

MAKE AN INFORMED CHOICE



FOR THE VOICE TO PARLIAMENT

The Castan Centre for Human Rights Law

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Acknowledgement of Country

The Castan Centre acknowledges and pays respect to the Bunurong Boon Wurrung peoples and the Wurundjeri peoples of the Kulin nation on whose land we live, work and play. We pay our respects to their Elders past and present and extend that respect to Aboriginal and Torres Strait Islanders who may read this.

We celebrate the diversity of First Nations peoples and their ongoing cultures and connections to land, sea and skies. These lands are, always were and always will be Aboriginal and Torres Strait Islander land. Sovereignty was never ceded.

Our Mission

The Voice to Parliament Clinic at the Castan Centre for Human Rights Law is made up of passionate law students from Monash University. We endeavour to use our legal knowledge to provide information that cuts through the noise and misinformation to help Australians make an **Informed Choice for the Voice**.

In 2023, all Australians will be asked to vote 'Yes' or 'No' to Indigenous Constitutional recognition. This booklet is to help you understand what the Voice to Parliament referendum is about and take an informed position on an Indigenous Voice.

 [@informedchoicevtp](https://www.instagram.com/informedchoicevtp)

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An Introduction to the Referendum

Legal Background

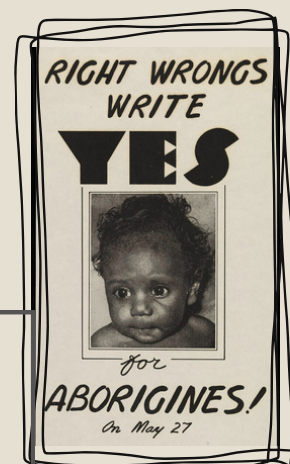
What is a referendum?

The Australian Constitution outlines the governing principles of our National systems, including the powers and structure of Parliament, Government and the courts. A referendum is a nation wide vote on a proposed change to the Constitution to determine the view of the Australian people.

A referendum will only be successful if a **majority of all Australian voters** vote 'Yes' as well as a **majority of states** vote 'Yes.' This means that it is very difficult for a referendum to succeed. Only 8 out of 44 referendums have passed since the Constitution's inception in 1901.

The most successful referendum in this nation's history was in 1967, which amended a section of the Constitution that explicitly excluded First Nations Australians. This enabled Aboriginal and Torres Strait Islander people to be counted as part of the population and allowed the Federal Government to make laws for them.

90.77% of Australian voters voted 'Yes' and every single state and territory had a majority 'Yes' vote in the 1967 referendum



What are we being asked to vote on?

At the 2023 referendum we will be asked whether to insert a new 'Chapter IX Recognition of Aboriginal and Torres Strait Islander Peoples into the Constitution.' All eligible voters must enrol and vote by writing 'Yes' or 'No' to the following 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 alteration?

Write "YES" OR "NO"

The VOICE



What is the Voice to Parliament?

The referendum would give Constitutional recognition to First Nations Australians as the traditional owners of this land. It establishes a constitutional principle that First Nations People should have a say about laws and policies that affect their communities.

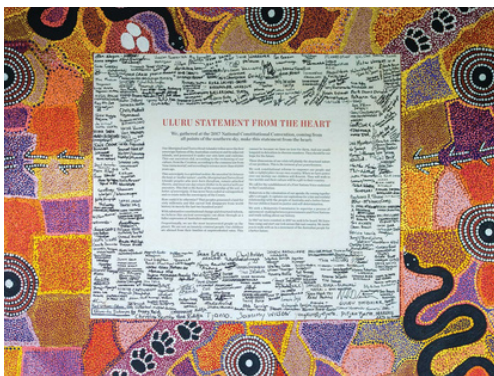
The Voice would be an advisory body made up of First Nations representatives who may make representations to Parliament and the Executive Government on laws relating to them. This will assist Governments to make better laws for First Nations Australians in partnership with them.



The Uluru Statement from the Heart

In 2017, **250 Indigenous leaders** who represented communities across the nation, gathered at Uluru to discuss constitutional recognition. These delegates reached a **97%** consensus on how non-Indigenous and Indigenous Australians could walk together to build a better future.

