

THE FIRST PEOPLE'S VOICE TO PARLIAMENT

Frequently Asked Questions & Answers

This referendum is about two things – [constitutional] recognition & consultation. That is what it's about. 'Albo'
Anthony Albanese Prime Minister of Australia 3-2-23 Guardian

Voice Treaty Truth

The Uluru Statement from The Heart 2017 calls for a First Nations Voice to Parliament to be enshrined in the Constitution to enable Aboriginal & Torres Strait Islander people's to provide advice to the Parliament on legislation, policies & projects that impact their lives. Makarrata, coming together after a struggle, follows. A Makarrata Commission would supervise agreement-making (treaty) & truth-telling.

<https://fromtheheart.com.au/what-is-a-First-People's-Voice-to-parliament/>

What is Constitutional Recognition through a First People's Voice to Parliament?

- A proposed group of Aboriginal & Torres Strait Islander people who would advise the Government & Parliament on how a policy (e.g. health) or a law (e.g. Native Title changes, Northern Territory Intervention) would *practically & culturally* affect First People's lives. This process of consultation would happen early at the ideas/development stage, with First People's participating from the beginning, not at the voting stage! Thus, **policies made with First People's not for them & thus giving more effective outcomes.**

What is the likely Referendum question?

Do you support an alteration to the Constitution that establishes an Aboriginal & Torres Strait Islander First Nations Voice?

What is the draft wording to go in the Constitution?

- *There shall be a body, to be called the Aboriginal & Torres Strait Islander Voice. The Aboriginal & Torres Strait Islander Voice may make representations to Parliament & the Executive government on matters relating to Aboriginal & Torres Strait Islander Peoples. The Parliament shall, subject to this Constitution, have power to make laws with respect to the composition, functions, powers & procedures of the Aboriginal & Torres Strait Islander Voice.*
- The Referendum Working Group with Minister Linda Burney & a broad cross-section of representatives from First Nations communities across Australia provides advice to Government & guides the referendum process. The final wording will be decided by Parliament.

<https://www.directory.gov.au/portfolios/prime-minister-&-cabinet/national-indigenous-australians-agency/referendum-working-group#:~:text=The%20Referendum%20Working%20Group%20will,referendum%2C%20refining%20the%20proposed%20constitutional>

Why do we need the Aboriginal & Torres Strait Islander's /First People's Voice recognised in the Constitution?

- The **First People's** Voice in the Constitution recognises the special place of Aboriginal & Torres Strait Islander people in Australia's history & current life as the original occupiers & custodians of our land.
- Embedded in the Constitution it will provide consistency & stability because it cannot be disbanded at the whim of changing Governments.
- It will enable progression towards Treaty & Makarrata as there needs to be a body representing First Peoples for the government to negotiate with.
- It is fulfilling part of Australia's commitment to the UNDRIP UN Declaration Rights of Indigenous Peoples in 2009

How will a First People's Voice to Parliament help First Nations communities?

- Laws & policies made with First People's not for them, thus giving more effective results
- First Peoples know their communities best & can provide specific, local solutions.
- First Peoples will be engaged at the beginning of any policy ideas or legislative process, & have input early, not at the end point of legislation being voted on! They will be at the centre of decision making, thus minimising negative outcomes we have seen in the past. The Government will have direct, better quality,

detailed & nuanced information about First Nations communities & issues with laws, policies & resource allocation better targeted with improved outcomes.

- It will further the self-determination of Aboriginal & Torres Strait Islander peoples by giving them a greater Voice & control in matters that affect them.

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- It would monitor the race power section of the Constitution Sect 51.26 that enables special laws to be made about First Peoples, so that it does not disadvantage them.

Is this going to create a third chamber of Parliament?

No. The Voice may advise on law & policy to the Parliament & the Government with no power to legislate i.e. pass laws.

Why do we need to change the Constitution? Why can't it be an ordinary act/legislation of parliament?

- The Voice needs to be enshrined in the Constitution to ensure it is protected & remains a permanent part of our democracy. It could only be abolished by another referendum.
- A legislated only Voice could be changed or abolished by any future Government that was not in agreement with it.
- It means that the First People's Voice can be unapologetic in its advocacy, with less likelihood of defunding or repeal (e.g. ATSIC) with a mandate from the Australian population backing it. (Mayor 2022)
- Constitutional recognition of the Voice, & its subsequent recommendations, makes it more likely to be listened to as mandated by the Australian nation.

