



## REFERENDUM ON THE VOICE: INFO SHEET

The Australian people will vote in a referendum in the latter part of 2023.

They will be asked whether they agree to change the Constitution to recognise Aboriginal and Torres Strait Islander Peoples by providing for a representative body to be called the Voice.

The wording of the change must be agreed by the Parliament before it is considered by the people.

This Info Sheet explains what is proposed and the steps that will be taken along the way.

It reflects the situation on 31 May 2023. It will be updated as the year progresses.

### WHAT IS THIS ABOUT?

Any change to the Australian Constitution requires approval by the Australian people voting in a referendum.

A change has been proposed to recognise Aboriginal and Torres Strait Islander Peoples in the Constitution by creating a representative body, to be called the Voice, to give its views to the Australian government and Parliament on matters relating to the Indigenous peoples.

The wording in the Constitution Alteration Bill introduced into the Parliament on 30 March 2023 is as follows:

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

- 1. There shall be a body, to be called the Aboriginal and Torres Strait Islander Voice.*
- 2. 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.*
- 3. 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.*

The section would appear at the end of the Constitution, as section 129, in a new Chapter IX, entitled *Recognition of Aboriginal and Torres Strait Islander Peoples*. The heading of section 129 would be *Aboriginal and Torres Strait Islander Voice*.

This wording will be considered by Parliament in the form of a proposed law to alter the Constitution, called the *Constitutional Alteration (Aboriginal and Torres Strait Islander Voice) 2023 (Bill)*. The wording could be changed in the course of the parliamentary process, although change would need to take account of the negotiations over these words that have already taken place with Indigenous representatives. Any change will be included in updates to this Info Sheet.

For the Constitution to be changed, once the bill passes the Parliament, it must be put to a direct vote by the Australian people, in the form of a referendum, following procedures laid down by the Constitution itself. This is likely to take place towards the end of 2023.

## **WHERE DID THE IDEA OF A VOICE COME FROM?**

The Aboriginal and Torres Strait Islander Peoples are Australia's First Peoples. They inhabited the Australian land mass for at least 60,000 years, developing distinctive cultures and laws, characterised by their relationship with earth, sea, and sky. The impact of dispossession from the time of colonisation is almost unimaginable, and its social, economic, legal, and cultural consequences continue.

Recognition of Aboriginal and Torres Strait Islander Peoples in the Australian Constitution has been discussed for decades, as a step towards reconciliation with Australia's First Peoples. It reflects the status of the Constitution as Australia's fundamental law. It draws additional significance from the complicated history of Aboriginal and Torres Strait Islander Peoples with the Constitution, beginning with their exclusion at the time the Constitution was made.

The need for Aboriginal and Torres Strait Islander Peoples to have a say on governmental decisions affecting them also has a long history. These two ideas come together in the idea of a Voice with a base in the Constitution. This form of recognition would be both symbolic and practical. It also fits the scheme of the Constitution, which relies on institutions and the relationships between them to provide effective democratic government within the framework of the rule of law.

The proposal for recognition through the creation of a 'Voice' came most immediately from the [First Nations National Constitutional Convention](#) that met at Uluru in 2017. The Convention involved 250 Indigenous Australians from all parts of the country and built on earlier discussions in [13 Regional Dialogues](#). In the Uluru [Statement from the Heart](#), the Convention reached a broad consensus on seeking a constitutional amendment to provide for a Voice, before creating a Makarrata Commission to oversee agreement making and a process of truth telling.

Since 2017, there has been extensive discussion of the idea of a Voice. In 2021, a [Report from the Indigenous Voice Co-Design Process](#), established by the then Commonwealth Government, set out some ideas about the structure and operation of the Voice, based on broad consultation with Aboriginal and Torres Strait Islander communities.

In 2022, the incoming Commonwealth Government agreed to initiate the process of constitutional change, leading to a referendum.

## WHAT WOULD THIS CONSTITUTIONAL CHANGE DO?

To understand what the change means and how it would work, it is helpful to break the proposed wording down.

### *In recognition of Aboriginal and Torres Strait Islander peoples as the First Peoples of Australia*

These opening words acknowledge Aboriginal and Torres Strait Islander peoples as the First Peoples of Australia, making constitutional recognition a reality and explaining the significance of the new section.

#### (1) *There shall be a body, to be called the Aboriginal and Torres Strait Islander Voice.*

This first sub-section requires the establishment of a body to be called the Aboriginal and Torres Strait Islander Voice. The name is self-explanatory. The effect of the provision is to give the Voice a base in the Constitution, Australia's highest law.

#### (2) *The Aboriginal and Torres Strait Islander Voice may make representations to Parliament and the Executive Government of the Commonwealth on matters relating to Aboriginal and Torres Strait Islander Peoples.*

This second sub-section provides a framework for what the Voice can do. The key elements of this framework are:

- The Voice may make 'representations'. In other words, it can give its views, from the standpoint of Aboriginal and Torres Strait Islander Peoples, but it cannot itself make binding decisions.
- The representations may be made to the Commonwealth 'Parliament and Executive Government'. In other words, they are available to inform the process of government decision-making at the Commonwealth level.
- The representations must be about 'matters relating to Aboriginal and Torres Strait Islander Peoples'. The Voice can be expected to have special knowledge of the ways in which government actions affect Indigenous people on matters 'relating to' them, which can improve the quality of government.