The Uluru Statement requests three important things: **'Voice, Treaty, Truth.'** First Nations Australians call for a Voice to Parliament that is enshrined in the Constitution to ensure that they have a permanent Voice to the Australian Parliament.



First Nations People make up **3.8%** of the Australian population

YET THEIR MORTALITY RATE IS

1.7 TIMES HIGHER
WITH
61% DEATHS BEFORE
AGE 65

COMPARED WITH 17% FOR NON-INDIGENOUS AUSTRALIANS



YET THEY ARE

12.5 TIMES
MORE LIKELY TO BE IMPRISONED
AS AN ADULT

26 TIMES
MORE LIKELY TO BE IMPRISONED
AS A CHILD



YET THEY HAVE

1.4 TO 2.4 TIMES
HIGHER

SUICIDE RATES
THAN NON-INDIGENOUS
AUSTRALIANS



Source: Australian Law Reform Commission and Australian Institute of Health and Welfare 2021

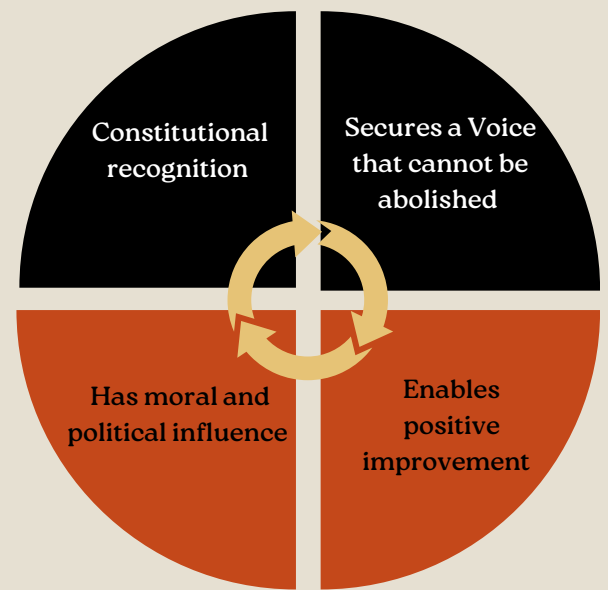
The Government's 'Close the Gap' initiatives has identified **19 socio-economic** targets to close the disadvantage between Indigenous and Non-indigenous Australians, however only **4 are improving** and **4 are worsening**. Source: Commonwealth Closing the Gap Annual Report 2022



The Need For An Enshrined Indigenous Voice

First Nations Australians were not only left out of the discussions for the Australian Constitution, they were explicitly excluded from its operation. Prior to the referendum in 1967, Section 51(xxvi) stated that Parliament could make laws for any race **'other than Aboriginal and Torres Strait Islanders.'** Enshrining the Voice in our national Constitution would finally recognise First Nations Australians as the 'First People' of this country who have continually occupied it for over 60,000 years.

Including a Voice to Parliament into the constitution through a referendum, rather than simply through ordinary legislative change, provides the Voice with significant political and moral influence as it would be backed by the majority of Australian people. This imbues the Voice with a special credibility and authority, and places a political responsibility on Parliament as our representatives, to listen to the Voice and make laws in consultation with them.



A Voice in the Constitution would establish a secure and permanent Voice to First Nations Australians that cannot be silenced or abolished by government or affected by other political pressures. In the past, countless Indigenous bodies have been set up by governments and then later abolished. Enshrining the Voice ensures the advisory body can provide frank and honest representations on how laws impact them without fear of political backlash or withdrawal of funding.

A Constitutionally guaranteed Indigenous Voice would mean that Parliament can continue to develop and improve the Voice advisory body through legislation. This means that the Voice will be able to evolve and become more effective in its ongoing drive to close the gap between Indigenous and non-Indigenous Australians that has resulted from the systemic inequities within our national systems.