Should the Government legislate for the First People's Voice before going to a referendum?

The bill to have a referendum & the question is usually done first. Then the detail is done after Referendum. This allows for consultation & later legislation to be changed if necessary to allow flexibility, a model developing over time according to the needs of First People's.

What is the detail of the model?

The final shape & composition will be decided by Parliament, with the input of First People's. The model detail will be legislated after the Referendum, thus enabling flexibility, & continuous improvement.

The Voice will:

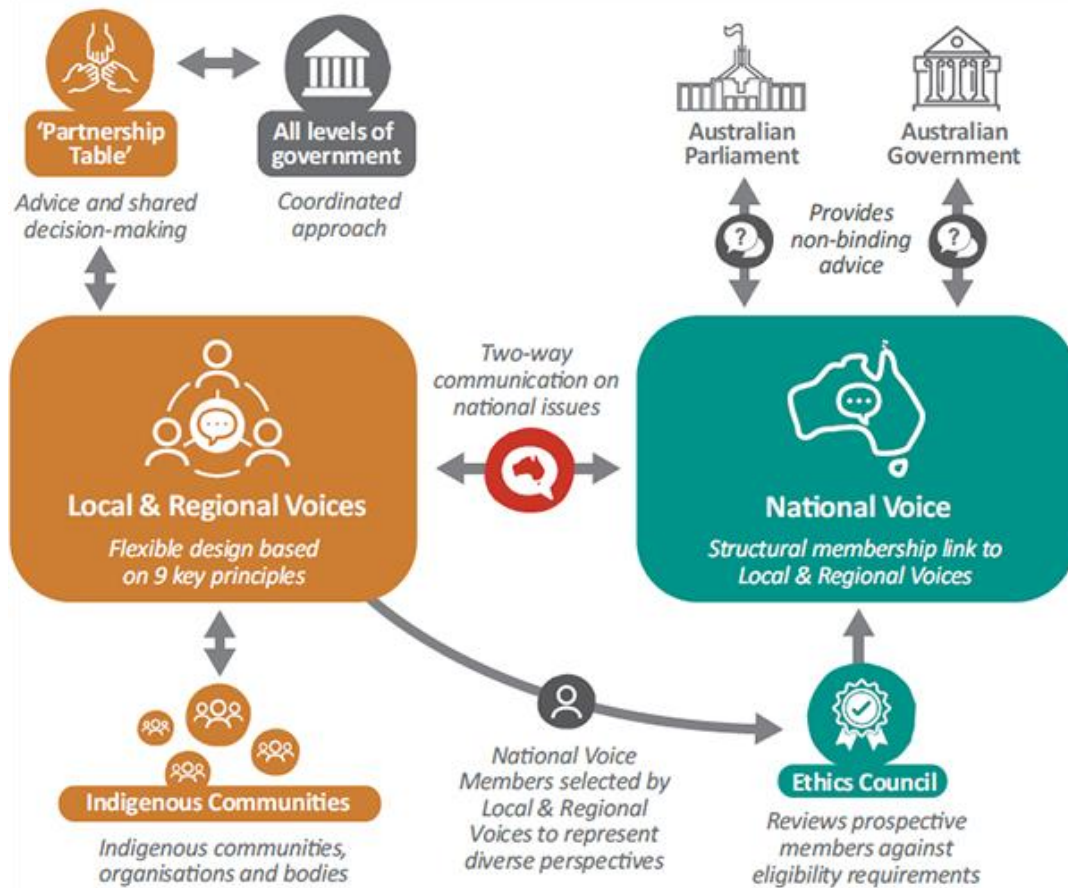
- be a genuinely representative body that reflects local communities in their diversity
- ideally, have cultural legitimacy, selected by First People's themselves in accordance with their own local practices, protocols & expectations.
- structurally independent of government; & adequately funded & resourced.
- draw on the expertise of pre-existing organisations e.g. community groups, peak bodies, but is distinct.
- **Various models already exist** or are evolving e.g. Co Design Final Report, as well as emerging ones such as Victorian First Peoples Treaty Assembly being suggested as the Victorian representation for the First People's Voice & possible directly elected representatives, as suggested by the co-chairs of the First Peoples' Assembly of Victoria.

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<https://www.smh.com.au/politics/federal/walk-with-us-victorian-first-peoples-assembly-offers-lessons-for-national-First-People's-Voice-20220802-p5b6ls.html>

Do we need more detail?

