





YOUR GUIDE TO THE ABORIGINAL AND TORRES STRAIT ISLANDER VOICE REFERENDUM



ABOUT THE GUIDE

This document has been created by the Don Dunstan Foundation's Flinders University intern, Maruca Ciulacu-Nemteanu, as part of her internship project in Semester 1 2023.

Maruca tells us what inspired the creation of Your Guide to the Aboriginal and Torres Strait Islander Voice Referendum and what we hope it will add to current public discussions about the upcoming referendum:

"Knowing that the DDF has a strong focus on First Nations people and Indigenous rights, it was clear to me from the start that I wanted this to be the focus of my project and the upcoming Referendum appeared to be a contemporary way to achieve this.

Before starting this project, I would describe my knowledge about the Voice and Referendum as limited. Sure, I knew about the Uluru Statement from the Heart, but I didn't really understand what the proposed Voice was. From conversations with various people, the concept for my project developed more clearly. I was finding there were limited sources that captured the many layers of the Voice and the Referendum. Often, I would find sources would describe the proposed Voice model and say that we needed the Voice, but I was still left with questions – but why did we need a Voice? How will it help Indigenous Australians? From this, I was inspired to create a resource that would capture and bring together all these different aspects in a simple and digestible way.

As a result, my project undertook various iterations before settling on this guide. Throughout this internship, my overarching goal was to create something helpful so the reader would be left feeling more knowledgeable on the Voice."

The Foundation acknowledges the Kaurna people as the Traditional Custodians of the Adelaide Region, where our office is located. The Foundation pays tribute to the Kaurna people's physical and spiritual connection to land, waters and community, enduring now as it has throughout time. The Foundation pays its respects to the Kaurna culture and to Elders past and present.

The Foundation extends this respect to all First Nations people and communities across South Australia, recognising that we live and work on what always was, and always will be, Aboriginal land.

The Foundation recognises and supports the Uluru Statement from the Heart as a blueprint for our future as one nation, with constitutional recognition for First Nations peoples through a Voice to Parliament. We walk with First Nations peoples in a movement of the Australian people for a better future.







About the author

Hello, my name is Maruca Ciulacu-Nemteanu, and I am the author of Don Dunstan Foundation's Your Guide to the Aboriginal and Torres Strait Islander Voice Referendum'

I am currently studying a Bachelor of Laws and Legal Practice (Honours) combined with a Bachelor of International Relations at Flinders University. As part of my studies, I was lucky enough to complete an internship with the Don Dunstan Foundation and I have thoroughly enjoyed my time there!

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INTRODUCTION

"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.

We call for the establishment of a First Nations Voice enshrined in the Constitution."

The Uluru Statement from the Heart, 2017

This year, the Australian public will be asked to vote in a referendum to enact the first pillar of the Uluru Statement from the Heart as pledged in 2022 by Prime Minister Anthony Albanese to implement. The first pillar involves constitutional recognition through an Aboriginal and Torres Strait Islander Voice.

The purpose of this resource is to act as a guide for any reader to feel more familiarised with the upcoming referendum. This guide will cover several topics including what the proposed amendments are, an overview of the constitutional recognition process, the proposed Voice model, why we need a Voice, frequently asked questions, addressing concerns, and additional resources for readers.

The goal is for the reader to become <u>an informed voter who can feel confident in their referendum vote</u> as well as developing confidence to have discussions with other people on the Aboriginal and Torres Strait Islander Voice Referendum.

THE PROPOSED REFERENDUM QUESTION

"A Proposed Law: to alter the Constitution to recognise the First Peoples of Australia by establishing an Aboriginal and Torres Strait Islander Voice.

Do you approve this proposed alternation?"

THE PROPOSED CONSTITUTIONAL AMENDMENT

After Chapter VIII of the Constitution, to insert:

Chapter IX - Recognition of Aboriginal and Torres Strait Islander Peoples 129 Aboriginal and Torres Strait Islander Voice

In recognition of Aboriginal and Torres Strait Islander Peoples as the First Peoples of Australia:

- i. There shall be a body, to be called the Aboriginal and Torres Strait Islander Voice;
- ii. The Aboriginal and Torres Strait Islander Voice may make representations to the Parliament and the Executive Government of the Commonwealth on matters relating to Aboriginal and Torres Strait Islander peoples;
- iii. The Parliament shall, subject to this Constitution, have power to make laws with respect to matters relating to the Aboriginal and Torres Strait Islander Voice, including its composition, functions, powers and procedures.

