Name-calling Noel Pearson misses the point about shifting support

Description

Last weekend, Noel Pearson added my name to his naughty list. My offence from his perspective has been to change sides on the proposed Indigenous voice to parliament and the executive.

He wrote in this newspaper that I had become a “shrill” opponent “whose lurid denunciations of the voice proposal stand directly at odds with his previous support”.

Pearson deserves to have his say. And given his impressive lexicon of abuse, I got off lightly.
At least I’m not a bed-wetter, which is how he described “Little Mickey Gooda”, a crybaby (Greg Craven), an undertaker (Peter Dutton), or caught up in a redneck celebrity vortex (Jacinta Nampijinpa Price).

But an implicit charge of hypocrisy requires a response. And it’s this: Pearson accuses me of changing my position on the voice. But the real change has been to the voice itself.

Until last July, when Anthony Albanese unveiled his preliminary wording for the proposed new chapter of the Constitution, the design of the voice was unsettled. Various options were being considered. This can be seen from the 2017 final report of the Referendum Council whose main recommendation for the voice was far more modest than the government’s final version.

Eight years ago I saw nothing wrong with requiring parliament to listen to Aborigines and Torres Strait Islanders before using its power under section 51(26) of the Constitution to make special laws that only affect Indigenous people. I still hold that view.

In February, barrister Louise Clegg delivered an address to the Uphold & Recognise think tank that makes it clear that Murray Gleeson, a former chief justice of the High Court, favoured such a targeted approach as late as 2019.
Clegg quotes Gleeson, a member of the Referendum Council, as writing: “It is difficult to see any objection in principle to the creation of a body to advise parliament about proposed laws relating to Indigenous affairs, and specifically about special laws enacted under the race power which, in its practical operation, is now a power to make laws about Indigenous people.”

This early model is what many people believe they are being asked to endorse. They are wrong.

This is not what is on offer at this referendum.
It is therefore a little harsh for Pearson to criticise me for not supporting a proposal whose preliminary wording was only made public last July and is dramatically different to the principle I favoured eight years ago.

The change proposed by Gleeson would have been difficult to oppose. It would still have required constitutional change but the voice would have been focused on providing advice on laws that relate only to Aborigines and Torres Strait Islanders.

The government is asking us to go beyond that and endorse a change that would undermine equality of citizenship.

It would do this by extending the scope of the voice beyond Gleeson's tight focus on laws that relate only to Indigenous people. I did not support this eight years ago and I do not support it now.

We are being asked to constitutionalise a race-based lobby group, paid for by taxpayers, that could involve itself not just in debates on Indigenous affairs, but in debates about all matters of public policy, all proposed laws and all administrative decisions.

That extended scope means we are being asked to constitutionalise a system of racial preference.

Extending the jurisdiction of the voice beyond Indigenous affairs, as proposed by the government, cannot be reconciled by the idea that all Australians should be equal not just before the law, but before those who make the law and those who apply the law.

It is perfectly logical for Indigenous people to have a say before parliament makes special laws on the basis of race that affect them alone.

But moving beyond that would give one group of Australians an entitlement to additional and unjustified influence over all public policy, all law making and all public administration.
If the government had wanted to focus the voice on Indigenous affairs, or on matters that relate only to Indigenous people or even primarily to Indigenous people, it would have included such qualifications in the words that would be inserted into the Constitution.

It has not done so. And that is exactly what voice proponents want.

On January 23 Pearson told Patricia Karvelas on ABC radio: "There is hardly any subject matter that Indigenous people would not be affected by and would not want to provide their advice to parliament."

Indigenous constitutional lawyer Megan Davis, who helped develop the voice, shares this view. On December 21 last year she was asked on ABC television what issues Indigenous Australians wanted to talk about to parliament through the voice.

Davis's answer: "At this point, virtually every issue."

Long before Pearson sought to belittle him as a crybaby, Craven was one of the country's most distinguished constitutional lawyers. He was one of the original architects of the voice.

On March 18 he wrote in this newspaper:

"There has been a distinct sleight of hand here in the development of the voice model. Originally it was a conservative product designed precisely to avoid judicial activism.

“But over the past year, groups of mainly Indigenous activists have worked to transform the model into precisely the opposite.”

The most surprising aspect of Pearson’s remarks is that they were so long in coming.

I explained my concerns to him privately months ago, only to be dismissed as a “liberal democracy purist”.

Equality of citizenship is fundamental to what it means to live in a democracy. We should never vote for its abolition.

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