails. That is why our leaders should make one final pitch at compromise as parliament debates the referendum legislation in coming weeks. The hyper-partisan climate makes this extremely unlikely, but we should let our politicians know that we expect better.’

He is right, and the bitterness will be exponentially enhanced by the cavalier and irresponsible way in which Albanese has promoted this Voice as ‘a minor change’ and ‘just good manners’. If this were true, why on earth shouldn’t disappointed Yes supporters be outraged?

But Kenny ignores the one outcome that the No campaign should be aiming for. This Voice is wrong in principle and in practice and it must be defeated convincingly. Is that possible? And what would comprise a convincing victory for the No case? A failure overall and in all states would be a good start. 1999 suggests this is achievable.

But to be really convincing – to really have a chance to delegitimise the inevitable claims of ‘we wuz robbed by a racist Australia’ – it must be based on the right reasons.

We often hear the refrain ‘If you don’t understand it, don’t vote for it’. I would argue this is a last resort argument, which lends itself to the kind of rhetoric quoted above. Ideally, the No campaign wants as many people as possible to be able to say, ‘I voted No because I did understand it’. To be able to say, ‘I voted No because it is wrong in principle and will be both dangerous and ineffective in practice.’



Unfortunately, the official No case to be developed by the opposition is very likely to be of the anaemic ‘lack of details’ genre. They missed their chance to vote against the Voice on principle, and to keep harping on ‘reconciliation’ and ‘constitutional recognition’ just plays into the hands of the activists. These two canards are based largely on white guilt – the need to atone for past wrongs. These are emotive arguments that are deployed in favour of the Voice – and all the more effective because they are emotive. The constitution can do nothing to eliminate the past or to improve the future of that 20 per cent of Aboriginal people who are genuinely disadvantaged. Effective action can only be achieved through legislation.

That is the purpose of my book *The Indigenous Voice to Parliament – the No Case* published by Connor Court (www.connorcourtpublishing.com.au). To present a comprehensive but concise No case covering all issues both substantive and emotive. It can be read in an hour or two. To be clear, I have no illusions that my book will be decisive, but every bit helps. That’s the sales pitch done. The real point of this article is to present just one argument that, in theory, should ensure the rejection of this referendum question. Strangely, as far as I am aware, I am the only person making this case.

This question is fundamentally flawed in a way that everyone should be able to understand.

A provision in the constitution that references, or rather preferences, a certain group of people, must make it beyond doubt who those people are. If the current criterion – self-identification – is applied, that would open up a can of worms. We need to know who exactly

qualifies as an Aborigine and how those persons establish their bona fides. For example, would any degree of Aboriginality in one's ancestry suffice? If so, then the Aboriginal population can only continue to expand indefinitely, to the point where this will become less and less about disadvantage and more and more about entitlement. If not, then where is the cut-off? 50 per cent Aboriginality? 25 per cent? 12.5 per cent? Wherever it is set, someone is going to be aggrieved. To further complicate the issue, prominent Aboriginal academic, Dr Suzanne Ingram, suggests that as many as 300,000 of the currently reported Aboriginal population of 800,000 may not be genuine.

If this issue is not adequately addressed in the referendum question itself, that alone should be a deal-breaker. I cannot stress this enough. It cannot be left up to parliament, or worse the High Court, to define, expand or contract this demographic at whim. If the Voice goes into the constitution, then it must be the constitution (by means of a referendum) that defines and redefines – over time and as necessary – who is an Aborigine.

To underscore this point, let me refer to Section 15 of the constitution. This covers casual Senate vacancies. The gamesmanship that followed Gough Whitlam's political opportunism in appointing Senator Lionel Murphy to the High Court caused this section to be rewritten in 1977. That reworked Section 15 is now the most voluminous and prescriptive section of the Constitution, occupying some two pages. My point is this: if a simple matter such as the filling of a casual Senate vacancy requires such a detailed treatment in the constitution, how can we possibly leave the definition of who is an Aborigine so open-ended? It will further entrench tribalism within the Aboriginal community and will become a lawyer's picnic.

One final point. Chris Kenny claims the Voice is not a race-based division. That may not be the explicit intent, but the outcome is the same. Only members of one particular race may aspire to sit on this Voice or to vote for it. Dr Suzanne Ingram – well-educated, well-remunerated and residing comfortably in Sydney – may sit on or vote for it. Dave Price – married to an Aboriginal woman, the father of Aboriginal children, a long-term resident of Alice Springs and directly and personally affected by its special problems – may not. That sounds like racial division to me.

We should want no part of it.