I now want to speak briefly on the joint select committee process. I thank all members and senators—particularly the chair, Senator Green—for their work. The parliamentary joint select committee heard some powerful evidence from a range of witnesses—evidence about the importance of constitutional recognition, evidence from legal experts, and evidence on how the Voice would make a practical difference on the ground. On the wording of the proposed amendments, expert after expert told the committee that the amendment is constitutionally sound. Former Chief Justice of the High Court Robert French said there was low risk or no risk. Bret Walker said:

… somehow jamming the courts from here to kingdom come as a result of this enactment, is really too silly for words.

Importantly, the Voice will be able to make representations to the executive government. Tom Calma spoke of how important this was, saying:

… we have many programs the executive government delegate to implement themselves that don't require parliamentary intervention , so that's why it's important to work with the executive government and the bureaucrats particularly on how to implement a lot of their programs.

Roy Ah-See reiterated that, saying:

I think it's critical and essential that this Voice has direct communications to the executive …

Tom and Roy are both correct: the Voice should be able to make representations to the executive government. The purpose of the Voice is to improve outcomes for our people. It is the executive government that makes policies about Aboriginal and Torres Strait Islander people, it is the parliament that passes laws about Aboriginal and Torres Strait Islander people and it is the executive government that implements them. There is agreement on this from Ken Wyatt. He says it's too late after the party room meetings, and it's too late after the legislation has been put into parliament, and that is why the Voice should be able to speak with the executive government.

I believe the constitutional amendment before the parliament takes the right form. It's symbolic and practical. It recognises 65,000 years of Australian history. It makes our system of government stronger. It makes a practical difference on the ground. It improves people's lives. It is constitutionally sound and sets the balance right. The Solicitor-General's opinion makes it clear. He says:

The proposed section 129 is not just compatible with the system of representative and responsible government prescribed by the constitution, but an enhancement of that system.

That is from the Solicitor-General, and we have taken his advice very carefully. He also said:

A core rationale underpinning the proposed amendment is to facilitate more effective input by Aboriginal and Torres Strait Islander peoples in public discussion and debate about governmental and political matters relating to them … it seeks to rectify a distortion in the existing system.

The Solicitor-General's advice is very important. Yet this is not enough for those hell-bent on dashing the hopes of a people. It is not enough of those hell-bent on stoking division. It is not enough for those trying to play politics with an issue that should be above partisan politics. The government believes we have the right amendment to proceed; we have the right rigorous process that has listened to the whole range of views. I encourage every single member of this parliament to support the Constitution alteration without amendment.

I want to conclude by quoting a passage from the Uluru Statement from the Heart:

Proportionally, we are the most incarcerated people on the planet. We are not an innately criminal people. Our children are aliened from their families at unprecedented rates. This cannot be because we have no love for them. And our youth languish in detention in obscene numbers. They should be our hope for the future.

These dimensions of our crisis tell plainly the structural nature of our problem. This is the torment of our powerlessness.

We seek constitutional reforms to empower our people and take a rightful place in our own country. When we have power over our destiny our children will flourish. They will walk in two worlds and their culture will be a gift to their country.

Let's get this done together, and let's move Australia forward for everyone.

Ms McKENZIE (Flinders) (13:18): It is with some sadness and disappointment that I rise to speak against the proposed Constitution Alteration (Aboriginal and Torres Strait Islander Voice) 2023. We all come to this place from different lives, with different personal and professional experiences and from different parts of this great wide land.

I represent the people of the Mornington Peninsula, home to the Bunurong and Boonwurrung people. Their land encapsulates roughly 8,000 square kilometres of the Victorian coastline and hinterlands from today's city down to the sea. Before the arrival of the white man, it was a small population, estimated by local historian Malcolm Gordon to number somewhere between 250 and 500. But their connection to and dependence on the land was constant, as Mr Gordon writes in A Never Ending Journey, his recently published history of the Mornington Peninsula. The Bunurong and Boonwurrung settled on the land in an organised way. The constant movement over their land for economic purposes was no different in concept from the movement of workers on the early pastoral holdings and

settler farms. While population estimates are conservative, it is accepted that within a decade of pastoralists' arrival in the mid-1830s fewer than 100 Indigenous men and women remained.