- Senator Patrick Dodson: The Australian people are being asked to vote 'on principle, not on detail'.
- A complete "model" of the First People's Voice will mislead & confuse voters & impair the constitutional function of the referendum. Voters may think they are voting on the detail of the model, & not the actual constitutional provision they are required to vote on. e.g. Republic referendum in 2001.
- The Co Design Model 280-page report (First People's Voice. niaa.gov.au/final-report) delivered to government in July 2021' contains detailed proposals- this is their proposed structural model



- Details of the First People’s Voice already exists from the last 10 years of government/ parliamentary inquiries. i.e. Referendum Council’s Regional Dialogues Final Report, the Joint Select Committee on Constitutional Recognition (2018), & the LNP government’s Indigenous Voice **Co-design Process Final Report** of 2021
- A constituted or even legislated model would be ‘too locked in’ & unable to evolve as per First People’s needs & future parliaments would be reluctant to disturb the model that was passed with the referendum.
- Peter Dutton wants more consultation & detail. But he has met with the Referendum Working group & there are already multiple reports etc (see above) that he has seen including a 2018 inquiry co-chaired by his own LNP Shadow Minister Julian Lesser.
- We accept policies at elections from parties prior to elections, without the specific detail, procedures & ‘operational manual’ developed beforehand e.g. affordable childcare, Anti-Corruption Commission, increased paid parental leave

Is the Voice proposal limited because it will only be able to advise parliament on policy & legislation?

- **No.** The Voice will have powers & functions to support First Nations people across a range of matters, as agreed between First Nations & government. Its strength for First Nations communities, as well as its value to government, will come from the legitimacy of being a genuinely representative, collective First People’s Voice & importantly from the mandate gained from the Australian people at a referendum.

<https://ulurustatement.org/education/faqs/>

How can First Nations have input into the model & ensure continued consultation?

- A dedicated process is needed where First people select their own representatives & are fully apprised of the options. This to occur after the referendum, with a timeline, & the principle by which it will be conducted, ideally, have cultural legitimacy, selected by First People’s themselves in accordance with their own local practices, protocols & expectations.
- **Various models already exist** or are evolving e.g. Co Design Final Report, as well as emerging ones such as Victorian First Peoples Treaty Assembly being suggested as the Victorian representation for the First

People's Voice & possible directly elected representatives, as suggested by the co-chairs of the First Peoples' Assembly of Victoria.

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Shouldn't Treaty be first?

- **The Voice is the first step to treaty** ... as per the Statement from the Heart - **Voice Treaty Truth**.
- A treaty takes years to develop & the First People's Voice can be immediate & be the **foundation self-determining body for a Treaty**.

Do the Australian people in general support this reform?

- Yes. Polling over 5 years show a majority of Australians support a First People's Voice to parliament. More recent polling shows 65% of Australians surveyed would vote "yes" to enshrine a First People's Voice to parliament for First Nations peoples in the constitution (The Australia institute, July 2022).

Are First Nations people all supportive of the First People's voice?

- Most are but not all. They are diverse with various communities, (500+ clans, urban/remote, 300+ original languages) values, ideologies, factions... just as non-Indigenous communities are. The Uluru dialogues, the National Constitutional convention, Joint select committee of the First People's Voice co-design through their consultations have shown majority support. Recent polling has shown majority 80% support for The First People's Voice by First Nations communities.
- Uluru Dialogue co-chair Pat Anderson said the research polling, done by Ipsos among Indigenous people (25-1-23) showed overwhelming support for the First People's Voice

<https://www.smh.com.au/politics/federal/not-going-to-chuck-the-towel-in-First-People's-Voice-champion-pat-&erson-undaunted-by-criticism-at-invasion-day-rallies-20230126-p5cfqm.html> David CROWE 27-1-23

Will having A First People's Voice for First Nations enshrined in the Constitution have an impact on First Nations Sovereignty?

According to all constitutional legal advice so far NO.

