

The Hon Kyam Maher MLC



Government
of South Australia

Minister for Aboriginal
Affairs

Attorney-General

Minister for Industrial
Relations and Public
Sector

Karna Country
GPO Exchange
10 Franklin Street
Adelaide SA 5000

GPO Box 464
Adelaide SA 5001
DX 336

Tel 08 7322 7050

23MAA0671

Ms Penny Pratt MP
Member for Frome
PO Box 1242
CLARE SA 5453

Email: frome@parliament.sa.gov.au

Dear Ms Pratt

Matters raised by your constituent, Mr Daniel Sugars

I write in response to your letter dated 14 November 2023 about questions asked by Mr Sugars in relation to the *First Nations Voice Act 2023 (the Act)*.

Mr Sugars appears to be concerned that the Act itself, or actions taken under it, will discriminate against him on the basis of his race. He does not explain how but I assume that his concern is either because he will be unable by reason of his race to elect or become a member of a First Nations Voice and/or because his interests and views will not be taken into account by First Nations Voices, including the State First Nations Voice when presenting to Parliament, the Government and other bodies.

Mr Sugars has asked first whether the Act, including its insertion of a new section 3 into the *Constitution Act 1934* that recognises the importance of the First Nations Voices, breaches Article 26 of the International Covenant on Civil and Political Rights (ICCPR).

The answer is no. The ICCPR is not directly incorporated into Australian law and does not provide any redress for alleged breaches of its guarantees of human rights and freedoms.

However, many of the rights recognised by the ICCPR are protected by Commonwealth and State laws. Article 26 of the ICCPR recognises that all people are equal before the law and that the law should prohibit discrimination based on any ground including race.

Racial discrimination is prohibited at both State and Commonwealth level, and both laws provide redress for a person who has suffered discrimination.

The Commonwealth Racial Discrimination Act is also referred to by Mr Sugars. It prohibits racial discrimination and provides a guarantee of equal enjoyment of rights, including political rights, to a person who is deprived of those rights by a State law.

The Office of the Hon Kyam Maher MLC acknowledges Aboriginal people's ongoing connection to the land and waters of South Australia. We recognise the importance of Country to Aboriginal identity, community and wellbeing. We pay our respects to Elders, past and present, and recognise the key role they play in caring for Country, community and culture.

However, a State law that institutes a “special measure” does not offend the Racial Discrimination Act. That term is defined in article 1.4 of the *International Convention on the Elimination of all forms of Racial Discrimination*, which forms the Schedule to the Racial Discrimination Act. Special measures are:

measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved.

The First Nations Voice Act constitutes a special measure. The Preamble to the Act refers to the “*unacceptable levels of disadvantage*” faced by Aboriginal and Torres Strait Islander people since colonisation and described the Voice as a platform to enable them to be better heard by government and to give them more of a say in the decisions that affect their lives.

Similarly, my second reading speech for the First Nations Voice Bill explained the overall purpose of the Bill in the following way:¹

In the decades and centuries gone by, the laws of our state and those of the colony that preceded it have done so much to disadvantage, discriminate against and disempower Aboriginal people. Today, this government seeks to use the laws of our state to achieve exactly the reverse.

A law that is designed to empower Aboriginal and Torres Strait Islander people and assist in redressing centuries of discrimination against them is a special measure and does not offend the Racial Discrimination Act. Neither do any actions taken to implement the First Nations Voice Act.

Finally, Mr Sugars has asked where the South Australian Parliament derives its power to enact the First Nations Voice Act. The Parliament derives its powers from the Commonwealth *Australia Act 1986* and the *South Australian Constitution Act 1934*. Its powers to enact laws are very wide and subject to very few restrictions, including those in the Commonwealth Constitution.

I trust that the above discussion will help you to respond to Mr Sugars’ questions.

Yours sincerely



Hon Kyam Maher MLC
Minister for Aboriginal Affairs

5/12/2023

¹ *Hansard*, Legislative Council, 9 February 2023, p1925.