HOW DID WE GET HERE? A TIMELINE OF CONSTITUTIONAL RECOGNITION

The 2023 Referendum is a culmination of much advocacy by Indigenous Australians for decades. First Nations people have been calling for recognition as early as colonisation. This timeline focuses on the most recent wave in the constitutional recognition movement.

2010

The Expert Panel on the Recognition of Aboriginal and Torres Strait Islander Peoples in the Constitution is established.



2012

The Expert Panel delivers its report and recommends removing existing constitutional references to race and inserting a statement of Indigenous recognition into the Constitution.



2013

The Aboriginal and Torres Strait Islander Peoples Recognition Act passes to provide an interim form of recognition of Aboriginal and Torres Strait Islander Peoples (it is no longer in force).



2014

The Joint Select Parliamentary Committee is formed to advance the work of the Expert Panel on the Recognition of Aboriginal and Torres Strait Islander Peoples in the Constitution.

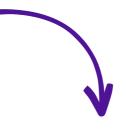


2015

The Referendum Council is established and the Kirribilli Statement is issued to Prime Minister Malcolm Turnbull and Opposition Leader Bill Shorten.

2016-2017

The Referendum Council conduct First Nations Constitutional Dialogues across the country to discuss options for constitutional reform and ensure Aboriginal decision-making is at the heart of reform process.



2017

The Uluru Statement from the Heart is issued to the Australian people. The Referendum Council holds a National First Nations Constitutional Convention at Uluru to ratify the decision making of the Regional Dialogues.



2018

The Joint Select Committee finds the Voice is the only viable recognition proposal and recommends that the Government initiate a process of codesign of the Voice with Aboriginal and Torres Strait Islander peoples.



2019

Minister for Indigenous Australians, Ken Wyatt, announces a co-design process to determine the structure and functions of the Voice.



2022

The Labor Government led by Anthony Albanese is elected and reconfirms his commitment to implement the Uluru Statement.



2023

The Aboriginal and Torres Strait Islander Voice Referendum will take place.

WHAT WILL THE VOICE LOOK LIKE?

The proposed Aboriginal and Torres Strait Islander Voice is designed around the following 8 principles:

The Voice will give independent advice to Parliament and Government

- The Voice would make representations to the Parliament and Executive Government on matters relating to Aboriginal and Torres Strait Islander peoples.
- Representations can be made proactively.
- Representations can be requested by Parliament and the Executive Government.
- The Voice would have its own resources to allow it to research, develop and make representations.
- Parliament and the Executive Government should seek representations in writing from the Voice early in the development of proposed laws and policies.

It will be chosen by Aboriginal and Torres Strait Islander people based on the wishes of local communities

- Members would be selected by Aboriginal and Torres Strait Islander communities, not appointed by the Executive Government.
- Members would serve on the Voice for a fixed period of time, to ensure regular accountability to their communities.
- To ensure cultural legitimacy, the way members of the Voice are chosen would suit the wishes of local communities and would be determined through the post-referendum process.

It will be representative of Aboriginal and Torres Strait Islander communities, gender-balanced and include youth

- Members would be Aboriginal and Torres Strait Islander according to the standard 3-part test.
- Members would be chosen from each of the states, territories and the Torres Strait Islands.
- Specific remote representatives and mainland Torres Strait Island representatives would also be included.
- Would have balanced gender representation.



It will be empowering, community-led inclusive, respectful, and culturally informed



- Members would be expected to connect with and reflect the wishes of their communities.
- The Voice would consult with grassroots communities and regional entities to ensure its representations are informed by their experience, including the experience of those who have been historically excluded from participation.

It will be accountable and transparent



- The Voice would be subject to standard governance and reporting requirements to ensure transparency and accountability.
- Members would fall within the scope of the National Anti-Corruption Commission.
- Members can be sanctioned or removed for serious misconduct.

