

Shaming us into changing our Constitution could backfire

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The campaign to sell the voice is unlike any we have seen before. A strange hybrid of best-in-breed Madison Avenue marketing schtick and a bit of Aussie-meets Hollywood-feelgood appeal.

Advocates don't actually quote Dennis Denuto's famous line, "it's the vibe of the thing", because even they must realise it screams of charlatanry. But they do everything but. Add in the concealment of the facts and constant dissembling, and you get a feel for what we are in for.

The heart of the problem is that advocates are trying to sell a product without telling us what's in it. This explains the contortions they are having to perform to sell it. Indeed, the key strategy currently being used to create the conditions for success seems to be to tell voters that no matter what the details of the voice turn out to be, only the immoral or the far right could oppose it.

A classic example was ABC's Insiders last weekend, which featured four pro-voice commentators. There is no room for a single sceptic who hasn't bought the marketing schtick. Instead, there is only excitable commentary on the inevitability of a Yes vote, and utter disdain for anyone who would dare question that outcome.

Indigenous television presenter Narelda Jacobs thinks it can be done next year, and "there's definitely gonna be bipartisan support. No one's gonna stand in the way of this. No one. No major party. I don't think any independent. You wouldn't risk it because the appetite is there in the public for this change".

A little later Shane Wright added that "the far right who don't want change" were still running the lines about the voice becoming a third chamber with a veto power. While it was amusing to see someone on the ABC hint that Malcolm Turnbull belonged to the far right because of his "third chamber" comments, the whole segment was shamefully activist even by the ABC's standards. Memo to voice advocates: trying to shame Australians into changing our Constitution is not merely dishonourable but will be counter-productive.

Earlier this week, Professor George Williams offered a more temperate effort. He claimed the proposal was "a modest and mature proposal with strong popular support" but acknowledged that a "careful, well-constructed political strategy" would be needed to win a referendum. The problem for Williams is that no one now knows what his "modest and mature proposal" is. Not even him.

Neither Williams nor any of the advocates who allege Australians have already embraced this proposal can answer the following questions: What powers, responsibilities and duties will the voice have? What is its term? What is its composition? Who is eligible to be elected or

appointed to the voice? Who can vote for the voice or otherwise be involved in its appointment or election? How is it funded? And, most critically, how, when and by whom can the voice be terminated or changed?

They can't answer these questions. None of us can. While there have been suggestions on some of these issues, most notably by Tom Calma and Marcia Langton, nobody knows what suggestions will be adopted and put forward to Australians. This is still a massive pig in a poke. Why the dissembling silence on this front?

The Uluru Statement was drawn up in 2017 and five years later the voice is no less mystical than the doctrine of Immaculate Conception. Yet advocates still have the nerve to tell Australians that while they can't tell us the details of a voice, only immoral, far-right extremists would withhold their support.

Anthony Albanese said the voice proposal put forward by the Uluru Statement "asks for nothing more than good manners". Is it bad manners, then, to ask for more details about the voice? With dissembling sweet talk like this, we are left to ask whether voice advocates are trying to sell this major change to our Constitution by simply appealing to the "vibe of the thing" because they know that if they come clean on the detail, many Australians, maybe even a majority, will reject inserting a race-based preference into the Constitution.

The Yes vote won't be won by activists figuratively patting Australians on the head, telling us not to worry our pretty little heads about the details before a referendum is held. And yet this is precisely the strategy that many have settled on. As Jacobs confessed this stratagem on *Insiders*: "It's gonna be so simple. So, so, so simple," she said, "then after the referendum, after the Yes vote, then comes the meat on the bones, as people like to put it."

The disdain for voters is palpable. Maybe we need to superimpose new consent laws about sex on the voice proposal – it should be clear and upfront consent about what is being proposed.

For those of you who may sympathise with the difficulties of specifying detail at this stage, the refusal to come clean with the Australian public is not limited to the finer details of how a voice would work. It extends to the one key design feature that may well be the difference between a proposal Australians will never accept and one they might consider. That design feature is whether the parliament can sack (or terminate or whatever you want to call it) the voice if it becomes unnecessary or ineffective. If the voice is subordinate to parliament – ie, can be terminated by parliament – it can be argued that parliamentary sovereignty continues unchallenged and that ultimately there is one body, and only one body, elected every three years that represents and is accountable to all of us.

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The voice could still be recognised in our federal Constitution, by language authorising parliament to make laws establishing it, but there must be words expressly authorising parliament in this new constitutional provision to amend or terminate the voice. Australians might think this is a fair way to redress Indigenous disadvantage on a basis that preserves parliamentary sovereignty.

Mindful that parliament did have to abolish ATSIC when there was bipartisan recognition of its comprehensive failure, most Yes advocates are intent on ignoring this issue, perhaps with the intention of sneaking in a provision prohibiting parliament from abolishing the voice. This would entrench a permanent race-based privilege in our Constitution. It would give those who elect the voice, and those who are members of it, a special preference not limited by time or conditioned by disadvantage, not available to all Australians. There is nothing moderate about this proposal. Neither is a Yes vote inevitable.

Instead, such a major change to the Constitution and our governance might be completely repugnant to Australians opposed to racial preferences being cemented into the Constitution. Shrewder Yes activists will understand this. And that's why they are so coy when asked to explain whether, on their preferred model, parliament can abolish the voice.

It is time for Yes activists to put aside their vibey talk, their dissembling, duckshoving refusals to answer the most critical question raised by the voice. So let me now issue a public challenge to them: You may not have any clue about any other feature of the voice, but can you at least tell us whether parliament can abolish the voice. Yes or no, please.

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