#### (3) *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.*

This third and last sub-section gives power to the Parliament to pass ordinary legislation to set the Voice up. Like all legislative powers provided by the Constitution, it is expressed to be 'subject to' the rest of the Constitution, including the federal structure of the system of government and the separation of powers. This legislation can be expected to provide for the composition and structure of the Voice, what it does and how it operates. It may provide for other matters as well, such as the way the Voice interacts with government and Parliament. Like any other ordinary legislation, it may be changed from time to time by the Parliament.

Since debate on the Voice began, there has been some discussion of whether the new section of the Constitution might give rise to challenges in court. Any constitutional provision is potentially subject to judicial interpretation. This new section would be no exception. It is drafted in a way that minimises the likelihood of litigation. As with much of the rest of the Constitution, the effectiveness of the Voice is likely to depend on the development of appropriate political practices, rather than on courts.

## WHAT HAPPENS NEXT?

The Constitution Alteration bill was introduced into the Parliament on 30 March 2023 and was examined by the Joint Select Committee on the Aboriginal and Torres Strait Islander Voice Referendum. The Committee [reported](#) in May, and recommended that the Constitution Alteration bill be passed unamended.

The bill is presently being considered by both the House of Representatives and the Senate, in the light of the Committee's report. What needs to happen then is set out in [section 128 of the Constitution](#).

Section 128 involves three steps.

Step 1: The Parliament passes a bill proposing the constitutional change. In this case, the bill is called *Constitution Alteration (Aboriginal and Torres Strait Islander Voice) 2023*. The bill normally has to be passed with absolute majorities in both the House of Representatives and the Senate (an absolute majority requires a majority of the total number of members of each House, not just the members actually present and voting). If one House does not pass the bill, there is a procedure for the other House to pass it twice, before it is sent to referendum.

Step 2: The bill passed by the Parliament is put to a vote by the people, in a referendum. The voting arrangements are similar to those used in ordinary elections and include compulsory voting. Voters will be provided with the text of the proposed changes. The question they will see on the voting paper, however, will be taken from the long title of the bill passed by the Parliament. In the case of this referendum, the question is likely to be:

'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?'

For the referendum to pass, two sets of majorities are required.

- There must be a national majority of all those voting, including voters in the two mainland territories.
- There must be a majority in at least four states, not counting the territories.

Step 3: If the Bill is passed at referendum, it must receive royal assent from the Governor-General. This is a formality.

Once these steps are completed, the Constitution is changed.

For the change to come into practical operation, it will be necessary for Parliament to pass legislation setting up the Voice. The [Co-Design Report](#) provides some guidance for this legislation. The Government also has released some [Design Principles](#) identified by the First Nations Referendum Working Group. In designing and drafting the legislation there would be more consultation with Aboriginal and Torres Strait Islander peoples and further deliberation in the Parliament itself. This would be likely to take place over the course of 2024.

There would be a period of practical implementation after that, as arrangements for the Voice are put in place and the institutions of government adapt their procedures to take the views of the Voice adequately into account.

## **THE REFERENDUM CAMPAIGN**

A referendum is a way of making public decisions that directly involves the voters. It is a form of direct democracy, that enables the voters themselves to decide substantive issues, rather than leaving them to elected representatives. Whenever a referendum is held, there is an important question about how best to assist voters to understand the constitutional change that is proposed, so that they can decide how to vote.

For many decades, the system for informing voters about referendum proposals has been set out in section 11 of the Referendum (Machinery Provisions) Act 1984. The section provides for the distribution of arguments for and against the change (the 'yes' and 'no' cases) prepared by Members of Parliament who voted respectively for and against the Constitution Alteration Bill, to be distributed as a pamphlet to voters by the Australian Electoral Commission.

For the purposes of this referendum, the [1984 Act was amended](#) to provide for the following information to be provided to voters for the Voice referendum:

- The pamphlet containing the 'yes' and 'no' cases will continue to be distributed, as in the past. Importantly, this pamphlet also will contain the text of the alteration proposed, to show how the Constitution would be altered.
- Factual information about the referendum and the referendum process also is available to voters on [vote.gov.au](https://www.vote.gov.au)

There will be many other sources of information as well, including through the [Centre for Comparative Constitutional Studies](#) at Melbourne Law School, which will be running a series of events throughout the referendum year.

## **ANY QUESTIONS?**

We hope you find this Info Sheet useful. Let us know if there are other matters you would like us to cover. And keep an eye on our website <https://law.unimelb.edu.au/centres/cccs> for updates, Questions and Answers and information about our ongoing public seminar series.