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It will work alongside existing organisations and traditional structures

• The Voice would respect the work of existing organisations.

It will not have a program delivery



 The Voice would be able to make representations about improving programs and services, but it would not manage money or deliver services.



It will not have a veto power

WHY DO WE NEED AN ABORIGINAL AND TORRES STRAIT ISLANDER VOICE TO PARLIAMENT?

Will the Voice improve the lives of Aboriginal and Torres Strait Islander people?

BETTER INSIGHT INTO COMMUNITIES

A Voice to Parliament will provide the Australian Government with better quality information about the issues faced by First Nations communities. Importantly, this source of information will be coming directly from communities who have lived experiences and practical knowledge. It will be these community appointed members who will act as representatives of the Voice.

It is well known that collaboration with Aboriginal and Torres Strait Islander peoples in the design and implementation of laws and policies enables more successful outcomes. This is accepted across political parties and forms a core principle of the National Agreement on Closing the Gap, which was introduced by the Coalition Government in 2020 and is now being implemented by the current Labor Government. Insights from communities will result in more informed and responsive laws and policies, better targeted investment and ultimately better outcomes for First Nations people across many sectors.

Why do we need to put the Voice in the Constitution?

AN ACT OF RECOGNITION AND RESPECT

Currently, there is no formal recognition of Aboriginal and Torres Strait Islander people in the Australian Constitution. It is well established that Indigenous Australians have a connection to this land that spans over 60,000 years. The Uluru Statement from the Heart identifies that Aboriginal and Torres Strait Islander peoples want a Voice in the Constitution as the mechanism for recognition. The proposed amendment to the Constitution achieves this by stating, "In recognition of Aboriginal and Torres Strait Islander Peoples as the First Peoples of Australia...".

ENSURES SECURITY AND STABILITY

The Australian Parliament has previously established national Indigenous representative bodies. Similar to the Voice, their objective was to speak to Government on policies and laws which affected Aboriginal and Torres Strait Islander peoples. However, each representative body was abolished by successive Governments. This lack of stability has contributed to the ongoing disadvantage experienced by First Nations people. By constitutionally enshrining the Voice, it provides greater independence and stability as it will not be aligned to political parties or undermined by election cycles and could only be removed by another referendum.

MORE LIKELY TO SUCCEED

A Voice in the Constitution demonstrates to the Australian Parliament and Government that it is endorsed by the Australian population (through a successful referendum) giving the representative body greater legitimacy. It indicates to political leaders that the Australian public wants the Voice to be taken seriously.

Why do we need an Aboriginal and Torres Strait Islander Voice when there are already elected Indigenous Parliamentarians?

We currently have a record 11 Indigenous Australians serving in Federal Parliament, which equals 4.8% or 11 of 227 members. While this is a positive development and can enable Indigenous interests and concerns to be heard in Parliament, a First Nations Voice is still needed for several reasons.

INDIGENOUS POLITICIANS HOLD A DIFFERENT ROLE

It is often assumed that Indigenous politicians will act as representatives for all Indigenous Australians across Australia. While Indigenous politicians can represent the interests of Indigenous Australians, their role as Members of Parliament or Senators is different to that of Indigenous representatives on the Aboriginal and Torres Strait Islander Voice. The key difference being that Indigenous Parliamentarians, like all Senators and MPs, are required to represent their constituents first and foremost, and are informed by electorate considerations and party affiliations.

The Voice sits independently from Parliament and Government and its role is to provide advice on and partnership in the development of laws and policies that will impact them. In the Final Report to the Australian Government, the National Indigenous Australians Agency proposed the National Voice would include 24 members with a structurally guaranteed gender balance. Of the 24 members, there would be 2 members to represent each state, the NT, ACT and Torres Strait (total 18), a further 5 members would represent remote areas (NT, WA, QLD, SA and NSW) (total 23) and the remaining member would represent a Torres Strait Islander person living on the mainland. The Voice better captures and represents the diversity of Indigenous communities in Australia as opposed to the 11 elected Indigenous Members of Parliament. Likewise, the Voice can reduce the burden on Indigenous politicians. For example, senators from Western Australia or the Northern Territory may not be aware of the nuanced challenges faced by Indigenous communities in Tasmania. The Voice therefore would enable greater insight on particular issues and communities instead of party interests or electoral limitations.