Abolished Indigenous advisory bodies

~~National Aboriginal Consultative Committee (NACC), abolished 1977~~

~~National Aboriginal Conference (NAC), abolished 1985~~

~~Aboriginal and Torres Strait Islander Commission (ATSIC), abolished 2004~~

Myth Debunking

This has been adapted from Dr Katie O'Bryan's and Professor Paula Gerber's article '[Voice to Parliament: Debunking 10 myths and misconceptions.](#)'

1 'The Voice will be a third chamber of Parliament'

A 'third chamber' refers to the creation of an additional body that has the same powers as the other houses of Parliament. The Voice is an advisory body that can only make representations to Parliament. The body does not have the power to veto or pass laws, which is the exclusive power of Parliament per the Constitution. Therefore, the Voice reserves the sovereignty of Parliament that our Constitution envisioned.

2 'The Voice is merely symbolic and will not have positive, practical impact on the lives of First Nations People'

The Voice would provide Parliament and Government with authoritative perspectives on issues that impact First Nations people which will lead to better laws. Parliament would not be obliged to implement its advice, however the Voice would have significant moral and political authority as an Australian 'Yes' vote would demand that the voices of First Nations peoples are listened to. Parliament will likely be more deliberative in its consideration of advice from the Voice and have to provide good reasons for not taking its advice in consequence.

3 'The Voice will give First Nations People Special Rights'

Under the Constitution and the implied right of political communication, all Australians have the right to make representations to Parliament. The Constitutional Expert Group has advised that a First Nations Voice does not give any special rights and would not 'change or take away any right, power or privilege of anyone who is not Indigenous.' First Nations Australians make up 3.8% of the Australian population, therefore it is important that this Voice and its permanency is protected in the Constitution.

4 'First Nations People are divided over the Voice, therefore it shouldn't be supported'

First Nations communities are varied and diverse in their opinions. However, a YouGov survey conducted in April 2023 revealed that 83% of First Nations Peoples are in favour of a Constitutionally enshrined Voice.

5 'The Voice will be a lawyer's picnic that leads to many High Court challenges'

The content of the representations is non-justiciable, meaning that they are not subject to litigation in the courts. This is because the courts are hesitant to interfere with Parliament's intention as a separate arm of government. Former High Court Judge Kenneth Hayne says it would be a matter for the Voice to decide whether it is appropriate to make representations to the Executive Government on a particular policy. Regardless, the Voice cannot dictate any policy; it is only advisory.

What the Voice may look like

Why isn't there more detail on how the Voice would operate?

- Our Constitution sets up the principles, procedures, and powers of our systems. It does not establish all the details about how things are done.
- The Constitution is often referred to as a 'living' document as it was designed to evolve and reflect the changes in society since its creation in 1901. This cannot happen if we are locked into the details.
- It is the responsibility of Parliament to make laws in accordance with the Constitution and to decide the practical application of these principles.

What principle is being established by this referendum?

- The referendum is simply establishing the principle in our Constitution that Aboriginal and Torres Strait Islander people should have a Voice through an advisory body to Parliament and the Executive Government.
- Like other advisory bodies, the model and structure of the Voice would be decided by Parliament, representing all Political points of view, after intensive parliamentary debate in both Houses.

The Design Principles for the Voice

Whilst the final form that the Voice will take on will be decided upon by Parliament, the design principles set out in the Government's 'Indigenous Voice Co-Design Process' that consulted with First Nations Peoples and experts over a two-year period, outlines how the Voice could work.

Independent The Voice would give independent advice to Parliament and Government.

Transparent The Voice would be subject to standard governance and reporting requirements to ensure transparency and accountability.

Representative The Voice bodies would be chosen by First Nations People and would be representative of their communities, gender balanced and include youth.

LOCAL VOICES



- 35 local Voice bodies
- Individually designed and run by the communities

NATIONAL VOICE



- 24 members voted in by Local bodies:
- 2 from each state and territory
 - 5 from remote communities
 - 2 from the Torres Strait
 - 1 representing Torres Strait Islanders living on the mainland



Their representations would be considered. But it is Parliament's discretion on whether it is taken up.