Today, the Indigenous people of the Mornington Peninsula include Aboriginal and Torres Strait Islanders from across the nation. It makes for a warm, inclusive, wise, curious and open community with remarkable cultural leaders, like Peter Aldenhoven and Lionel Lauch, and those who embody that warmth and welcome in their every breath, like Uncle John McLean and Aunty Helen Bnads. I'm grateful for their advice and guidance, as I am to those who have agreed to meet with me across Flinders to discuss their passions regarding the Voice on all sides and from all perspectives.

I equally thank those who have met with me here in Canberra—like Empowered Communities, who showed me that diverse, unique governance models can produce remarkable results in some places. I thank Dean Parkin, campaign director of Yes 23, for his persistence, hope, wisdom and graceful desperation for something, anything, to disrupt the pattern of failure in our combined attempts to close the gap. And I especially thank Mark Textor, Tony Nutt and my friends Julian Leeser and Greg Craven for leading a debate amongst conservatives which helps us all to see the need for constitutional recognition of our First Nations peoples and the urgency of level-headed and full-hearted endeavours to address the persistent disadvantage suffered by our Indigenous peoples.

I come to this place as someone whose first academic and professional experience was in constitutional law. An avid student of it, I became a research assistant to Greg Craven at the University of Melbourne and studied both Australian and international constitutional law, and then worked for years at the Centre for Comparative Constitutional Studies before I came to my first job in this place as an adviser to the Commonwealth Attorney-General with responsibility for constitutional law, coinciding with the 1999 referendum. With that start in mind, I have read widely about the Voice and have had the benefit of conversations with parliamentarians and legal experts of all persuasions, many of whom have been leaders in the pursuit of a voice to parliament—a notion which, I remind this chamber, has been led by the coalition for the last decade. I conclude from those discussions and wide reading that the choice to embody a voice in the Australian Constitution in its current format, including with reference to the executive government, of imprecise operation and purpose, is a misfounded one—one which carries profound constitutional and legal risk.

The Constitution is not, as suggested by the Prime Minister, a document of spirit and morality, when he insists on calling it the nation's birth certificate and our founding document, like it carries the mysticism of Australian culture in its 128 provisions. It is, and was always intended to be, a plain and pragmatic document. My friend the member for Menzies cited its recognised plainness in the dissenting report of the Joint Select Committee on the Aboriginal and Torres Strait Islander Voice Referendum. There, he noted the Parliamentary Education Office's commentary on the Constitution, as we parliamentarians give it out to Australian school students:

> Australia's Constitution contains little of the soaring rhetoric which is familiar in the constitutions of many other lands. That is one of its strengths. It is a practical, matter-of-fact, unpretentious but effective document. As such, it reflects the pragmatic, no-nonsense attitude which we like to think is among the most attractive features of the Australian character.

In the Australian Constitution the founders, combining what they hoped was the best of the United Kingdom and United States systems of government, brought six sparring colonies into an uneasy truce. But it was accepted that the Commonwealth government would be given power over such administrative measures as lighthouses, stamps, the recording of the weather and determining our national weights and measures. Yes, section 51 also included broader concepts like defence, at a time where no known nation had ever experienced a world war, and external affairs, when such activity largely comprised sending telegraphs to London.

The Constitution gave the High Court original jurisdiction over its interpretation—a power it has exercised for 120 years—with many different interpretative methodologies at its disposal to suit both the times and the perspectives of its various judges. As the last arbiter of legal matters in Australia, that is indeed its duty—the steady and careful evolution of the law in Australia. But it has not always done so in what might be called a predictable or linear matter. Nor can any of us with any certainty foresee what the High Court might read into the proposed words of section 129 in the future.

It is worth remembering that for the first 20 years the High Court interpreted the Constitution consistent with the spirit in which it had been founded, giving preference to the powers of the states over the newly formed Commonwealth. Then one day in August 1920 the High Court changed its interpretive methodology dramatically, replacing the implied doctrines of the immunity of instrumentalities and the reserved powers of the states with an approach of strict literalism, insisting that the words of the Constitution should be interpreted in their literal sense, not consistent with the founders' intentions, and indeed be given the broadest interpretation possible. Of course, it was not a dramatic move, as great moments of apparent spontaneous ideological revolution rarely are. Thirty years ago I spent a cold Canberra winter in the National library by Lake Burley Griffin, steadily ploughing my way through Sir Isaac Isaacs's personal papers and handwritten notebooks in which he plotted a course through the

jurisprudence of the High Court from 1906 to 1920 to persuade, cajole and win over his brethren until one day the High Court dropped its fidelity to the doctrines which operated to preserve the powers and influences of the states. And the rest, from the application of the federal award to the railway engineers of Western Australia to the very bright lights in this grand chamber, is history.