THE VIEWS OF POLITICIANS DON'T ALWAYS ALIGN WITH THE COMMUNITY

The views of Indigenous politicians do not always match up with the views of the community. As considered by Regional Delegates at the Uluru Dialogues, "there are Aboriginal people who have been elected to Parliament, but they do not represent us. They represent the Liberal or Labor Party, not Aboriginal People." By having an Indigenous Voice to Parliament, it can enable Indigenous communities nation-wide to have a say in laws and policies that will directly impact their lives.

For example, we have seen this play out within political debate regarding the Voice. Individual Members of Parliament and Sentators, including Jacinta Price, Lidia Thorpe and Kerrynne Liddle, have opposed to the Voice for various reasons. However, the Voice to Parliament is a reflection of the majority of Aboriginal and Torres Strait Islander people. We know this by looking back at the Uluru Statement from the Heart. Following his election 2022, Prime Minister Anthony Albanese affirmed his promise to enacting the Uluru Statement from the Heart. The Uluru Statement identifies the constitutional recognition and reforms desired by First Nations people - Voice, Treaty and Truth. The Uluru Statement is the culmination of First Nations Regional Dialogues held across Australia in 2016-2017 which set out to identify options for constitutional recognition. At the National First Nations Constitutional Convention in 2017, the Uluru Statement from the Heart was issued to the Australian public and the Statement itself was signed by over 250 Aboriginal and Torres Strait Islander delegates. Additionally, in a poll conducted earlier this year by IPSOS found 80% of First Nations people would vote yes in a referendum, 10% stated they were undecided and the remaining 10% said they did not support the Voice. This demonstrates that the interests of Indigenous politicians do not always align with the community.

ADDRESSING CONCERNS

While there is a great deal of support for the Aboriginal and Torres Strait Islander Voice, some concerns regarding the proposed constitutional amendment also exist. Many of these concerns have become the basis of No campaigns and are endorsed by some politicians.

Concerns about the Voice range from it being divisive instead of unifying, that it is a Canberra politician's Voice not an Indigenous Voice, that the Voice is just bureaucracy and won't function practically, that Treaty should come before Voice and questions about what the Voice means for Aboriginal and Torres Strait Islander sovereignty.

Would an Aboriginal and Torres Strait Islander Voice divide Australians based on race?

RACIAL DIVISION ALREADY EXISTS

Some of the discourse surrounding the Voice is that by supporting the Voice, it will create division among the nation, "It puts racial separation in your Constitution by giving a Voice to one group, based on race, that no other group has, or will have" (Fair Australia, n.d.).

The Constitution as it currently exists already has division based on race within it. Section 25 grants States the possibility of disqualifying people of a particular race from voting in State elections and section 51 (xxvi) grants Parliament the power to make laws on "the people of any race for whom it is deemed necessary to make special laws".

The concept of race is recognised by biological scientists, anthropologists and social theorists as socially constructed and scientifically indemonstrable. Having mapped the human genome, scientists have shown that there is no genetic code for race. Instead, race has been used to justify suffering and injustice against populations on the basis that mental capacities are correlated to physical differences.

Until the 1967 referendum and section 51 (xxvi) was amended, Aboriginal and Torres Strait Islander peoples were the only race that federal parliament were unable to make laws for - the power was granted only to states. Since then, section 51 (xxvi) has been used to establish organisations, give Indigenous Australians access to services and participate more fully in society. But likewise it has enabled policy such as the 2007 Northern Territory intervention which has been widely criticised by Aboriginal and Torres Strait Islander groups. The High Court of Australia in the Hindmarsh Island Bridge case were also unable to reach a conclusion as to whether section 51 (xxvi) is interpreted as enabling 'beneficial' or 'detrimental' laws.

Given that parliament already has the power to pass laws specifically on Aboriginal and Torres Strait Islander peoples, the proposed Voice will not divide Australians based on race. As an advisory body, the Voice promotes First Nations people to be involved in the decision-making process and to help create laws that are beneficial instead of detrimental.

Would a separate body for Indigenous Australians give Aboriginal and Torres Strait Islander peoples special rights?