THE VOICE TO PARLIAMENT CLINIC

'Ask us First'

The Voice to Parliament Clinic's video piece 'Ask us First' provides an engaging platform to distinguished First Nations leaders, activists, musicians, athletes, and artists to answer questions and common misconceptions about the Voice to Parliament.

Before you vote Australia

**ASK US
FIRST**

 **MONASH**
University

CASTAN
CENTRE FOR
HUMAN RIGHTS
LAW

 <https://www.youtube.com/watch?v=QxdX8M67LkM&t=8s>

Why I, as a Ukrainian-Australian, must vote Yes for an Aboriginal and Torres Strait Islander Voice to Parliament

Josh Spork is a Law/Arts student at Monash University. This article was published in the Geelong Advertiser.

As someone with Ukrainian heritage, I am very passionate about human rights and believe it is important to preserve, promote, and celebrate different cultures and languages. My grandparents fled Ukraine after World War II. They fled the oppression of both the Nazis and the Communists who wished to erase their culture, language and histories through violent repression.

They knew what it was like to experience the pain of displacement, the sting of cultural erasure, and the trauma of genocide. My grandparents settled in Geelong. Australia offered a haven, a beacon of peace, hope, and prosperity in which they were free to speak their language and practice their culture and religion.

I have always struggled to reconcile this with the experiences of the Australia's First Peoples. How could Australia, a sanctuary for my family, be built upon the suffering of its first inhabitants?

Their story is one of the devastating impacts of colonisation and the ongoing fight for recognition and justice. The cultural erasure, the dispossession, and silencing of their language and voice draws harrowing parallels with the violence that my own family fled in Ukraine, and the experiences of many other European migrants that came here after WWII.

Stalin's 1930s famine in Ukraine, aimed at obliterating the population for Russian resettlement, echoes the plight of Indigenous peoples in Australia who, until 1969, had lands confiscated and were placed in missions and forbidden from speaking their languages and practicing their culture.

Even today, Russia is removing children from Ukrainian families and taking them to Moscow to be raised in Russian to erase their heritage and culture. This is eerily similar to the Stolen Generations. Aboriginal and Torres Strait Islander children were removed from their families and communities to be raised white as recently as the 1970s. Does Putin want to do in Ukraine what Australia has done to Indigenous peoples?

Given this, I find the proposed Aboriginal and Torres Strait Islander Voice to Parliament vital. It's not a call for retribution or conflict, but an invitation to walk a path of healing, respect, and cooperation. The proposal is for an indigenous advisory body to government. This is not radical, but could be a meaningful step toward representation and reconciliation.

We, as Australians, need to acknowledge the historical injustices suffered by the Aboriginal people. We cannot ask them to simply "move on", no more than we could ask a Ukrainian who has suffered under Russian occupation to simply forgive and forget.

While Australia has progressed significantly, the struggle for recognition continues for Aboriginal peoples. Just as we condemn Putin's oppressive rule over Ukrainians, we should not deny Aboriginal people their rightful say in Australia. It's time we uphold the Australian values of fairness and equality by voting yes for the Aboriginal Voice to Parliament. We can't undo the past, but we should at least try to improve the future.



Respectfully rebutting the progressive No

The Voice is a modest proposal, but it's one that the Left should be proud to support.

Thomas Ponissi is a Laws/Global Studies student at Monash University. This is an abridged version of his article published in the Reasonable Observer. Read it here.

Progressive Yes voters need to develop a vocabulary for countering the progressive No case without either capitulating or chastising. This means engaging sincerely, particularly when First Nations Peoples share their lived experience; after all, the very point of the Voice is that those in a position of power or privilege actively listen. However, this also means responding passionately with a substantive defence of the Voice as a valuable progressive reform in and of itself.

I identify two key concerns of the progressive No case: one around process, the other around power. The process concern is twofold: it alleges that the Uluru Dialogues, the process that led to the Uluru Statement from the Heart, were unrepresentative; and it alleges that the sequence of Voice, Treaty, Truth — the order of the reforms recommended in the Statement — is misguided. The power concern relates to the alleged weakness of the proposed constitutional amendment.