There have been equally determinative twists and turns in the interpretive approach of the High Court since the engineers' case, and roaring debate between jurists and judges alike about whether these twists and turns were right. Former High Court Justice Michael McHugh highlighted the impact of the court's interpretive leaps had had on Australia's political journey and system of government without a single constitutional amendment. In the 2007 Hal Wootten lecture at the University of New South Wales, Justice McHugh said:

> If many High Court cases had been decided the other way—and many lawyers agree that they could reasonably have been decided the other way—Australia would be a very different country politically from what it is today. The States would be as important—perhaps more so—than the Commonwealth. State Premiers would vie with the Prime Minister for political importance. Federal laws could not bind the States and their employees. Nor, in most cases, could the operation of federal laws extend into internal State matters … Trade practices legislation would not be able to deal with commercial transactions taking place solely within a State … Television and radio might well be controlled by the States, not the Commonwealth. So would company law. Australians would be subjected to both State and federal income taxes, as they were until 1942. There would only be one bank—the Commonwealth Bank, the private banks having been nationalized … The Communist Party would be banned. The Franklin River would not have been saved …

Despite the protestations of some of the best contemporary constitutional legal minds in the country, of the likes of Bret Walker SC, Professor Cheryl Saunders and Solicitor-General Stephen Donaghue, my heart and head rest with the well-argued warnings of Greg Craven as with the concessions of former justices Kenneth Hayne and Robert French that ultimately, were the High Court to conclude there were a duty on the executive government to consult the Voice as a result of the proposed section 129(ii), it would bring the government to a halt and make government unworkable.

No right-minded lawyer or even non-lawyer could reasonably look at this bill, the explanatory memorandum, the joint select parliamentary committee, the Indigenous Voice codesign process, the 2018 parliamentary committee process or this second reading debate and conclude that the words in section 129(ii) as drafted were meant to have no meaningful effect, impact or disruption on the operation of the executive government. Indeed, many of those in favour of the current wording insist disruption is exactly what is intended. Provision 129(ii) as written will, whether now or in five or 10 or 20 years time, be interpreted as being intended to have meaningful effect on the operation of the executive government of Australia. Who knows what that meaningful effect will be? I do not. The shadow minister for Indigenous Australians, who has spent her adult life fighting for improved outcomes for Indigenous Australians, does not. The shadow Attorney-General and the Leader of the Opposition do not. Truthfully, the Minister for Indigenous Australians, the Attorney-General and the Prime Minister do not know either.

I respect and accept that this legislation and the Voice it proposes comes from not only a well-meaning but a necessary place. I am firmly committed to the recognition of Australia's First Nations peoples in the Australian Constitution. It was Prime Minister John Howard who in 2007 promised a referendum to formally recognise Indigenous Australians in our Constitution; their history as the first inhabitants of our country; their unique heritage, culture and languages; and their special, though not separate, place within a reconciled indivisible nation. Prime Minister Howard committed to enlisting wide community support for a yes vote, a noble aim which seemed to be shared by all just a year ago, but not since.

In his final Boyer lecture in December 2022, Noel Pearson, the man who has had more influence over public policy in Australia affecting Indigenous Australians than any other in the last two decades, gave us all wise counsel when he said:

> … I am convinced the referendum on Indigenous Australian recognition should not be understood as yes alliance versus no alliance, conservatives versus progressives, left versus right, us versus them.

These words were spoken a mere five months ago. They may as well have been a lifetime ago. Whatever happens at the referendum later this year, I do hope that we all, whatever side we sit on for whatever reasons, continue to be kind and respectful of each other's individual choices. The Constitution belongs to all of us—

The DEPUTY SPEAKER (Ms Vamvakinou): Order! The debate is interrupted in accordance with standing order 43. The debate may be resumed at a later hour, and the member for Flinders will have an opportunity to continue.