THE VOICE DOES NOT GRANT SPECIAL RIGHTS

This question has been considered by legal experts who concluded the Voice does not grant special rights on anyone. The Voice would not change or remove any right, power or privilege of anyone who is not Indigenous. Instead, the Voice gives Aboriginal and Torres Strait Islander peoples an opportunity to make representations to Parliament and Government.

Parliament can pass special laws that only affect Aboriginal and Torres Strait Islander peoples. This is the only group of people in Australia about which special laws are made. It is reasonable that Aboriginal and Torres Strait Islander people should be able to speak to Parliament and Government about those laws.

How will the Voice Close the Gap? Is the Voice just more Government bureaucracy?

A NEW SOLUTION IS NEEDED

Closing the Gap is a commitment by Governments to achieve greater equality for Indigenous Australians in health and life expectancy. This initiative has now expanded to include health, social, cultural and education targets. Closing the Gap is often criticised for failing to achieve its targets. The Productivity Commission has recently released data which indicates that of the 19 target areas, only 4 are on track to be met by 2031. Some areas of improvement include tertiary qualification rates, early childhood education and employment rates, whereas many areas are worsening such as incarceration rates of adults.

It is clear that continuing with the status quo will not enable Closing the Gap targets to be achieved. Change is necessary. A structural change like the proposed Aboriginal and Torres Strait Islander Voice that would provide Government and the Parliament insight directly from Indigenous communities. In turn, this perspective can inform policies of the specific needs of the community in order to address Closing the Gap targets. The Voice will also be able to collaborate with the Coalition of Peaks in achieving outcomes. While the Voice will not be an overnight solution, it demonstrates an effort by Government to make a change, try a new approach and listen to the needs of First Nations people.

Will the Voice be the voice of Canberra politicians and not the voice of Aboriginal and Torres Strait Islander peoples?

MEMBERS REFLECT THE COMMUNITY

The Voice will not be the voice of Canberra politicians because members of the advisory body will be selected from the community by the community. Through the specific allocation of the members' seats (i.e. to each state and territory and remote communities) the Voice can elevate the Indigenous communities that struggle to be heard at a national level. By electing community members, the Voice will have the proper knowledge and expertise to give advice on issues.

What about Treaty? Should Treaty come before Voice?

VOICE FIRST, THEN TREATY AND TRUTH

Some sections of the population, both Indigenous and non-Indigenous, advocate for a Treaty instead of a Voice or that Treaty should come before Voice. It is argued that a Voice will lead only to talk and doesn't guarantee civil rights of Aboriginal and Torres Strait Islander peoples.

"This argument fails to understand the potential power of the Voice. It can, not only lay a foundation for a movement towards reconciliation and truth, but also act as a tool to craft novel solutions to the problems created by the unique circumstances of Australia's history and culture" (Anderson & Komesaroff, 2022).

The Uluru Statement from the Heart does not exclude Treaty. In fact, Treaty is one of the three components for constitutional change proposed in the Uluru Statement - Voice, Treaty and Truth. Treaty is captured in the Aboriginal concept of "'Makarrata', which refers to a process of learning from the past to create new ways of interacting with each other based on dialogue. Voice, Makarrata and Truth are inseparable, but Voice is the motor that drives all of them forward" (Uluru Statement from the Heart, 2017).

Will the Voice cede Aboriginal and Torres Strait Islander sovereignty?

THE VOICE IS INDEPENDENT FROM INDIGENOUS SOVEREIGNTY

An Aboriginal and Torres Strait Islander Voice cannot and will not cede the sovereignty of Indigenous peoples. Several leading Indigenous and non-Indigenous constitutional and international lawyers have considered this question and have identified three reasons as to why this is not possible.

- 1. Indigenous sovereignty cannot be ceded except by agreement. Only Aboriginal and Torres Strait Islander peoples can cede their sovereignty. Likewise, the Voice proposal makes no mention of Indigenous sovereignty.
- 2. Indigenous sovereignty cannot be extinguished by the Australian Constitution. Indigenous sovereignty is connected to and drawn from Country. It does not come from the Australian Constitution as reflected in the Uluru Statement from the Heart, Indigenous sovereignty is 'a spiritual notion'.
- 3. The Participation of Aboriginal and Torres Strait Islander peoples in Australian governance does not cede sovereignty. The Voice is a platform that enables Aboriginal and Torres Strait Islander peoples to participate in the development of law and policy that affects them.