The thirteen Uluru Dialogues, hosted across Australia by various land councils and community organisations between December 2016 and May 2017, were the most proportionally representative consultation process ever undertaken with Australian First Nations Peoples. At the May 2017 National Constitutional Convention, 243 out of 250 delegates — 97% — endorsed the Uluru Statement. Today, over 80% of Aboriginal and Torres Strait Islander Australians support the Voice. This doesn't mean the consultative process was perfect, nor that there was unanimous consensus. However, it does indicate that the Dialogues democratically reached a popular result. The Left is not betraying the anti-racist cause when it listens to a supermajority of Aboriginal and Torres Strait Islander persons.

Every Uluru Dialogue prioritised Voice before Treaty or Truth. There will be an inherent power imbalance when negotiating with the state, but having a constitutionally enshrined elected body to assist with Treaty will mitigate this. A No vote on Voice will thwart momentum and delay a federal Treaty for a generation. We can already look to Victoria and Queensland, respectively: Victoria's First Peoples' Assembly, the state equivalent of a Voice body, is leading the way in negotiating a Treaty, while the

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DO YOU APPROVE THIS PROPOSED ALTERATION?



WRITE "YES" OR "NO"



process in Queensland — a state without a comparable consultative body — has been criticised by elders. Fears that constitutional recognition will extinguish Aboriginal and Torres Strait Islander sovereignty have been debunked by multiple constitutional experts. Enshrining the Voice in the Constitution is an important practical safeguard; it protects against a future Parliament abolishing the body.

Some take issue with the advisory nature of the Voice and do not trust Governments to actually listen if they are not formally compelled to. This is reasonable; Australian history is littered with broken promises. However, just because we are concerned that the Voice's representations will be ignored doesn't mean we should reject the Voice entirely. A successful referendum proposal, the first in over 40 years, would constitute a resounding public endorsement and likely imbue the Voice with great moral influence, at least temporarily. More so, we should continue to campaign after the referendum, to ensure that the Voice's representations are taken seriously and that the entire Uluru Statement is realised. There is nothing inherently wrong with the Voice as a body or instrument. Any issues that may rise will be a reflection of our own shortcomings.

Australian progressives are privileged to have a preferential voting system; I know that I am one of many who favour the Greens, but always put Labor above the Coalition. In a referendum, the Left does not have that luxury. The choice before us is binary. A No vote by any other name is still a No vote.

We shouldn't get baited into rejecting the good in pursuit of the perfect. The Voice is a major step forward. I look forward to spring, to finally being handed my referendum ballot. I will be proud to accept the Uluru Statement from the Heart. I will be proud to write— Yes!

PSO to non-Indigenous POCs: Why we need to vote YES to the Voice to Parliament

Sneha Ramanan is a Arts/Law Student at Monash University. This is an abridged version of her article.

In a nation as diverse and multicultural as ours, it is essential that we recognise and respect the rights and aspirations of all our citizens. The Voice Referendum offers a unique opportunity to rectify the historical injustices inflicted upon Indigenous peoples of Australia by granting them a constitutionally enshrined voice in the decision-making process. While the issue may primarily concern Indigenous communities, it is crucial for non-Indigenous people of colour (POCs) to stand in solidarity and vote yes on this referendum. By doing so, we can foster a more inclusive, equitable, and united Australia.

Australia has often been coined as the nation of immigrants. Our parents, grandparents, aunties, and uncles have left their homelands to build a better life in this country, and their experiences have been fraught with hardship and adversity. We know what it is like to be marginalised in schools, workplaces and communities based on race and cultural diversity. What we do not know is the Indigenous experience of systemic racism in key institutions of Australian society - whether that is the obscene over-representation of Indigenous people in prisons, the negligence they encounter in healthcare settings, or the mistreatment in child services.

Considering our lived experience of societal marginalisation, we should stand in support of First Nations Peoples against the systemic marginalisation they face in our legal systems. These systems are spoils of a colonial past and are therefore rooted in oppression and injustice. Many of us are all too familiar with the trauma caused by colonisation and many of our homelands are still deconstructing the systems and beliefs built by their colonisers. The Australian Constitution and Government are no different.