- The **Constitutional expert group** (of the Referendum Working group) featuring legal scholars including Anne Twomey & George Williamssaid in a statement... **the First People's Voice did not impact sovereignty'**.. Guardian 2-2-23 . https://www.theguardian.com/australia-news/2023/feb/02/indigenous-FIRST-PEOPLE'S-VOICE-to-parliament-peter-dutton-liberal-julian-leeser-referendum-working-group?CMP=Share_&roidApp_Other
- In 2011 Barrister Bret Walker gave advice referred to in both the 2012 Indigenous recognition expert panel report & the 2015 joint select committee report.: *"That recognition of Aboriginal & Torres Strait Islander peoples in the Constitution ...**Nor should constitutional recognition in general have any detrimental effect, ..., on future projects aimed at a greater place for customary law in the governance of Australia.**"*
*The 2015 report quotes: "[British arrivals] did not ask permission to settle. No-one consented, no-one ceded. **Sovereignty was not passed from the aboriginal peoples to the settlers by any actions of legal significance***"The sovereignty [of the commonwealth] ... thus does not depend in any way on any act of original or confirmatory acquiescence by or on behalf of Australia's indigenous peoples."* David CROWE—27-1-23 SMH*

Do other countries have a First People's Voice to their parliaments, or something similar?

- Many liberal democracies with Indigenous populations have mechanisms aimed at improving Indigenous participation in the work of the parliament & the government. Indigenous bodies, parliaments exist, e.g. in Finland, Sweden or Norway; some eg NZ have reserved seats for Indigenous peoples.

Isn't having the First People's Voice racist?

- **No**, because this Voice will recognise Aboriginal & Torres Strait Islander people as being the First peoples of the I& known as Australia with 65000+ years of living here. They have a unique & special place as Indigenous First Peoples of this country. The Voice will acknowledge the need to **address the racism**, dispossession, injustice, genocide, cultural break down experienced by them.

Aren't First Nations peoples already equal?

- In theory they have equal rights but not in reality. Close the gap figures reports attest to this – with health disadvantage, shorter life spans, more disability, mental health, poorer education outcomes etc. They still experience racism, intergenerational trauma, disproportionate numbers of children in care & huge incarceration rates. The voice is part of the path to bring equality.

Why don't they get elected & use these representatives & those already elected as First Nations MP's, to represent their views?

- Whilst it is positive that there are more First Peoples in Parliament, these MP's are not elected by First Nations people. They represent their electorates, their party's views & policies. Their numbers fluctuate over the years according to election outcomes. Some First Nations Peoples do not acknowledge the sovereignty of the Constitution of the Parliament.
- Preselection processes are gruelling, difficult & political parties are in themselves racist & often antithetical to some First Nations cultural practices, values & communication, with thus few First peoples as mainstream political party members.

REFERENCES /RESOURCES

- <https://www.smh.com.au/politics/federal/not-going-to-chuck-the-towel-in-First-People's-Voice-champion-pat-&erson-undaunted-by-criticism-at-invasion-day-rallies-20230126-p5cfqm.html> David CROWE 27-1-23
- 7-12- 22 [Gabrielle Appleby](#), Professor, UNSW Law School, [UNSW Sydney](#) & [Eddie Synot](#), Lecturer, Griffith Law School, [Griffith University](#) This article is republished from [The Conversation](#) under a Creative Commons license. Read the [original article](#).
- Referendum Council's Regional Dialogues, as reported in their [Final Report](#), the [Joint Select Committee on Constitutional Recognition](#) (2018), & the government's Indigenous First People's Voice Co-design Process, as reported in its [Final Report](#) of 2021.
- <https://First-People's-Voice.niaa.gov.au/who-involved#>
<https://First-People's-Voice.niaa.gov.au/resources> for all the past reports that Peter Dutton opposition leader has access to.
- Finding the Heart of the Nation 2nd edition 2022 Thomas Mayor
- <https://ulurustatement.org/>
- <https://fromtheheart.com.au/what-is-a-First-People's-Voice-to-parliament/> <https://fromtheheart.com.au/uluru-statement/frequently-asked-questions/>
- https://www.theguardian.com/australia-news/2023/feb/02/indigenous-first-people's-voice-to-parliament-peter-dutton-liberal-julian-leeser-referendum-working-group?cmp=share_&roidapp_other
- The Referendum Working Group <https://voice.niaa.gov.au/#> <https://www.directory.gov.au/portfolios/prime-minister-&-cabinet/national-indigenous-australians-agency/referendum-working-group#:~:text=The%20Referendum%20Working%20Group%20will,referendum%2C%20refining%20the%20proposed%20constitutional>
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- The Australia institute, July 2022.

Jenne Perlstein

First Nations Ally 40 years; Walking Together Group co- Coordinator & member First Nations Solidarity - BUC; VIC ALP Aboriginal Affairs Policy committee member (& ex Chair) 20 years; ANTaR (Land Equality Justice), Vic Member 27 years & ex Co Chair 4 years.

10-2-23