A REFERENDUM REFRESHER

A referendum is a national vote on a question about a proposed change to the Australian Constitution. There are several phases involved in conducting a referendum.

Phase 1: A referendum is decided

- Before a referendum takes place, the Federal Parliament of Australia must decide on the proposed change to the Constitution.
- The proposed law that outlines the changes to the Constitution needs to be passed by both houses of Parliament (the House of Representatives and the Senate) or passed twice in either houses of Parliament.
- Once approved, the referendum can take place after 2 months at its earliest but no later than 6 months.
- The Australian Electoral Commission is the responsible body for conducting the referendum and provides campaigns for both the 'Yes' and 'No' cases.



For this referendum you will receive a ballot paper with the proposed change to the Australian Constitution.

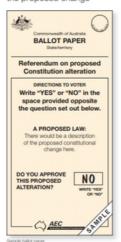
On the ballot paper:

Write **YES** if you approve the proposed change



Write **NO** if you do not approve the proposed change





Don't worry if you make a mistake. You can ask for another ballot paper and start again.

Phase 2: The vote is conducted

- The Governor-General of Australia issues a writ (formal instructions) to run the referendum.
- Similar to elections, the referendum must be held on a Saturday and voting will occur in the same polling places such as schools or other public buildings.

Phase: 3 The results are decided

- The Australian Constitution can only be changed when the results are approved by a double majority.
- Counting votes may take days or weeks and each vote is counted more than once to check that the initial count was correct.
- The referendum result is binding and the Australian Government must act on the results of the referendum.

Phase 4: The counting of votes is completed

• When the counting process is finished, the Australian Electoral Commission will return the writ to the Governor-General with a certificate from the Electoral Commissioner which sets out the results of the referendum from each state, territory and nationally.

If passed, there will be consultation with Aboriginal and Torres Strait Islander communities and broader public to finalise the Voice design.

A bill to establish the Voice is introduced to Parliament, where it needs to be passed by Parliament to become law.

Once approved, the legislation comes into effect and the Voice is established and implemented.

If the referendum is unsuccessful, no amendment is made to the Constitution and the Voice is not established.

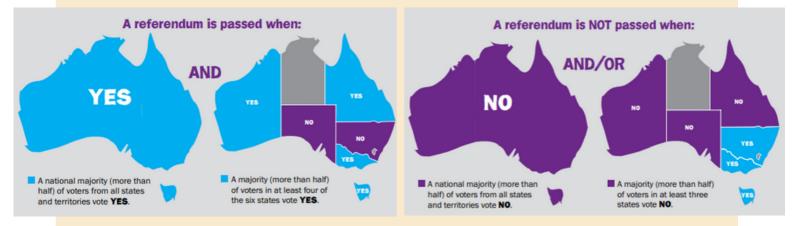
What needs to happen for a referendum to pass?

A referendum is passed when:

• A national majority (more than half) of voters from all states and territories vote YES

AND

• A majority (more than half) of voters in at least four of the six states vote YES



Even if a majority of all voters vote YES, if a majority of voters in three states or more vote NO, the referendum is not passed.

ADDITIONAL RESOURCES

From Yes23:

- A Guide to Talking About the Voice to Parliament
- Frequently Asked Questions

From The Uluru Statement from the Heart:

 Resources on the <u>Uluru Statement</u> from the <u>Heart and First Nations</u>
 Voice

From Yes23 and the Uluru Statement from the Heart:

 Indigenous Constitutional Recognition Through a Voice Course

From **The Conservation**:

 Frequently asked questions about the Aboriginal and Torres Strait Islander Voice

From the Attorney-General's Department SA:

• Information and resources on the South Australian First Nations Voice

From the Parliament of Australia:

Bills Digest for the Constitution
 Alteration (Aboriginal and Torres
 Strait Islander Voice) 2023 - a
 comprehensive overview on the
 proposed Voice, the history of
 advocacy and discussion of key
 issues.

Author's acknowledgements

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