A constitutionally enshrined Voice for Indigenous Australians will strengthen the very fabric of our society. The Voice to Parliament will allow elected Indigenous Australians to advise on policies and decisions that affect their lives directly, addressing the specific challenges faced by their communities.

In embracing this change, we foster a more inclusive democracy and pave the way for a society where minority voices are adequately heard and valued. It is necessary for this a Voice to Parliament to be enshrined in the Constitution, so that future governments and ministers cannot discard and undo the efforts towards providing a Voice as they have done in the past.

As POCs, we understand the importance of acknowledging and addressing the historical injustices faced by marginalised communities. There are striking similarities between the Aboriginal Civil Rights movements and the decolonisation movements that occurred in colonies across the world. India's Independence movement for example was also a struggle against colonial rule and institutions imposed by the British, that discriminated and suppressed their population. The central aim of both movements is to assert their right to self-determination and gain autonomy over their own land and resources. Aboriginal Australians sought recognition of their sovereignty and cultural rights, while Indians aimed for complete independence from British rule. Interestingly, nonviolent resistance and civil disobedience were significant tactics employed by both movements. Mahatma Gandhi, a prominent leader of the Indian Independence movement, advanced nonviolent protest, and Aboriginal activists also embraced peaceful protests, marches, and sit-ins. In the latter stages, the Indian National Congress sought legal and policy reforms to dismantle discriminatory practices and gain recognition of their rights. The First Nations Peoples are now looking to do the same through constitutional enshrinement of the Voice.

The Voice calls upon non-Indigenous people of colour to use our empathy and stand alongside our Indigenous brothers and sisters in their quest for recognition, justice, and equality. By voting yes, we can help rectify historical injustices, amplify the voices of Indigenous Australians, rebalance power dynamics, and build a more inclusive nation. By voting yes, we take an important step towards a more just future, where the strength of our collective diversity is celebrated and nurtured. By voting yes, we can create a future where all Australians, regardless of their background, can thrive in a society that values and respects the contributions of every individual.

What you can do to support First Nations People

① Read, Watch, Listen

Read the [Uluru Statement from the Heart](#), which is written by Aboriginal and Torres Strait Islander Australians and is where the Voice to Parliament comes from. Then, continue to seek out trustworthy sources to learn more about the Voice to Parliament and the long history of First Nations campaigning for change that has led to this moment. Don't be afraid to ask for help if you're not sure where to start.

② Show your support

Whether it's a sign on your fence or a pin on your collar, these small displays of solidarity go a long way to normalising discussions about the referendum. The Voice isn't something to be scared of, and supporting it is nothing to be ashamed of!

③ Be a First Nations Ally

Being an ally is different to being a saviour, so don't speak for First Nations People. Instead, empower Aboriginal and Torres Strait Islanders to speak about this issue and why it matters to them. But on the other hand, don't leave all the hard work to First Nations People either! We can't expect Aboriginal and Torres Strait Islander Australians to do this alone. They are less than 4% of the population. Think about times when you can help lighten their burden by advocating yourself.

④ Have Respectful Conversations

Engage with family, friends and the wider community about the referendum. This isn't always easy, but it's important to have open discussions in order to win hearts and minds. Ask yourself why you support First Nations Peoples, and then share your 'why' with others.



Further Resources

Uluru Statement from the Heart

<https://ulurustatement.org/the-statement/view-the-statement/>

Resources:

Monash University, Castan Centre for Human Rights Law Voice to Parliament Resources:

<https://www.monash.edu/law/research/centres/castancentre/our-areas-of-work/indigenous/voice-to-parliament-resources>

Katie O'Bryan and Paula Gerber, 'Voice to Parliament: Debunking 10 myths and misconceptions'

<https://lens.monash.edu/@politics-society/2023/02/27/1385518/voice-to-parliament-debunking-10-myths-and-misconceptions>

'Indigenous Voice Co-Design Process: Final Report to the Australian Government' July 2021

<https://voice.gov.au/resources/indigenous-voice-co-design-process-final-report>

Publications:

Thomas Mayo & Kerry O'Brien, 'The Voice to Parliament Handbook: All the detail you need.'